

# **The Anthony Grainger Inquiry**

**Report into the Death of  
Anthony Grainger**

**Chairman: His Honour Judge Teague QC  
July 2019**

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## Note on References

Unless otherwise indicated, footnotes cite documentary sources by reference to the bundles (named Bundle A, B, C etc.) to which they were assigned during the evidence-gathering phase. Quotations from the Inquiry's oral proceedings are identified: (i) in the case of the main evidential hearing, by reference to page and line numbers from the consolidated transcript (TS/1234:1–2); and (ii) in the case of all other hearings, by reference to hearing date and page and line numbers from the relevant transcript. The transcript is available on the Inquiry's website. Other documentary sources will be available on application to the Secretary to the Inquiry.

# Foreword

1. A public inquiry is, of necessity, an exercise in hindsight. That is the whole point of the thing. It may be otherwise in adversarial proceedings, but the Chairman of an Inquiry must be a seer after the event, examining society's conscience, revealing even those things that could not have been known at the time and, in the process, illuminating a future to which it might not otherwise have been possible to aspire. To disregard after-acquired knowledge when considering whether an historical decision or action was objectively justified risks subverting the purpose of an investigation such as this.
2. It is only when assessing the extent to which a decision or action may be blameworthy that it becomes important to eschew retrospection. In making such a judgement, it is plainly necessary to consider the matter in the light of the situation as the person responsible understood it, or could reasonably have been expected to understand it. For all other purposes, hindsight is no luxury, but a necessity if the opportunity to learn from the past is not to be squandered. To confine my investigation to questions of culpability, without exploring the wider issues that arise, would have been to hobble it from the start.
3. In fulfilling my Terms of Reference (see Appendix A), therefore, I have not heeded pleas to “beware of hindsight”, except where not doing so might lead to unjust criticism of an individual or organisation. In all other cases, I have done my utmost to make full use of all the information available to me, recognising that those who had the task of taking decisions at the time could not possibly have known much of it. At the same time, I have kept constantly in mind the observation of Sir Brian Leveson, President of the Queen's Bench Division, that “minute dissection of fractions of a second with the benefit of hindsight will discourage an appropriate response, in real time, to threats thereby resulting in potentially increased danger to those involved in (or likely to be affected by) these exceedingly difficult operations”.<sup>1</sup> It is, in the end, a question of balance.
4. The pages that follow contain an analysis not only of what happened on 3 March 2012 in Culcheth, but also of the chain of events and decisions that led to it. My wide-ranging Terms of Reference dictated such a comprehensive approach, and rightly so, for it turns out that Anthony Grainger's untimely death was not the consequence of one wrong decision but of many. As often happens, it took a combination of errors and blunders to produce so calamitous an outcome – an outcome for which I have concluded that Greater Manchester Police is to blame.
5. Those who were close to Mr Grainger will never forget him. To his children, he was a devoted father.<sup>2</sup> To his mother, Marina Schofield, he was her “beautiful boy”.<sup>3</sup> To his fiancée, Gail Hadfield-Grainger, he was not just her life partner but a loving father to her children.<sup>4</sup> They have had to wait too long to find out what lay behind the brutal circumstances of his sudden death but have borne the delay with patience and dignity.
6. The investigation into those circumstances began as an inquest. I have traced the legal and administrative route by which it came to be converted into a public inquiry in Chapter 1, where the reader will also find an executive summary of my findings.

<sup>1</sup> *E7 (an officer of the Metropolitan Police) v Sir Christopher Holland (in his capacity as Chairman of the Azelle Rodney Inquiry)* [2014] EWHC 452 (Admin).

<sup>2</sup> Marina Schofield, TS/412:13–413:3; Gail Hadfield-Grainger, TS/419:3–7.

<sup>3</sup> Schofield, TS/411:16.

<sup>4</sup> Hadfield-Grainger, TS/419:6–7.

Had it proceeded as an inquest, its conclusions would have taken the form of a brief narrative, setting out when, where, how and in what circumstances Mr Grainger came by his death. In order not to deprive the individuals most closely affected by these proceedings – above all those who knew and loved Mr Grainger – of the clear answers to those questions to which they are entitled, I have taken care to ensure that the Inquiry discharges all the functions of the original inquest. It is for that reason that my Report ends with a short narrative conclusion of the kind that the inquest would have produced.

7. The scale and complexity of my task turned out to be far greater than I or, indeed, those who first asked me to perform it could have anticipated. I am not ashamed to confess that I could not have undertaken it without an enormous amount of help and support. That the Inquiry has fulfilled its Terms of Reference within the budget allotted to it is due entirely to the skill and resourcefulness with which its Secretary, Susan Curran, with minimal administrative support, steered the process through the reefs and shoals of funding and red tape. I am especially grateful to my Counsel, Jason Beer QC and Sophie Cartwright, to the Inquiry’s solicitor, Lachlan Nisbet, of Brabners LLP, his predecessor Jane Worthington of the Government Legal Department, and the Inquiry’s paralegal, Paul Connor. That the oral hearings proceeded as smoothly as they did is largely due to the tact and sensitivity with which the Inquiry’s usher, Bernie Shaw, managed them. Two successive Recorders of Liverpool, His Honour Judge Clement Goldstone QC and His Honour Judge Andrew Menary QC, not only released me from my usual Crown Court duties for extended periods, but graciously made available a court room for the Inquiry’s use. His Honour Judge Roger Dutton, Honorary Recorder of Chester, was kind enough to set aside a room in Chester Castle for meetings and other administrative purposes. I am grateful to the team of dedicated shorthand writers, Adam Khalid Moon, Ciaran Morris and Sophie MacGregor, and to the editors and staff at Accuracy Matters. I am equally indebted to all those friends and colleagues, too numerous to identify, whose encouragement sustained me throughout the Inquiry process. Above all, I thank my wife Helen for her constant patience, understanding and support.
8. Although I have relied heavily on the help and advice of my legal team, I accept sole responsibility for any defects in this Report. Since its subject matter is so contentious, its conclusions will not be universally palatable. To anyone inclined to dismiss them out of hand, I say: “Don’t bite my finger. Look where I’m pointing.”<sup>5</sup>

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<sup>5</sup> Usually attributed to the American neurophysiologist Warren McCulloch (1898–1969).

# Chapter 1: Background and Executive Summary

## A. Background

- 1.1 The village of Culcheth lies six miles north-east of Warrington in the semi-rural plain between Liverpool and Manchester. Ten miles east is Salford; beyond Salford, Manchester.<sup>1</sup>
- 1.2 Until the boundary changes of 1974 ordained otherwise, the village was in Lancashire. Now officially assigned to Cheshire, it retains much of the mood and character of the south Lancashire landscape that surrounds it.
- 1.3 Having little industry or commerce of its own, Culcheth is essentially a dormitory village for the great cities of Liverpool and Manchester and other nearby conurbations, a role for which its close proximity to the M62 motorway and the A580 “East Lancs” road perfectly suits it.
- 1.4 The centre of the village is dominated by shops and small businesses, including cafés, pubs and restaurants, together with a branch of Sainsbury’s supermarket. There is still a local post office, but the few banks that served the village in 2012 have now closed. In Jackson Avenue, almost opposite the post office and close to Sainsbury’s, is the vehicle entrance to a small public car park occupying the right angle created by Jackson Avenue and Thompson Avenue; the exit from the car park leads into the latter thoroughfare.
- 1.5 It was in the Jackson Avenue car park that an authorised firearms officer of Greater Manchester Police (“GMP”) shot and killed Anthony Grainger on the evening of Saturday 3 March 2012.
- 1.6 Mr Grainger, who was 36 years of age, was sitting in the driver’s seat of an Audi car. There were two other men in the car with him. The front passenger was David Totton; a man called Joseph Travers sat in the back. All three were from the Salford area. None had any personal connection with Culcheth. The Audi had been stolen some weeks earlier and was displaying false number plates.
- 1.7 It was not the first time that Mr Totton and Mr Grainger had travelled from Salford to Culcheth. During the preceding week or so, they had made the return trip no fewer than five times. Each visit took place at very nearly the same hour of the evening. On each occasion they used the stolen Audi. On each occasion they drove into or very close to the Jackson Avenue car park.<sup>2</sup> On each occasion they returned to Salford after spending no more than a few minutes in the village and without bothering to get out of the car.
- 1.8 There was no legitimate reason for these strange expeditions. The only credible explanation is that they were connected with a serious criminal enterprise of some kind.
- 1.9 In October 2011, GMP officers had set up an investigation named Operation Shire, the purpose of which was to look into the activities of a suspected organised crime group based in Salford. One of Operation Shire’s subjects was Mr Totton, a professional

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<sup>1</sup> See Appendix B.

<sup>2</sup> See paragraphs 3.2 and 3.3.

criminal of considerable notoriety who, many years earlier, had survived an attempted assassination in the Brass Handles public house in Salford, during the course of which his two assailants were shot dead.

- 1.10** Mr Grainger was not one of the original subjects of Operation Shire. He first came to the attention of the investigating team in late January after surveillance officers saw him in the company of Mr Totton. Thereafter, through a combination of conventional surveillance (sometimes with mobile armed support<sup>3</sup>) and the use of vehicle tracking devices, the investigation monitored the activities of both men and the stolen Audi's movements.
- 1.11** By Friday 2 March 2012, Operation Shire's Senior Investigating Officer ("SIO"), Detective Inspector ("DI") Robert Cousen, was in possession of intelligence which, in conjunction with his team's own observations, led him to conclude that Mr Totton, Mr Grainger and a third man called Robert Rimmer were planning to commit an armed robbery in Culcheth. Anticipating that the robbery might take place the next day, DI Cousen set up a surveillance operation and secured the assistance of a Mobile Armed Support to Surveillance ("MASTS") team of firearms officers.
- 1.12** Early on the evening of Saturday 3 March, the stolen Audi travelled to Culcheth. Mr Grainger reversed it into a corner space commanding a view of the entire car park, as well as of some nearby commercial buildings. Shortly after 7 p.m., firearms commanders in charge of the MASTS team decided to arrest the men in the Audi. It was during that operation that an officer known as "Q9" discharged a single round from his carbine through the Audi's windscreen, hitting Mr Grainger in the chest and killing him.
- 1.13** The three men in the Audi turned out to have been wearing gloves, and two of them were wearing hats that could be rolled down to form face masks; investigators later recovered a third hat from the car's front footwell. No firearms or other weapons were found at the scene or in subsequent searches of the men's homes.
- 1.14** The Independent Police Complaints Commission (IPCC; now the Independent Office for Police Conduct – IOPC) immediately began an investigation into the circumstances of Mr Grainger's death.
- 1.15** In September 2012, Mr Totton, Mr Travers and Mr Rimmer appeared for trial at the Crown Court in Manchester on a charge of conspiracy to rob. At the outset of the hearing, the defendants offered to admit conspiring to steal cars.<sup>4</sup> The prosecution rejected that offer and proceeded to trial on the original charge. The trial resulted in the acquittal of all three men.
- 1.16** On 27 June 2013, the IPCC produced its Final Investigation Report. In summary, it concluded that there had been serious organisational failings in the use and briefing of intelligence to firearms officers and in the development of operation-specific firearms tactics, as well as individual failings by certain officers (including Q9) in their decisions to use force.<sup>5</sup> The report also found that some of the decision-making in respect of planning tactics, options and use of force had been "formulaic" and "suggestive of a predetermination to use MASTS combined with Hatton [i.e. tyre-breaching] rounds and CS dispersal canisters".<sup>6</sup>

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<sup>3</sup> Mobile Armed Support to Surveillance ("MASTS").

<sup>4</sup> Bundle E/533; Nicola Moore, TS/1665:8–1671:1.

<sup>5</sup> Bundle C/1063–1096.

<sup>6</sup> Bundle C/1076–1077.

- 1.17** The IPCC passed its report to the Crown Prosecution Service (“CPS”), for that body to determine whether criminal proceedings should be instituted against any individual or organisation.
- 1.18** In January 2014, the CPS announced that it had decided not to bring charges against Q9 or any other individual police officer. The same month, however, it instituted proceedings against Sir Peter Fahy in his capacity as Chief Constable of GMP for an alleged offence contrary to the Health and Safety at Work etc. Act 1974, arising out of the Force’s planning and conduct of the armed operation on 3 March 2012.
- 1.19** In January 2015, the judge in the case against Sir Peter Fahy ruled that there could not be a fair trial without disclosure to the defence of certain material that was subject to a public interest immunity claim. As a result, the prosecution elected to offer no evidence against Sir Peter Fahy and invited the court to direct his acquittal.
- 1.20** The involvement of agents of the State in the events that led to Mr Grainger’s death engaged the State’s obligation under Article 2 of the European Convention on Human Rights to hold an effective public investigation into the circumstances surrounding his death, including the planning and control of the police operation.
- 1.21** On 6 May 2015, the Lord Chief Justice nominated me to conduct the investigation and inquest into Mr Grainger’s death.
- 1.22** By October of that year, I had gathered a considerable body of relevant material. At hearings held in October and November, I upheld claims from various bodies to withhold some of the material from disclosure on grounds of public interest immunity.
- 1.23** Where there is reason to suspect that death resulted from the act or omission of a police officer in the purported execution of his duty, an inquest must be held with a jury, which can only sit in open session. There is no power to exclude the general public, save on grounds that do not arise in the present case.
- 1.24** After hearing submissions from all properly interested persons, I concluded that an inquest jury would not be able to ascertain the circumstances in which Mr Grainger came by his death without access to the evidence that I had decided must be withheld from disclosure. Further, an inquest that was precluded from investigating those circumstances would not provide the level of scrutiny required by Article 2 of the European Convention on Human Rights.
- 1.25** On 20 November 2015, I wrote to the Home Secretary (then the Rt Hon Theresa May MP), setting out my views and inviting the Government to convert the inquest into an inquiry under the Inquiries Act 2005 (“the 2005 Act”).
- 1.26** On 17 March 2016, the Home Secretary appointed me Chairman of the present Inquiry into Mr Grainger’s death under the provisions of the 2005 Act. In her statement to the House of Commons, the Home Secretary set out the Terms of Reference (see Appendix A), stating that the Government had considered it necessary to convert the inquest into a statutory inquiry “so as to permit all relevant evidence to be heard by the Judge”.<sup>7</sup>
- 1.27** Following the Home Secretary’s announcement, I appointed a legal and administrative team and, with their assistance, continued to gather relevant material. The Inquiry’s

<sup>7</sup> House of Commons Debate (17 March 2016), *Hansard*, vol. 607, cols. 52WS–53WS, <https://hansard.parliament.uk/Commons/2016-03-17/debates/16031732000017/StatutoryInquiryAnthonyGrainger>.

opening session took place on 26 July 2016. At that session, I directed that the Inquiry would begin hearing oral evidence on 17 January 2017. As I said at the time, that was an intentionally ambitious timetable. I held preliminary hearings on 14 November and 15 December 2016 and made a series of ancillary open and closed rulings. The efficiency and industry of my team and the willing co-operation of core participants enabled the Inquiry to keep to its timetable, opening as planned on 17 January 2017 and concluding four months later with closing statements, on 17 and 18 May 2017.

**1.28** The Inquiry's Terms of Reference extend beyond the scope of the original inquest in requiring me to make "such recommendations as may seem appropriate".<sup>8</sup> In February 2018, I heard evidence relating to that part of my task.

## B. The Inquiry's approach

**1.29** As the Home Secretary told the House of Commons, the whole point of the Government's decision to hold the present Inquiry was "so as to permit all relevant evidence to be heard". The requirement in my Terms of Reference to investigate the "information available to those who planned the operation" thus embraces all the highly sensitive material that would have been excluded from consideration by an inquest jury.

**1.30** To my knowledge, no previous process in any forum has ever been required to conduct a detailed forensic investigation of the handling and interpretation of "raw" secret intelligence. On the rare occasions when judges have to consider material of such extreme sensitivity, they are generally provided with "sanitised" gists or summaries, the accuracy of which they must necessarily take on trust. I have therefore taken full advantage of what is likely to prove a unique opportunity to scrutinise closely the "accuracy, reliability, interpretation, evaluation, transmission and dissemination of such information" in accordance with my Terms of Reference.

**1.31** Having regard to Article 2's requirement that my investigation should be conducted in public, I have, through preliminary rulings and in the composition of this Report, made public as much as possible of the information upon which my conclusions are based. I cannot, however, reveal any of the secret material that has been disclosed to me, nor can I disclose anything that might betray its content or origin; those are matters covered in a separate closed report.

**1.32** A similar situation arose in relation to the inquiry into the murder of Alexander Litvinenko. In rejecting as "implausible" the argument that an inquiry would serve no useful purpose because it could only reveal publicly what a conventional inquest could reveal, the High Court said this:

Of course, a statutory inquiry would have to consider the HMG material in closed session and would be precluded from disclosing it; but the chairman of the inquiry would almost certainly be able to state publicly *some* useful conclusion based on the material without disclosing the material itself. It is extremely difficult to envisage a situation in which *no* conclusion could be stated publicly without infringing the restriction notice. All this applies even more forcefully in relation to an inquiry of the kind sought by the Coroner, which would look at all the open evidence as well as the closed material, not only increasing the chances that some useful finding could be made but also making it that much easier to express conclusions without revealing the closed material.<sup>9</sup>

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<sup>8</sup> See Appendix A.

<sup>9</sup> *R (Litvinenko) v Secretary of State for the Home Department* [2014] EWHC 194 (Admin), §67.

**1.33** My experience in the present Inquiry amply bears out that view. The degree to which it has proved necessary to withhold from publication conclusions based on closed material, and the reasoning on which I have based such conclusions, has turned out to be far less than the reader may be tempted to imagine, and I am confident that any necessary omissions from my published Report are not such as to compromise its overall integrity.

## C. The standard of proof

**1.34** Neither the 2005 Act nor the Inquiry Rules 2006 (“the 2006 Rules”) specifies the standard of proof that the chairman of a public inquiry ought to apply when determining facts. It seems to me, however, that the 2005 Act and the 2006 Rules do inform the legal position in relation to the standard of proof to which facts may be determined.

**1.35** It must be recognised at the outset that the function of a public inquiry is very different from that of either civil or criminal proceedings. A public inquiry is inquisitorial, whereas civil and criminal proceedings are adversarial.

**1.36** That distinction is reflected in the fact that the panel of a public inquiry is specifically prohibited by section 2 of the 2005 Act from determining any person’s civil or criminal liability. The prohibition is stated in the following terms:

- (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.<sup>10</sup>

**1.37** The difference in function between a civil or criminal court on the one hand, and a statutory public inquiry on the other, means that an inquiry is not required to adopt the standard of proof that applies in either the civil courts or the criminal courts.

**1.38** Section 2(2) of the 2005 Act also suggests to me that a public inquiry conducted under the 2005 Act is not to be inhibited from making findings of fact to either the criminal or civil standard of proof merely because doing so might give rise to a likelihood of liability being inferred from facts so determined.

**1.39** Section 17 of the 2005 Act is also of assistance. So long as I act fairly, I am free to decide upon an approach to findings of fact which best suits discharging the Inquiry’s Terms of Reference:

- (1) Subject to any provision of this Act or of rules under section 41, the procedure and conduct of an inquiry are to be such as the chairman of the inquiry may direct.
- (2) In particular, the chairman may take evidence on oath, and for that purpose may administer oaths.
- (3) In making any decision as to the procedure or conduct of an inquiry, the chairman must act with fairness and with regard also to the need to avoid any unnecessary cost (whether to public funds or to witnesses or others).<sup>11</sup>

<sup>10</sup> Inquiries Act 2005, section 2, [www.legislation.gov.uk/ukpga/2005/12/section/2](http://www.legislation.gov.uk/ukpga/2005/12/section/2).

<sup>11</sup> *Ibid.*, section 17, [www.legislation.gov.uk/ukpga/2005/12/section/17](http://www.legislation.gov.uk/ukpga/2005/12/section/17).

**1.40** Section 24(1) of the 2005 Act provides that:

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).<sup>12</sup>

**1.41** It will be seen that section 24(1)(a) of the 2005 Act places me under an obligation to set out in this Report the facts I determine. However, section 24 contains a rider that an inquiry report may also contain anything else the panel considers to be relevant to its terms of reference. I address below what, in my view, this rider permits in the present context.

**1.42** From my review of the approaches taken in a wide range of public inquiries (conducted under the 2005 Act, and otherwise), a clear and consistent approach to the question of the standard of proof emerges, namely that a flexible and variable standard should be applied. I shall not set out in this Report what they have all said, but the inquiries to which I refer are:

- *The Shipman Inquiry* – see paragraphs 9.43–9.48 of the First Report by Dame Janet Smith;<sup>13</sup>
- *The Bloody Sunday Inquiry* – see paragraphs 9–10 of the Standard of Proof Ruling by Lord Saville;<sup>14</sup>
- *The Baha Mousa Inquiry* – see paragraphs 1 and 28 of the Ruling on the Standard of Proof by Sir William Gage;<sup>15</sup>
- *The Mid Staffordshire NHS Foundation Trust Public Inquiry* – see paragraphs 95 and 100 of the Executive summary of the report by Sir Robert Francis QC;<sup>16</sup>
- *The Al Sweady Inquiry* – see Chapter 5, Volume 1 of the report by Sir Thayne Forbes;<sup>17</sup>
- *The Litvinenko Inquiry* – see paragraph 2.20, and paragraphs 121–122 of Appendix 1, in the report of Sir Robert Owen;<sup>18</sup> and

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<sup>12</sup> *Ibid.*, section 24(1), [www.legislation.gov.uk/ukpga/2005/12/section/24](http://www.legislation.gov.uk/ukpga/2005/12/section/24).

<sup>13</sup> *The Shipman Inquiry: First Report – Volume One: Death Disguised* (2002), [https://webarchive.nationalarchives.gov.uk/20090808163959/http://www.the-shipman-inquiry.org.uk/fr\\_page.asp](https://webarchive.nationalarchives.gov.uk/20090808163959/http://www.the-shipman-inquiry.org.uk/fr_page.asp).

<sup>14</sup> *The Bloody Sunday Inquiry, Standard of Proof Ruling* (11 October 2004), <https://webarchive.nationalarchives.gov.uk/20101103103956/http://www.bloody-sunday-inquiry.org/rulings/tribunal/Archive/proof.pdf>.

<sup>15</sup> *The Baha Mousa Public Inquiry, Ruling on the Standard of Proof* (7 May 2010), [https://webarchive.nationalarchives.gov.uk/20120215210241/http://www.bahamousainquiry.org/linkedfiles/baha\\_mousa/key\\_documents/rulings/standardofproofruling7may2010.pdf](https://webarchive.nationalarchives.gov.uk/20120215210241/http://www.bahamousainquiry.org/linkedfiles/baha_mousa/key_documents/rulings/standardofproofruling7may2010.pdf).

<sup>16</sup> *Report of the Mid Staffordshire NHS Foundation Trust Public Inquiry: Executive Summary* (2013), [https://assets.publishing.service.gov.uk/government/uploads/system/uploads/attachment\\_data/file/279124/0947.pdf](https://assets.publishing.service.gov.uk/government/uploads/system/uploads/attachment_data/file/279124/0947.pdf).

<sup>17</sup> *The Report of the Al Sweady Inquiry, Volume I* (2014), [https://assets.publishing.service.gov.uk/government/uploads/system/uploads/attachment\\_data/file/388292/Volume\\_1\\_Al\\_Sweady\\_Inquiry.pdf](https://assets.publishing.service.gov.uk/government/uploads/system/uploads/attachment_data/file/388292/Volume_1_Al_Sweady_Inquiry.pdf).

<sup>18</sup> *The Litvinenko Inquiry: Report into the death of Alexander Litvinenko* (2016), [https://assets.publishing.service.gov.uk/government/uploads/system/uploads/attachment\\_data/file/493855/The-Litvinenko-Inquiry-H-C-695.pdf](https://assets.publishing.service.gov.uk/government/uploads/system/uploads/attachment_data/file/493855/The-Litvinenko-Inquiry-H-C-695.pdf).

- *The Undercover Policing Inquiry* – see the Standard of Proof Ruling by the late Sir Christopher Pitchford.<sup>19</sup>

**1.43** Of these previous reports and rulings, I have found that of Sir William Gage in the Baha Mousa Inquiry most helpful (in particular because he was considering a range of issues not dissimilar to those before me – i.e. conduct of agents of the State resulting in the death of a civilian where the investigation was not confined to the immediate and proximate cause of death). Sir William examined an instance of the very serious mistreatment of civilian detainees by British soldiers in Basra, Iraq, in September 2003, which had led to the death of Baha Mousa and serious injury to other detainees. Sir William expressed the provisional view that he should adopt a flexible approach, indicating the level of satisfaction which he found established in relation to any significant finding of fact that warranted such an indication (i.e. the approach adopted both by the Shipman and Bloody Sunday inquiries). He heard submissions advocating a wide range of different approaches ranging from the application of the balance of probabilities across the board to complex systems applying different standards of proof to different categories of alleged conduct.

**1.44** As in the Bloody Sunday Inquiry, the Baha Mousa Inquiry’s attention was drawn to a range of case law from both the coronial jurisdiction and civil courts. Sir William Gage explained that these authorities did not help on the issue of whether he should adopt a uniform standard of proof across the board: they were decisions in proceedings that did not equate with public inquiry proceedings.<sup>20</sup> Sir William followed the Bloody Sunday Inquiry in endorsing Dame Janet Smith’s flexible approach, concluding that it was in the public interest to do so:

I must also be fair to the detainees who, on any view of the evidence I have so far heard, suffered serious and traumatic injuries following their arrest and detention in the TDF at Battlegroup Main between 14 and 16 September 2003. In addition, this is a Public Inquiry and it is in the public interest that my findings in the Report are expressed in such a way as can be readily understood as my judgment on what occurred, who was responsible and why I have made recommendations. In my opinion, this can best be achieved by adopting the flexible and variable standard of proof as applied in the Shipman Inquiry.<sup>21</sup>

**1.45** At the end of his ruling, Sir William explained how he would apply the flexible approach in relation to his task. He chose to adopt the civil standard of proof as a starting point, but indicating where he was sure of a finding:

For the reasons which I have endeavoured to explain I have concluded that it is right for me to approach my task by initially adopting the civil standard of proof in relation to findings of facts, but indicating where appropriate where I am sure of a finding. As I have said, I shall record the level of satisfaction which I find established in relation to any finding of fact. Thus, I shall state where necessary that I find a fact proved on the balance of probabilities or to a higher standard where appropriate. I do not think it will be necessary expressly to refer to expressions such as “inherent improbabilities” or the “bare” balance of probabilities.<sup>22</sup>

**1.46** A discrete issue arose during the course of argument as to whether in an inquiry under the 2005 Act a panel is permitted to express its views in terms of suspicion that conduct or an activity occurred. Sir William concluded that he was permitted to express a suspicion that an allegation was true; to do so would not be a finding of fact but a permissible comment.

<sup>19</sup> Undercover Policing Inquiry, Standard of proof (13 January 2016), [www.ucpi.org.uk/preliminary-issues/standard-of-proof](http://www.ucpi.org.uk/preliminary-issues/standard-of-proof).

<sup>20</sup> The Baha Mousa Public Inquiry, Ruling on the Standard of Proof (7 May 2010), §17.

<sup>21</sup> *Ibid.*, §19.

<sup>22</sup> *Ibid.*, §28.

**1.47** The arguments in relation to this issue, and his conclusions on them, are set out in his ruling:

24. During the course of oral argument I canvassed with all counsel whether or not I am entitled to make comments expressing suspicion or, some other such phrase, that an allegation is true. Mr Singh submitted that I am entitled to do so; others disagreed. Mr Beer submitted that I have no power to do so because my power is only to determine the facts (s.24(1)(a) of the 2005 Act).

25. I do not accept that I may not make such comments. In my opinion the terms of s.24(1) (a) do not restrict me from doing so. In any event, as Mr Singh pointed out, s.24(1) of the 2005 Act provides that “The report may also contain anything else that the panel considers relevant to the terms of reference”. I do, however, accept and stress that by making a comment of that nature I would not be making a finding of fact. I further accept that the power to make such a comment should be exercised sparingly. Circumstances in which I will feel constrained to do so will, I believe, be comparatively rare.

26. In adopting this procedure for finding facts I do not see any unfairness arising to Core Participants from not knowing to what standard of proof allegations against them may be found proved. In preparing submissions on their behalf counsel representing them will no doubt properly seek to place their version of events in the best possible light, regardless of the variations in the standard of proof. As I have indicated, my starting point will be the civil standard. I shall not make findings of fact to a lower standard than on the balance of probabilities and I will make clear where appropriate that I am sure of a finding. This I conceive to be my duty and cannot lead to any unfairness. Equally, albeit sparingly and with fairness at the forefront of my mind, I may indicate, where appropriate, that reasonable suspicion remains in relation to an issue, but this would be a comment and not a finding of fact.<sup>23</sup>

**1.48** I have concluded that I should adopt the approach taken by Sir William Gage in the Baha Mousa Inquiry. In other words, I have decided to apply a flexible and variable approach to the level of confidence or certainty with which I express my factual conclusions or findings. My starting point will be the civil standard (the “balance of probabilities” – i.e. whether it is more likely than not that an event occurred) but, depending upon the context, I may specify a different level of certainty or uncertainty. This will permit me to find, where the context requires it, that a fact has been proved to the criminal standard where I am sure beyond reasonable doubt. Exceptionally, I may also express comments couched in terms of suspicion; these will not be findings of fact.

**1.49** Where the level of confidence or certainty of a finding is neither specified nor obvious from the immediate context, it can be assumed to be on the balance of probabilities.

## **D. Executive summary of conclusions and recommendations**

### **Key conclusions**

**1.50** Anthony Grainger died on 3 March 2012 from a single gunshot wound inflicted by an authorised firearms officer (“AFO”) of Greater Manchester Police (“GMP”) known as “Q9”.

**1.51** Although Mr Grainger had a history of dishonesty and vehicle crime, he had no convictions for violence or robbery.

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<sup>23</sup> *Ibid.*, §§24–26.

- 1.52** In October 2011, GMP's Robbery Unit began an investigation, known as Operation Shire, into the activities of a Salford-based organised crime group suspected of committing commercial robberies in North West England. The investigation's chief objective was to obtain evidence that would convict its subjects of involvement in serious criminality. To that end, the investigation team ensured that the subjects were kept under intermittent surveillance, sometimes with the support of AFOs.
- 1.53** The original subjects of Operation Shire included David Totton, but not Mr Grainger.
- 1.54** In December 2011, unknown thieves stole a red Audi car in Bolton. Officers later found the stolen Audi in Salford, displaying false registration plates, and fitted it with covert tracking equipment to allow them to monitor its movements.
- 1.55** In January 2012, investigators added Mr Grainger as a subject of Operation Shire after surveillance officers saw him in the stolen Audi with Mr Totton. However, instead of obtaining a bespoke intelligence profile of Mr Grainger, the investigation team adopted an existing profile that had originally been prepared for an unrelated investigation of a different nature. That profile, which Operation Shire's investigators did not verify or develop, contained serious inaccuracies, presenting a distorted and, in some respects, exaggerated picture of the threat Mr Grainger presented.
- 1.56** On four out of five of the evenings preceding 3 March, the stolen Audi travelled from Salford to the same part of Culcheth and back. The visits to Culcheth had no legitimate purpose but passed uneventfully.
- 1.57** On Thursday 1 March, anticipating that a "hostage" robbery might take place in Culcheth during the early hours of Friday 2 March, firearms commanders authorised, planned and briefed a Mobile Armed Support to Surveillance ("MASTS") deployment. The authority for that deployment was rescinded after the night passed without incident.
- 1.58** Shortly before 7 p.m. on Friday 2 March, the stolen Audi made another visit to the centre of Culcheth. Later the same evening, suspecting that Mr Totton, Mr Grainger and Robert Rimmer intended to commit a robbery against an unknown commercial target in Culcheth, Operation Shire's investigators sought and obtained authority to mount a MASTS operation the following day.
- 1.59** While GMP had received no intelligence suggesting that the subjects of the operation were armed or had immediate access to firearms, the three men collectively posed sufficient danger to justify the deployment of a firearms team in support of surveillance officers according to the orthodox view of the MASTS methodology. However, the firearms commanders who authorised and planned the armed deployment of 3 March 2012 held an unorthodox and fundamentally flawed view of MASTS, treating it less as a means of deploying firearms officers in support of a surveillance operation and more as a means of deploying surveillance officers in support of a firearms operation, the predetermined purpose of which was to carry out arrests.
- 1.60** Firearms commanders planned the operation of 3 March incompetently and without keeping proper records of their decisions:
- They treated the firearms authority of 3 March as a continuation or extension of the previous day's rescinded authority, which had been developed in anticipation of a different threat (an overnight "hostage" robbery), and wrongly assumed that the previous day's threat assessment and tactical plan remained appropriate without further consideration.

- Instead of subjecting the available intelligence and information to fresh and independent scrutiny, they uncritically adopted the previous day's threat assessment and tactical plan without significant amendment. Their failure to detect or appreciate the significance of material changes in circumstances since the previous MASTS operation, including the red Audi's further visit to Culcheth the previous evening, meant that: (i) they did not consider whether the subjects' presence in Culcheth might be for the purpose of some form of criminal activity other than armed robbery (such as to conduct reconnaissance or to steal a vehicle for the purposes of such a robbery); (ii) they failed to identify alternative tactical options, including tactics to disrupt criminal activity without making arrests in Culcheth; and (iii) they failed to plan adequately for contingencies including, in particular, loss of surveillance of the operation's subjects while they were in the centre of Culcheth.
- They unnecessarily purported to authorise the carrying of special munitions, namely CS dispersal canisters (an illicit munition) and tyre-breaching rounds. The use of such munitions required the officers tasked with deploying them to approach the Audi with no adequate means of defending themselves, thereby rendering them, to the knowledge of their colleagues, especially vulnerable to violent resistance or retaliation by the Audi's occupants.
- They failed to maintain any proper contemporaneous record of their decisions, reconstructing their commanders' logs retrospectively in the light of after-acquired knowledge.

**1.61** The pre-deployment briefing of AFOs on 3 March 2012 was seriously misleading:

- Instead of creating a bespoke briefing presentation, firearms commanders uncritically adopted the inaccurate slide presentation that had been prepared for the previous day's deployment in anticipation of a different threat pursuant to the earlier, rescinded firearms authority.
- They failed to inform AFOs on 3 March that there was no current intelligence to suggest that any of the operation's subjects would be armed or would have access to firearms.
- They wrongly briefed the AFOs that one of the subjects had been seen in Culcheth a few days earlier in possession of a hacksaw, thereby reinforcing the mistaken theory that the subjects might be contemplating an overnight "hostage" robbery.
- They overstated Mr Grainger's past criminal history, particularly in relation to violence and firearms, thereby presenting the AFOs with a distorted and, in some respects, exaggerated impression of the threat he presented.
- They failed to brief the AFOs about the extent to which officers approaching the stolen Audi (including those tasked with deploying special munitions) would be able to see what was happening inside the vehicle. In particular, they failed to provide any description or picture of the stolen Audi and did not inform the AFOs that, although the Audi's rear screen and rear side windows were heavily tinted, the front windscreen and front side windows were clear. As a result, Q9 gained the erroneous impression that his colleagues would be unable to see the subjects inside the stolen Audi and would therefore be particularly vulnerable to any violent response from them.

- 1.62** On the evening of 3 March, the stolen Audi travelled from Salford to Culcheth, where Mr Grainger parked the vehicle in a public car park off Jackson Avenue. Mr Rimmer was not present. Mr Totton occupied the front passenger seat and a third man, Joseph Travers, sat in the back. They were wearing gloves, and Mr Totton and Mr Travers were wearing hats that could be rolled down to form face masks,<sup>24</sup> but the three men were not equipped with firearms or any other kind of weapons. While the visit to Culcheth was undoubtedly linked to serious crime, its purpose was probably not to commit a commercial robbery that evening but to conduct reconnaissance or steal a car for use in the course of a future robbery.
- 1.63** The reviews of the threat assessment and tactical plan which GMP's firearms commanders conducted during Saturday 3 March were inadequate and ineffective:
- Commanders failed to reappraise the subjects' intentions against the background of a rapidly diminishing number of plausible targets for the robbery they anticipated. By the time the stolen Audi arrived in Culcheth, there remained few credible targets for a commercial robbery, most businesses having closed and the last cash delivery of the day having passed without incident.
  - When, shortly before 19:00, the surveillance team lost visual contact with the stolen Audi's occupants, commanders omitted to conduct a further tactical review. In particular, they failed to consider whether, in the interests of public safety, police officers should take immediate steps to disrupt any intended criminal activity without attempting to arrest the subjects at the scene.
- 1.64** It was while Mr Grainger, Mr Totton and Mr Travers were sitting in the stationary Audi that a team of GMP's AFOs attempted to arrest them and Q9 fatally shot Mr Grainger. Mr Grainger lost consciousness within seconds and no medical intervention, however prompt, could have saved his life.
- 1.65** Q9 discharged his weapon in the erroneous but honestly held belief that Mr Grainger was reaching for a firearm with which he intended to open fire on Q9's colleagues. In fact, Mr Grainger was probably reaching for the driver's door handle in order to get out of the stolen Audi.
- 1.66** In making his dynamic risk assessment, Q9 failed to distinguish adequately or at all:
- between information formally briefed to him (which he was entitled to regard as reliable) and anecdotal information that he had gleaned from unofficial and untested sources; and
  - between information relating directly to the subjects of the operation and information relating to other known criminals, who were not at the time active associates of the subjects.
- 1.67** Q9's mistaken belief that Mr Grainger was about to discharge a firearm was based on the inaccurate and inadequate briefing he had received that morning and the incorrect information he had gleaned from unofficial and untested sources, leading Q9 to make the following false assumptions:
- The subjects of the MASTS operation on 3 March would be carrying firearms.

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<sup>24</sup> Investigators also recovered a beanie/bob hat from the front footwell of the car.

- The subjects were active criminal associates of a Salford organised crime group, other members of which had previously discharged firearms at police officers while committing robbery.
- The subjects had travelled to Culcheth in order to carry out an armed robbery, which was likely to take the form of a “hostage” robbery involving the kidnapping of commercial employees at gunpoint.
- Once AFOs deployed from their vehicles to effect the intended arrests, they would be unable to see inside the Audi, leaving Q9 as the only armed officer in a position to monitor what was happening inside the Audi and provide cover for his colleagues.

**1.68** In combination, those false assumptions left Q9 with an exaggerated impression of the threat posed by Mr Grainger and the other occupants of the Audi, as well as of the vulnerability of his own colleagues (especially those tasked with deploying special munitions), thereby making it more likely that he would misinterpret non-compliant actions by the Audi’s occupants, and predisposing him to decide to discharge his weapon when he might not otherwise have done so.

**1.69** When Q9 shot Mr Grainger, more than 14 hours had elapsed since he first reported for duty. I regard that period as excessive and am unable to exclude the possibility that fatigue had, by then, degraded Q9’s ability to make accurate decisions in a critical situation.

**1.70** The use of tyre-breaching rounds to disable the stolen Audi was unnecessary and inherently dangerous in that it exposed officers and subjects to the risk of injury from shrapnel.

**1.71** GMP had procured the CS dispersal canister that was discharged on 3 March 2012 in flagrant breach of the *Code of Practice on Police use of Firearms and Less Lethal Weapons* (the “Code”) and without the approval of the Secretary of State. In any event, I consider the use of CS, by any means of delivery, against subjects inside a vehicle during a MASTS intervention to be both dangerous and counterproductive.

**1.72** While the use of special munitions on 3 March 2012 did not directly contribute to the death of Mr Grainger, Q9’s belief that the officers tasked with deploying them would be particularly vulnerable to any violent response from the stolen Audi’s occupants was a factor that influenced his decision to shoot Mr Grainger.

**1.73** Some of the officers who commanded or participated in the MASTS operation of 3 March 2012, including the tactical firearms commander (“TFC”) and the operational firearms commander (“OFC”), lacked the requisite level of professional competence:

- The TFC, Superintendent Mark Granby, had recently failed a specialist Police Service of Northern Ireland Joint Services training course. Before allowing Supt Granby to resume a tactical command role, GMP should have considered whether to remove him from firearms command responsibilities pending further assessment of his operational competence, but did not do so.
- The OFC, “X7”, had not attended his mandatory annual refresher training and had recently failed a counter-terrorist specialist firearms officer (“CTSFO”) course for the second time. He was not occupationally competent at the date of the MASTS operation and, by reason of his second CTSFO failure, was no longer eligible to participate in a MASTS operation in any capacity.

- One of the AFOs, “Z15”, had also recently failed a CTSFO course. GMP should have suspended him from AFO duties pending remedial training but did not do so until after the death of Mr Grainger.
- A tactical adviser (“TA”), “Y19”, had never been trained as a MASTS AFO and was not occupationally competent to act as TA in a MASTS operation.

**1.74** The decision to encourage AFOs, when making their detailed written accounts, to copy certain details from a flip chart, while made in good faith, was ill advised and led to some of the AFOs’ witness statements containing information that was incorrect and, in some cases, did not genuinely reflect the witnesses’ personal recollections.

**1.75** Overall, Mr Grainger died because GMP failed to authorise, plan or conduct the MASTS operation on 3 March in such a way as to minimise, to the greatest extent possible, recourse to the use of lethal force.

## Recommendations

**1.76** A summary of my recommendations follows. These are explained and set out fully in Chapter 11.

**1.77** My closed Report contains a number of further recommendations that I cannot make public. However, I am able to say that one of them relates to the work of the Investigatory Powers Commissioner and recommends that the Commissioner’s role be extended to include audit inspections of individual operations, so as to assure compliance with processes for the assessment, handling and dissemination of sensitive intelligence.

**Recommendation 1:** A national policing body should manage a national register of recommendations relating to armed policing, and the response to such recommendations, arising from Independent Office for Police Conduct (“IOPC”) reports, prevention of future death reports made in the course of inquests, and statutory inquiries concerning fatal police shootings.

**Recommendation 2:** Her Majesty’s Inspectorate of Constabulary and Fire & Rescue Services (“HMICFRS”) should conduct a thematic inspection or inspections concerning: (i) the selection and training of officers authorised to use weapons requiring special authorisation (paragraph 2.3.1(b) of the *Code of Practice on Police use of Firearms and Less Lethal Weapons*); (ii) the selection and training of officers authorised to command incidents involving the use of weapons requiring special authorisation (paragraph 2.3.1(b) of the *Code*); (iii) the selection and training of officers authorised to provide tactical advice relating to the use of weapons requiring special authorisation (paragraph 2.3.1(b) of the *Code*); (iv) compliance with the *Code* and/or the Armed Policing module of *Authorised Professional Practice* (“APP”) relating to the police use of firearms (paragraph 2.3.1(c) of the *Code*); and (v) compliance with the *Code* and/or APP concerning the procurement and use of special munitions.

**Recommendation 3:** The Secretary of State for the Home Department should ensure that the new *Code of Practice on Police use of Firearms and Less Lethal Weapons* contains an express prohibition on the use of a new weapon system by the police service until the approval process set out in the *Code of Practice* has been completed and the new system has been approved by the Secretary of State.

**Recommendation 4:** The North West Armed Policing *Standard Operating Procedure on Weapons and Ammunition* should be amended so that it only permits the use of new

specialist munitions that have been approved in accordance with the *Code of Practice on Police use of Firearms and Less Lethal Weapons*.

**Recommendation 5:** Greater Manchester Police (“GMP”) should design and promulgate a written policy that specifically relates to the collection, analysis and dissemination of intelligence for the purposes of planned armed deployments within the meaning of the Armed Policing module of *Authorised Professional Practice* (“APP”). While it will be for GMP to determine the specific content of such a policy (having regard, in particular, to regional co-operation arrangements), it must address:

- the use of intelligence in threat and risk assessments for planned armed deployments;
- where responsibility lies for the creation of threat and risk assessments for planned armed deployments;
- where responsibility and processes lie for the assurance of threat and risk assessments for planned armed deployments;
- the use of intelligence in briefings and presentations to authorised firearms officers (“AFOs”) in planned armed deployments;
- where responsibility and processes lie for the assurance of briefings and presentations of threat and risk assessments to AFOs in planned armed deployments; and
- where responsibility lies for training officers in the use of intelligence in threat and risk assessments for planned armed deployments and in the creation, assurance and presentation to AFOs of such assessments.

**Recommendation 6:** All documents and training relating to Mobile Armed Support to Surveillance (“MASTS”) should:

- clearly differentiate between MASTS as an operational method of supporting surveillance (and delivering a standard range of tactical options), and the additional tactical options of “intervention” and “interception” that MASTS-trained authorised firearms officers (“AFOs”) can deliver;
- make clear that a MASTS deployment authorisation should not be taken to imply that “intervention” or “interception” are preauthorised or preferred tactical outcomes;
- note that decisive action by MASTS officers is a high-risk option and explain what factors lead to higher risks (for example, the presence of a subject inside a stationary vehicle); and
- make clear that the reasons for any strategic or tactical command decision in a firearms operation (including any decision to authorise such an operation) must be recorded at the time the decision is made unless it is impracticable to do so, in which case such reasons, together with a full explanation for not recording them at the time, must be recorded as soon as possible.

**Recommendation 7:** The National Police Chiefs’ Council (“NPCC”) should, in the formulation of policy, take into account that, when establishing the facts, discharging investigative obligations and ensuring openness and transparency following the discharge of a firearm

by a police officer in the course of a pre-planned firearms operation, there are significant advantages in having:

- recordings of the communications of firearms commanders and authorised firearms officers (“AFOs”); and
- video recordings from the body-worn video cameras of AFOs and police vehicles involved in decisive action.

**Recommendation 8:** The National Police Chiefs’ Council (“NPCC”) should consider whether to recommend equipping unmarked vehicles used in Mobile Armed Support to Surveillance (“MASTS”) interventions with apparatus designed to identify to subjects that those conducting such interventions are police officers – specifically (i) the illumination of previously concealed blue lights on unmarked police vehicles; and/or (ii) integral loudspeaker systems that could be used to broadcast information or instructions outside such a vehicle.

**Recommendation 9:** The National Police Chiefs’ Council (“NPCC”) and the College of Policing should jointly decide, in the light of independent expert advice, whether there should be a maximum period of time during which authorised firearms officers (“AFOs”) are permitted to remain on continuous duty and, if so, should ensure that this maximum period is specified in national guidance.



# Chapter 2: Operation Shire

## A. The genesis of Operation Shire

**2.1** Operation Shire was an investigation into a Salford-based organised crime group (“OCG”) that was thought to be committing commercial robberies.<sup>1</sup> The operation came into being on 3 October 2011<sup>2</sup> following the receipt by Greater Manchester Police (“GMP”) of intelligence suggesting that Aaron Corkovic was planning, with others, to commit a robbery.<sup>3</sup> On that day, the Senior Investigating Officer (“SIO”), Detective Inspector<sup>4</sup> (“DI”) Robert Cousen, began work on his investigative assessment, the broad aim of which was to set out the new operation’s objectives, resources and strategy.<sup>5</sup> At the time he completed that document, on 15 October,<sup>6</sup> the operation had two subjects: Aaron Corkovic (born 6 August 1987) and David Totton (born 8 January 1979); they were respectively codenamed “York” and “Wilt”.<sup>7</sup> Aaron Corkovic was also known as Aaron Brady;<sup>8</sup> the investigative assessment at one point confused the situation by treating them as if they were two distinct individuals:

Corkovic and Brady are well-connected Salford nominals.<sup>9</sup> Both have a history of criminality including convictions for CVIT [cash and valuables in transit] armed robberies.<sup>10</sup>

**2.2** After summarising the intelligence background, DI Cousen’s investigative assessment set out Operation Shire’s strategic objectives:

- I. To protect the community and in particular members of the financial industry from physical harm and loss caused by the subjects.
- II. To obtain evidence of the involvement in serious criminality by the subjects leading to their arrest and conviction.
- III. To seek recovery of assets from the subjects that has been gained through crime.<sup>11</sup>

**2.3** The investigation strategy declared that:

The proactive targeting of the subjects is in relation to serious crime. However if the opportunity arises for a less serious offence, this will be considered if it is thought that this is necessary to disrupt serious criminality where an arrest is not feasible.

The above strategic priorities seek to protect the public from the subjects and bring them to justice as soon as possible.

It is intended that where available and possible, evidence against the subjects should be obtained from police observations.

The strength of the case against the subjects will be reviewed on a regular basis by the SIO.

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<sup>1</sup> Intelligence summary, Bundle G1/2193.

<sup>2</sup> Robert Cousen, TS/1059:7–14.

<sup>3</sup> Cousen, day book, Bundle K/1097.

<sup>4</sup> Most of the witnesses who provided evidence to the Inquiry were serving police officers in 2012. Some have since been promoted. Others have retired from the police service. To avoid confusion, I have adopted the policy of referring to all police witnesses by the ranks they held at the material time.

<sup>5</sup> Cousen, TS/1081:16–23; see also GMP Investigative Assessment, Bundle F/1.

<sup>6</sup> Cousen, TS/1080:24–1081:4. An SIO contemplating a “proactive” investigation such as Operation Shire must submit an investigative assessment to obtain the necessary authorisation: Cousen, TS/1081:16–1082:11.

<sup>7</sup> Cousen, day book, Bundle K/1097.

<sup>8</sup> Deborah Hurst, day book, Bundle P/108.

<sup>9</sup> A “nominal” is a person: Andrew Ross, TS/658:15–16.

<sup>10</sup> GMP Investigative Assessment, Bundle F/1.

<sup>11</sup> Bundle F/1.

Consideration for the allocation of a Special Case Prosecutor from the CPS [Crown Prosecution Service] has been made, however this will not be actioned until evidence of criminality starts to unfold.<sup>12</sup>

## 2.4 The offence strategy was as follows:

At all times through the proactive phase when surveillance is under way, it is of paramount importance that the risk of the subjects committing a spontaneous offence is minimised. Should this scenario begin to develop it will be the policy of the operation to identify any target premises and frustrate any attack. Such action is in keeping with the operational objectives and our duty of care to the community.

In the event an attack takes place without warning or the frustration of the attack is impracticable then it will be the policy of the operation for staff (incl DSU [Dedicated Surveillance Unit] operatives) to preserve and secure whatever evidence they can in order to sufficient [sic] to arrest and prosecute the offenders.

Any intervention will only take place where the SIO is satisfied that the operational objectives can be met and the success of the operation will not be compromised.<sup>13</sup>

## 2.5 The operational risk assessment covers five pages and is reproduced as Appendix C to this Report.

## 2.6 The core investigation team comprised five officers from GMP's Force Robbery Unit ("FRU").<sup>14</sup> At the head was its SIO, DI Cousen, whose deputy was Detective Sergeant ("DS") Deborah Hurst. The case officer was Detective Constable ("DC") Andrew Talbot. Detective Constable Gary Mills was the exhibits officer.<sup>15</sup> Another detective constable, David Clark, performed an array of tasks; he was the nominated disclosure officer, the intelligence officer, the officer responsible for handling telephone evidence, and he occasionally manned observation posts.<sup>16</sup> Other officers, including members of the Dedicated Surveillance Unit ("DSU"), were drafted in from time to time. Surveillance officers, however, could not always be spared from other duties.

## 2.7 DI Cousen, as SIO, ran the investigation and set its tone. It was he who briefed firearms commanders when the need arose. He was an important witness, who spent four days giving evidence to the Inquiry. During that time, his conduct of the investigation necessarily underwent minute scrutiny. It was undoubtedly a considerable ordeal for him. At times, he found it difficult to conceal his irritation at having his actions and decisions subjected to the retrospective judgement of lawyers.<sup>17</sup> His sensitivity to criticism sometimes led him to adopt an unduly defensive tone. Early in his evidence, for example, he needlessly picked a quarrel with Jason Beer QC, Leading Counsel to the Inquiry, over the date of the investigative assessment he had completed for Operation Shire.<sup>18</sup> Nevertheless, the overall impression DI Cousen conveyed was positive. He struck me as an efficient, conscientious and hard-working officer, an astute and talented investigator and – subject to one significant exception (see section F of this chapter) – a truthful and generally reliable witness.

## 2.8 The operation's core team shared a bank of desks,<sup>19</sup> at the head of which DS Hurst sat. DI Cousen, as SIO, had a separate office nearby. The operation had IT facilities,

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<sup>12</sup> Bundle F/2.

<sup>13</sup> Bundle F/3.

<sup>14</sup> David Clark, TS/1823:12–23.

<sup>15</sup> Cousen, TS/1067:24–25.

<sup>16</sup> Clark, TS/1814:8–12.

<sup>17</sup> Bundle H/77–78.

<sup>18</sup> Cousen, TS/1077:1–1081:10.

<sup>19</sup> Cousen, TS/1064:23–1065:2.

including its own operational folder on a GMP shared computer drive referred to as the “S: drive”. The operational folder contained a series of subfolders for telecommunications, observations, authorities, subject profiles and other matters, according to a set format.<sup>20</sup> These would normally have included an intelligence subfolder, accessible to all members of the core team, which the case officer would update daily.<sup>21</sup> According to DC Talbot, however, Operation Shire’s intelligence subfolder was not used, because the intelligence officer, DC Clark, maintained a separate password-protected intelligence folder.<sup>22</sup> That folder contained a document, or “intelligence matrix”,<sup>23</sup> known as the “intelligence chronology”, to which DI Cousen, DS Hurst and DC Clark all enjoyed access,<sup>24</sup> but DC Talbot did not.<sup>25</sup> The reason for protecting the document with a password lay in the sensitivity of some of its contents.<sup>26</sup>

**2.9** It was DS Hurst and DC Clark who set up, maintained and updated the intelligence chronology;<sup>27</sup> DC Clark described it to Mr Beer QC as his preferred method of collating intelligence:

Question: Is it a normal thing to be done in an operation of this kind, that there is a document called an “intelligence chronology”, with a sort of capital I and a capital C?

**Answer: If I am doing the disclosure, I like it that way so I can disclose it at the end, but yes, the reason being it is really hard to get access to some of the information that was on there out of hours, so we had it locked, password-locked, so if we needed to go to a cadre or someone at short notice it was in a set place that we could go to. That was the main reason.**

Question: Where was it kept?

**Answer: It was on the hard drive, the joint hard drive.**

Question: The S: drive?

**Answer: The S: drive, yes.**<sup>28</sup>

According to DI Cousen, the purpose of the document was to reduce the intelligence, which came in discrete logs from the Central Operational Policing Unit (“COPU”), to a more manageable and convenient format.<sup>29</sup> Although DC Talbot, as case officer, did not have access to the intelligence chronology, it appears that he was aware of at least some of its contents.<sup>30</sup>

**2.10** The usual method of “populating” the intelligence chronology was to copy logs from GMP’s digital COPU system and paste them into the document.<sup>31</sup> COPU was an old intelligence handling system used by GMP to store and disseminate intelligence to operational departments such as the FRU.<sup>32</sup> Although it had been replaced by a new system known as the Force Intelligence System (“FIS”), COPU still held information of potential value to investigators.<sup>33</sup> Other GMP intelligence databases were the OPUS

<sup>20</sup> Gary Mills, TS/917:13–19.

<sup>21</sup> Mills, TS/917:22–918:25.

<sup>22</sup> Andrew Talbot, TS/967:1–971:2.

<sup>23</sup> *Ibid.*

<sup>24</sup> Clark, TS/1820:11–14.

<sup>25</sup> Talbot, TS/972:10–12; Cousen, TS/1068:17–19.

<sup>26</sup> Clark, TS/1820:15–16.

<sup>27</sup> Cousen, TS1068:5–15; 1071:13–14.

<sup>28</sup> Clark, TS/1819:21–1820:10.

<sup>29</sup> Cousen, TS/1327:14–25.

<sup>30</sup> Cousen, TS/1072:1–24.

<sup>31</sup> Clark, TS/1820:18–1822:11.

<sup>32</sup> Cousen, TS/1064:1–12; Rachel Griffiths, TS/502:6–8.

<sup>33</sup> Russell Kelly, TS/576:15–577:1; Griffiths, TS/502:6–8.

system and its predecessor GMPics, which was still in use but was in the process of being replaced by OPUS.<sup>34</sup> In addition, the team had access to the Police National Computer (“PNC”) database. For initiating enquiries and recording their completion, they used an electronic action management system known as CLIO.<sup>35</sup> It was DS Hurst’s responsibility to “raise actions” (i.e. generate tasks) on CLIO; in practice, she often allocated such actions to herself.<sup>36</sup>

**2.11** All GMP officers had access to OPUS. As exhibits officer, DC Mills did not have a designated intelligence role, but he would routinely check OPUS each morning.<sup>37</sup> He was not alone in doing so. DC Clark told the Inquiry that all members of the team did it “because we are robbery geeks”.<sup>38</sup> However, they confined their monitoring of the OPUS system to checking major developments, such as whether a subject had been arrested or stop-checked overnight.<sup>39</sup> They did not use the system to research or develop information the team already possessed, which, as DC Mills explained, they assumed to be up to date and, therefore, correct when they received it:

Question: How do you know you do not have to go back to 1976 and look for intelligence about your targets then?

**Answer: Because we would – when the operation started we would have nominal profiles that had been created by the Force Intelligence Bureau.**

Question: They are the base station from which you work?

**Answer: That is the sort of up-to-date intelligence prior to, you know, when the operation starts and then, after that, we sort of research from then on, daily.**

Question: You were given the subject profiles –

**Answer: Yes.**

Question: – that will have been prepared by the Force Intelligence Bureau?

**Answer: Yes.**<sup>40</sup>

A “subject profile” (also known as a nominal profile) may be described as a pen picture of the individual to whom it relates (see paragraph 2.18).

## **B. The subjects of Operation Shire**

**2.12** The initial focus of the investigation was on members of the Corkovic family.<sup>41</sup> Later, in February 2012, DI Cousen divided the operation into two distinct strands, after it had become clear that the Corkovics were not associating with “the other nominals” at all.<sup>42</sup> It is, of course, only to be expected that the membership of an OCG will be somewhat fluid and liable to change unpredictably with the passage of time.<sup>43</sup> Nevertheless, the team’s assessment in February was that Mr Totton was not, in fact, working with the Corkovic OCG.<sup>44</sup> From that point on, therefore, investigators no longer regarded intelligence relating to the Corkovic family as having relevance to the

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<sup>34</sup> Cousen, TS/1064:13–19.

<sup>35</sup> Cousen, TS/1061:24–1062:6. See also Operational Risk Management, Bundle F/8.

<sup>36</sup> Cousen, TS/1061:16–1062:17.

<sup>37</sup> Mills, TS/914:20–917:10.

<sup>38</sup> Clark, TS/1817:21–1818:6.

<sup>39</sup> Mills, TS/917:5–10.

<sup>40</sup> Mills, TS/916:8–21.

<sup>41</sup> Talbot, TS/978:20–24.

<sup>42</sup> Cousen, TS/1256:21–1259:1.

<sup>43</sup> Talbot, TS/981:12–16.

<sup>44</sup> Talbot, TS/980:20–981:20.

activities of Mr Totton and his associates.<sup>45</sup> At the same time, while they continued to monitor the Corkovics, they did not re-designate that strand of the enquiry Operation Shire 2 until after Anthony Grainger's death.<sup>46</sup>

**2.13** The original subjects of Operation Shire were Aaron Corkovic (also known as Aaron Brady) and Mr Totton. The subsequent addition of other subjects proceeded in a somewhat chaotic fashion, which is not always easy to follow. Although investigators named Aaron Corkovic as one of the two original subjects, they seem to have been more interested in other presumed members of the Corkovic OCG during the initial stages of Operation Shire. They requested subject profiles in relation to Jamie Corkovic (born 11 December 1988) and Robert Rimmer (born 12 February 1986) as early as 27 October 2011, more than six weeks before they came into possession of Aaron Corkovic's profile; there is an entry for that day in DS Hurst's day book referring to profiles of Jamie Corkovic and "Rimmer", presumably Robert Rimmer.<sup>47</sup> Officers of GMP's Force Intelligence Bureau ("FIB") completed both profiles within 24 hours.<sup>48</sup> Mr Rimmer was in due course assigned the code name "Hamp" and Jamie Corkovic the code name "Derby". On 14 December 2011, Detective Constable Simon Lapniewski, of the FIB, completed a profile of Paul Corkovic,<sup>49</sup> who was to become known as "Lincoln".

**2.14** Meanwhile, on 29 November 2011, DC Talbot produced an intelligence summary in which he named the subjects of Operation Shire as Aaron Corkovic, Jamie Corkovic, Anthony Corkovic and Mr Totton, identifying Adam Brown and Paul Corkovic as relevant associates.<sup>50</sup> He appended subject profiles in respect of each of the subjects apart from Anthony Corkovic. There is, however, an entry dated 28 November in DI Cousen's day book which refers to a profile of Anthony Corkovic, whom the entry identifies by the code name "Pembroke".<sup>51</sup>

**2.15** Each profile was in a similar format and included a section listing "key associates" of the subject. Other than as one of Mr Totton's key associates, Mr Grainger does not feature in the intelligence summary or its appendices, nor, indeed, is there any reference to Mr Totton or his key associates in the material relating to other subjects of Operation Shire and their associates. In fact, the summary is notable for the absence of any indication of a tangible connection between the Corkovic OCG and Mr Totton or Mr Grainger, something on which DC Talbot himself commented:

At present there has been only limited intelligence regarding David Totton.<sup>52</sup>

If anything, that was an understatement.

**2.16** One reason why Mr Totton featured so little during the early stages of Operation Shire was that he spent a fortnight in Thailand over the Christmas and New Year period.<sup>53</sup> It was only after his return to the UK on 13 January 2012 that investigators managed to find out where he was living.<sup>54</sup> During November and December 2011, and most of

<sup>45</sup> *Ibid.*

<sup>46</sup> Talbot, TS/979:7–980:19.

<sup>47</sup> Hurst, day book, Bundle P/117.

<sup>48</sup> Simon Lapniewski, witness statement, 18 June 2012, Bundle A/16–17.

<sup>49</sup> Bundle K/803–813.

<sup>50</sup> Intelligence summary, Bundle G1/2193.

<sup>51</sup> Cousen, day book, Bundle K/1134.

<sup>52</sup> Intelligence summary, Bundle G1/2201.

<sup>53</sup> Talbot, TS/981:25–982:9; Cousen, TS/1257:24–1258:19.

<sup>54</sup> Cousen, TS/1257:24–1258:19.

January 2012, therefore, they gave priority to Aaron and Jamie Corkovic,<sup>55</sup> whom they believed to be planning to carry out “cash-in-transit” robberies, and in respect of whom the DSU carried out covert observations on a number of occasions. By 15 November 2011, DI Cousen was already aware that Mr Totton had not been sighted during the operation, noting in his day book: “I will review his status regularly and if deemed appropriate will remove him from the DSA [Directed Surveillance Authority].”<sup>56</sup>

**2.17** Anthony Grainger (born 26 January 1976) did not become a subject of Operation Shire until late January<sup>57</sup> when he was assigned the code name “Gloucester”.

## C. The subject/nominal profiles

**2.18** Most of the background information which was later used to brief firearms officers came from subject profiles prepared by FIB officers. A subject profile provides an intelligence-based portrait of a specific individual.<sup>58</sup> As already mentioned, its main purpose is to give investigators a “pen picture”,<sup>59</sup> or “initial snapshot”,<sup>60</sup> of a subject or nominal. DC Lapniewski, the FIB field intelligence officer who compiled Mr Totton’s profile, explained it in this way:

Question: When you are preparing a subject profile, do you know the purpose to which it might be applied when you, or after, you have handed it over?

**Answer: It has never been explained definitive. My understanding was that they [i.e. investigators] would use it at the start of an enquiry to have an understanding of that subject, so it incorporates up-to-date intelligence that would not be captured in the OPUS profile, which is accessible by a majority of police officers. Its intention is to give a clear understanding of addresses, vehicles, because, like I say, that information might not be held on records that were available to other officers, so we can research different systems to provide a clear understanding which they might want to use for OPs [observation points] or, like, for surveillance and stuff like that, so telecommunications data.**

Question: Okay, you understood the purpose of the provision of a profile was for investigative processes?

**Answer: Yes, sir.**

Question: That might translate into some operational action like staffing up an observation post or conducting surveillance?

**Answer: Yes, sir, yes.**

...

Question: When you were writing a profile, did you know that it could be used as the basis of a briefing for firearms officers?

**Answer: The information that I have provided on the profile, simply to give a briefing for a firearms officer? No, I would say I would have expected more information to be provided on that risk assessment.<sup>61</sup>**

**2.19** The FIB was part of GMP’s Investigative Support Division (“ISD”).<sup>62</sup> Its subsidiary departments included the Intelligence Coordination Unit (“ICU”), which was responsible

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<sup>55</sup> Cousen, day book, Bundle K/1124.

<sup>56</sup> *Ibid.*

<sup>57</sup> 26 January 2012; see Bundle G1/329.

<sup>58</sup> Griffiths, TS/430:20–21.

<sup>59</sup> Griffiths, TS/424:22–25.

<sup>60</sup> Cousen, TS/1108:9; see also Lapniewski, TS/522:20–23.

<sup>61</sup> Lapniewski, TS/517:3–518:1; TS/519:4–10.

<sup>62</sup> Kelly, TS/568:4–9.

for collating and disseminating COPU logs,<sup>63</sup> and the Intelligence Development Unit (“IDU”),<sup>64</sup> of which Detective Sergeant Russell Kelly was the immediate line manager<sup>65</sup> under the overall supervision of Detective Inspector Ann Buckley.<sup>66</sup> It was the IDU that had responsibility for preparing subject profiles for investigators as part of its wider function of researching and developing operations.<sup>67</sup> In theory, the IDU was supposed to support each major investigation with a nominated single point of contact (“SPOC”),<sup>68</sup> who would create subject profiles and research intelligence.<sup>69</sup> In practice, the IDU did not always have enough staff to go around.<sup>70</sup>

**2.20** DI Cousen cited DC Lapniewski in the investigative assessment as Operation Shire’s SPOC, “to manage the intelligence flow”,<sup>71</sup> in the apparent belief that DI Buckley had nominated him to that role.<sup>72</sup> Giving evidence to the Inquiry, DC Lapniewski denied that he had been Operation Shire’s SPOC, although he agreed that he might have acted as an “initial” point of contact.<sup>73</sup> If his nomination as SPOC amounted to anything, it was probably little more than an aspirational formality; in so far as he ever performed such a function, he had certainly ceased to do so by Christmas 2011.<sup>74</sup> In any event, however, DI Cousen was almost certainly under a misapprehension, for managing the intelligence flow was not a function of the IDU, the FIB section to which DC Lapniewski belonged.<sup>75</sup> In an email dated 15 February 2012,<sup>76</sup> Detective Constable Gillian Lee of the ICU identified herself as the “single point of contact for Operation Shire”. The ICU was a different branch of the FIB whose role was indeed to “manage the intelligence flow”<sup>77</sup> (i.e. to check, grade and disseminate current intelligence<sup>78</sup>), rather than to develop operations, research background material or create subject profiles.

**2.21** In compiling subject profiles, IDU officers made use of the PNC database and the Force OPUS and GMPics systems, as well as such publicly available sources as the Land Registry, Experian and Google Maps software.<sup>79</sup> They relied heavily on police “warning markers” or “signals”, the principal sources of which were the PNC and OPUS databases.<sup>80</sup> As its name suggests, the purpose of a warning marker is to alert police officers to the existence of a potential risk posed by an individual to those who may directly encounter him.<sup>81</sup> It is a simple and, by necessity, crude system, which can also perform the useful function of prompting further detailed research, for which, however, it is plainly not intended to be a substitute. Each marker covers a wide range of possible conduct and need not be based on a court conviction or finding.<sup>82</sup>

<sup>63</sup> Cousen, TS/1066:18–24.

<sup>64</sup> Kelly, TS/568:11–12.

<sup>65</sup> Kelly, TS/568:19–22.

<sup>66</sup> Kelly, TS/614:14–18.

<sup>67</sup> Griffiths, TS/429:20–430:7.

<sup>68</sup> Kelly, TS/569:2–18.

<sup>69</sup> Kelly, TS/569:19–25.

<sup>70</sup> Kelly, TS/569:2–18; TS/613:3–614:5.

<sup>71</sup> Bundle F/2.

<sup>72</sup> Cousen, TS/1092:24–1094:5.

<sup>73</sup> Lapniewski, TS/528:8–21. See also Kelly, TS/613:3–614:5.

<sup>74</sup> Cousen, TS/1095:13–24; TS/1325:5–11.

<sup>75</sup> Lapniewski, TS/538:22–539:9.

<sup>76</sup> Bundle W/248.

<sup>77</sup> Cousen, TS/1326:4–1327:13.

<sup>78</sup> Bundle W/248.

<sup>79</sup> Griffiths, TS:433:25–437:3.

<sup>80</sup> Kelly, TS/603:17–19.

<sup>81</sup> Ross, TS/661:1–15.

<sup>82</sup> Ross, TS/671:2–12. DC Lapniewski was under the mistaken impression that PNC markers had to be conviction based: Lapniewski, TS/558:25–559:7.

**2.22** The four PNC markers of relevance to this Inquiry relate to drugs, firearms, violence and weapons.<sup>83</sup> A unique reference number alongside each marker enabled an investigator to trace and research the original incident or event that had led to the inclusion of the marker in the individual's record.<sup>84</sup> At the time of Operation Shire, Mr Grainger's PNC record disclosed three warning markers: one for violence and two for drugs.<sup>85</sup>

**2.23** As with the PNC, an OPUS marker may be generated without a court conviction. Indeed, the threshold of suspicion is, if anything, lower than for the PNC.<sup>86</sup> As DI Cousen explained, the subject of an OPUS record need not even have been arrested:

Question: In order to get a field populated on ... your OPUS record, you must have been arrested for it?

**Answer: No. You could go on there if you was locate/trace, if you was wanted for that offence. As long as you were named on the crime, you could be ... Your name has to have been connected to a crime in one way or another.**<sup>87</sup>

Unlike PNC warning markers, those on the OPUS system did not provide links to identify the supporting information on which they were based.<sup>88</sup>

**2.24** It is not difficult to envisage good reasons why it might be prudent, or even necessary, to enter a warning marker against an individual's record without an arrest or conviction having taken place, but the very fact that such markers are not necessarily conviction based is bound to limit the scope of their proper use. While an unarmed officer sent to serve a witness summons on a person with a "weapons" marker may need to be aware of the marker, he neither requires nor has time to research its precise status or factual basis. By contrast, the mere fact of such a marker, without more, ought to carry very little weight with firearms commanders contemplating the deployment of authorised firearms officers ("AFOs") to arrest the same subject. For that purpose, much is likely to depend on whether the marker relates, let us say, to the suspected use of a pool cue in a tavern brawl many years previously, or, to take a very different example, a recent conviction for using a machete to commit an offence of wounding with intent to do grievous bodily harm.

**2.25** Subject profiles did not have to conform to a specified format or style. Those who compiled them received no formal instruction on how to do so, nor was there any written policy or guidance to assist them.<sup>89</sup> They simply "picked it up on the job".<sup>90</sup> The only form of quality assurance was the occasional "dip sample" undertaken by DS Kelly as line manager of the officers who compiled subject profiles.<sup>91</sup>

**2.26** At the time of Operation Shire, Mr Grainger's OPUS record included markers (drawn from the older GMPics system) for offending on bail, violence, using a weapon and

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<sup>83</sup> Ross, TS/662:19–667:10.

<sup>84</sup> Kelly, TS/604:11–605:3; Ross, TS/675:21–676:12.

<sup>85</sup> Ross, TS/675:21–676:17. See also Anthony Grainger's PNC record, Bundle F/1050.

<sup>86</sup> Cousen, TS/1227:6–17.

<sup>87</sup> Cousen, TS/1139:6–15.

<sup>88</sup> Kelly, TS/606:11–14.

<sup>89</sup> Griffiths, TS/426:11–427:4; Lapniewski, TS/507:23–508:20.

<sup>90</sup> Lapniewski, TS/508:3–8.

<sup>91</sup> Kelly, TS/592:17–24.

using a radio scanner.<sup>92</sup> It also described him as a “Group 1 Offender”<sup>93</sup> (although witnesses to the Inquiry were unable to agree precisely what that expression meant).

- 2.27** The earliest reference to Mr Grainger in any relevant subject profile is to be found in the document that DC Lapniewski completed on 11 October 2011 in respect of Mr Totton.<sup>94</sup> At that stage, Mr Grainger was not a subject of the investigation, nor had Operation Shire’s surveillance officers yet sighted him. Mr Grainger featured in Mr Totton’s profile as one of his two “key associates”.<sup>95</sup> Mr Totton was thought – wrongly, as it turned out – to be living at an address owned by Mr Grainger at that time. The document reproduced Mr Grainger’s GMPics warning markers, correctly recording the fact that he was subject to prison licence, but it failed to include (as it should have done<sup>96</sup>) any underlying information about those matters. In fact, the conviction that had led to his imprisonment and release on licence was his first for nearly ten years and was for an offence of conspiring to handle stolen goods to which he had pleaded guilty.<sup>97</sup>
- 2.28** Further, the same section of Mr Totton’s profile also recorded that he and Mr Grainger, together with other men, had been “arrested in 2006 for conspiracy to commit armed robberies at various financial institutions in GMP [*sic*]”,<sup>98</sup> but had been “eliminated”.<sup>99</sup> DC Lapniewski’s understanding of the word “eliminated” in the present context was that it meant not merely that they had not been convicted of, or charged with, the offences, but implied a positive assessment that they had not committed them.<sup>100</sup>
- 2.29** Significantly, Mr Totton’s profile contained no reference to any member of the Corkovic family. DC Lapniewski confirmed that his research had uncovered nothing to suggest that the Corkovic family were “key associates” of Mr Totton;<sup>101</sup> that is also consistent with what is shown in the profile that DC Lapniewski prepared in respect of Jamie Corkovic.<sup>102</sup>
- 2.30** The FIB officer who compiled Mr Grainger’s subject profile was Police Constable (“PC”) Rachel Griffiths. The format of the document she produced differs in a number of respects from Mr Totton’s profile and was not typical of profiles produced by the IDU at that time. The reason was that PC Griffiths had completed it on 20 September 2011,<sup>103</sup> some weeks before Operation Shire began, for an entirely different enquiry

<sup>92</sup> Bundle C/704.

<sup>93</sup> *Ibid.* I have been unable to find any official definition of a “Group 1 Offender”. There is no legislative or other formal division of offenders into groups of this kind. The phrase is probably an unofficial adaptation of the categorisation of police information for data retention and destruction purposes. Such information was divided into four groups in *Guidance on the Management of Police Information* (first issued in 2006 and re-issued in 2010) and now finds expression in the College of Policing’s *Authorised Professional Practice*. Information within Group 1 relates to offenders who have ever been managed under multi-agency public protection arrangements; individuals who have been convicted, charged, arrested, questioned or implicated in relation to a murder or “serious offence” as defined in the Criminal Justice Act 2003; or who are potentially dangerous people.

<sup>94</sup> Cousen, TS/1191:23–1193:4; David Totton, subject profile, Bundle F/33.

<sup>95</sup> Totton, subject profile, Bundle F/42.

<sup>96</sup> Kelly, TS/600:16–603:16.

<sup>97</sup> Grainger, PNC Court Print, 10 September 2014, Bundle I/263.

<sup>98</sup> Totton, subject profile, Bundle F/43.

<sup>99</sup> *Ibid.*

<sup>100</sup> Lapniewski, TS/559:8–24.

<sup>101</sup> Lapniewski, TS/559:25–560:10.

<sup>102</sup> Lapniewski, TS/560:12–561:5.

<sup>103</sup> Griffiths, TS/425:3–7.

to which she had been temporarily seconded as intelligence officer.<sup>104</sup> That operation, designated Samana, was a particularly sensitive investigation into the theft of a digital memory stick belonging to a GMP officer (see section A of Chapter 10).<sup>105</sup> During her secondment, PC Griffiths was not based in the IDU office and did not work under the direct supervision of her usual superior, DS Kelly.<sup>106</sup> She told the Inquiry that, when performing her normal duties as an employee of the IDU, she would not be fully aware of the use to which investigation teams intended to put the subject profiles she created, although that was not something that affected their content.<sup>107</sup> She explained:

We would be asked to produce a nominal profile on behalf of a unit in relation to an operation they would be running. I wouldn't be involved in the operation. I wouldn't go to the briefing, so I don't know what they would use it for. It is an intelligence picture about a specific person.<sup>108</sup>

As a member of Operation Samana's team, however, PC Griffiths knew what that investigation was about.<sup>109</sup> Indeed, she was asked to prepare the subject profile for the purpose of a briefing that she herself attended.<sup>110</sup>

**2.31** While denying that her knowledge of Operation Samana had influenced the contents of Mr Grainger's profile,<sup>111</sup> PC Griffiths agreed that she had to some extent "tailored" the profile by reference to her understanding of the investigation's scope,<sup>112</sup> adding that a conventional subject profile such as that which DC Lapniewski prepared in respect of Mr Totton would normally include considerably more detail than she had provided.<sup>113</sup> Describing it as "more of an operational profile than a subject profile",<sup>114</sup> she said its purpose had been to provide "an intelligence overview for Operation Samana on Anthony Grainger and Colin Waters".<sup>115</sup> Fully aware that there were no other persons of interest to Samana's investigators, she produced a single document which covered both men but omitted topics she regarded as redundant, such as their business interests, assets and associates.<sup>116</sup> That was an entirely proper exercise of personal initiative for which I do not criticise PC Griffiths. She could not have foreseen that others would adopt her document without amendment and use it for a purpose she had never envisaged in a wholly unrelated operation.<sup>117</sup> Even so, the later misapplication of the profile might not have greatly mattered had its contents been accurate. Unfortunately, they turned out to be seriously misleading in several respects.

**2.32** The subject profile<sup>118</sup> comprised an aggregation of material that PC Griffiths had copied and pasted from police computer databases and publicly accessible digital sources, together with free text which she herself had composed.<sup>119</sup> Although headed "Pen

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<sup>104</sup> Griffiths, TS/447:19–449:6; Kelly, TS/592:25–593:22.

<sup>105</sup> Griffiths, TS/456:14–18.

<sup>106</sup> Kelly, TS/610:22–611:17.

<sup>107</sup> Griffiths, TS/430:8–432:20.

<sup>108</sup> Griffiths, TS/430:16–21.

<sup>109</sup> Griffiths, TS/456:11–22.

<sup>110</sup> Griffiths, TS/451:2–22.

<sup>111</sup> Griffiths, TS/456:19–22.

<sup>112</sup> Griffiths, TS/452:14–20.

<sup>113</sup> Griffiths, TS/452:22–24; TS/450:15–19.

<sup>114</sup> Griffiths, TS/448:4–5.

<sup>115</sup> Griffiths, TS/453:9–18. Anthony Grainger and Colin Waters were the subjects of Operation Samana.

<sup>116</sup> *Ibid.*

<sup>117</sup> Griffiths, TS/460:16–23.

<sup>118</sup> Grainger, subject profile, Bundle F/11. Note that pages F/28–32 inclusive do not, contrary to appearance, form part of the subject profile: Griffiths, TS/442:11–23.

<sup>119</sup> Griffiths, TS/435:4–437:3.

Picture Relating to Anthony Grainger”, it actually covered both subjects of Operation Samana; only the first half of the document concerns Mr Grainger, the remainder (irrelevant for present purposes) relating to Mr Waters.

**2.33** Under the heading “Warnings”,<sup>120</sup> PC Griffiths included the PNC’s violence and drug markers but not the OPUS markers, which she regarded as less reliable.<sup>121</sup> Unlike DC Lapniewski, she added some information alongside each marker<sup>122</sup> to indicate the broad nature of the underlying material:

Warnings	VI [violence] -	Affray 04/12/97	PNC
	DR [drugs] -	Conspire to supply Amphetamine 08/09/08 Possess cannabis 01/06/08 <sup>123</sup>	PNC

**2.34** As PC Griffiths acknowledged to Mr Beer QC, she did not regard that information as anything more than a foundation for further development by an investigation team:

Question: You said that for maybe a front-line officer on the street, where you are the dispatcher and you are calling down the radio, “He has got Victoria India for an affray in 1997, beware”, or whatever words you might use, that would be sufficient?

**Answer: It would be for the officer to gauge, wouldn’t it, and the demeanour of the person that they are dealing with.**

Question: Yes. Where, by contrast, the person to whom the information is provided is an investigating officer –

**Answer: Yes.**

Question: – and they have a number of months to research a profile –

**Answer: Yes.**

Question: – would you expect them to look in the subset information?

**Answer: Yes, I would.**

Question: What about if firearms officers were being briefed up on the basis of your inclusion of warning markers? I know you didn’t intend for that to happen.

**Answer: No, I didn’t intend, if it was used for that purpose, which I don’t know if it was or not, then I would have expected – to be honest, profiles of this nature, both DC Lapniewski’s and myself, are created as a foundation to an operation, not the crux of it – that it should be developed from there. And we wouldn’t contain everything within a subject profile because you would pass it to the officer in the case, and they would then develop what you have given them. I would expect them to look into these warning signals more in depth. Likewise, with potentially any antecedents or anything that they deem relevant to their job, to what they were investigating. That is what I would expect, and I would expect the briefing to be done with the firearms, if it gets to the fruition of an operation, to be done from a completely different document, not this one.**

Question: So –

**Answer: I would expect a bespoke one for firearms.**

Question: In short, you would expect the foundations to be built on?

**Answer: Yes. ...<sup>124</sup>**

<sup>120</sup> Grainger, subject profile, Bundle F/14.

<sup>121</sup> Griffiths, TS/475:11–478:7.

<sup>122</sup> Griffiths, TS/483:8–484:22

<sup>123</sup> Grainger, subject profile, Bundle F/14.

<sup>124</sup> Griffiths, TS/484:23–486:13.

In my view, that expectation – which DC Lapniewski shared<sup>125</sup> – was entirely reasonable. The warning marker system is no more than a rough-and-ready method of alerting police officers to the need to perform a risk assessment. It is not a substitute for the risk assessment itself.

**2.35** As Mr Beer QC strikingly demonstrated,<sup>126</sup> a careful analysis of the facts underlying Mr Grainger's PNC marker for violence reveals a somewhat different picture from the one suggested by the marker itself. That marker related, as Mr Grainger's subject profile correctly stated, to an allegation of affray on 4 December 1997, when he was 21 years old. Mr Grainger, who was a disqualified driver at the material time, had been at the wheel of a stolen vehicle which police officers were following with a view to detaining its three occupants. Twice during the pursuit, he deliberately reversed into collision with the police car. On each occasion, his two passengers got out and attacked the police car with weapons, damaging it and causing some incidental injury to its occupants from flying fragments of glass. I have seen video footage of the incident, which was a shockingly brazen display of violence against police officers carrying out their duty to protect the public.

**2.36** Mr Grainger was in due course prosecuted for his part in what had happened. Initially, he was charged with: two offences of unlawful wounding, contrary to section 20 of the Offences Against the Person Act 1861; an offence of violent disorder, contrary to section 2 of the Public Order Act 1986; aggravated vehicle-taking, contrary to section 12A of the Theft Act 1968; and driving while disqualified, contrary to section 103 of the Road Traffic Act 1988. In the event, no contested trial took place. The prosecution elected not to proceed against Mr Grainger for the offences of unlawful wounding. When the remaining charges came to court, the prosecution dropped the allegation of violent disorder, replacing it with a less serious charge of affray, contrary to section 3 of the Public Order Act 1986, and accepted guilty pleas from Mr Grainger to dangerous driving, driving while disqualified and, instead of aggravated vehicle-taking, the simple (i.e. non-aggravated) form of taking a conveyance, contrary to section 12 of the Theft Act 1968. For those offences, the Crown Court at Manchester sentenced Mr Grainger to a total of 18 months' imprisonment. The outstanding charge of affray was ordered to lie on the file with the usual direction that it was not to be further prosecuted save by leave of the Crown Court or the Court of Appeal (Criminal Division).

**2.37** Those circumstances tellingly expose the imprudence of taking PNC warning markers at face value. Anyone looking at Mr Grainger's subject profile, without more, might naturally suppose that he had been convicted of affray, an offence which, while covering a wide range of violent conduct, typically involves fighting, with or without weapons. In fact, Mr Grainger had not been convicted of any crime of violence or public disorder on this occasion or any other. His lengthy criminal record was confined to offences of dishonesty and road traffic matters; even the drug markers were not based on any court conviction. Nevertheless, the fact that Mr Grainger had once used a stolen car as a weapon against police officers trying to detain him was self-evidently a vital piece of information for any firearms commander contemplating the deployment of armed officers to arrest him while he was at the wheel of a stolen car. Reliance on Mr Grainger's warning marker for violence was liable to distort such a commander's threat assessment, because it would overstate the risk that Mr Grainger might resort to personal violence in the conventional sense, while seriously understating the very

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<sup>125</sup> Lapniewski, TS/518:2–12.

<sup>126</sup> Ross, TS/681:7–683:21.

real risk that he might use the vehicle he was driving as a weapon against police officers trying to arrest him.

**2.38** None of this is to suggest that the absence of relevant convictions from Mr Grainger’s antecedent history invalidates the proposition that he was a career criminal who posed a potential threat to police officers. The point is that any useful assessment of that threat required nuanced consideration of the factual material underlying the warning markers in his police records. It was the job of Operation Shire’s investigation team, not PC Griffiths, to carry out such further research as was necessary to enable them to undertake a proper risk assessment;<sup>127</sup> even if PC Griffiths had compiled Mr Grainger’s profile during her routine duties within the IDU, and not while seconded outside that unit to a specific operational team, she could hardly be expected to anticipate and accommodate the intelligence needs of an investigation of which she knew nothing. Equally, it is not for the Tactical Firearms Unit (“TFU”) to conduct such background research. A tactical firearms commander (“TFC”) cannot put together a credible working strategy without access to properly developed background intelligence. That is not possible unless the investigation team has already thoroughly researched such material by the time the SIO briefs the TFC or, at the very least, accepts the responsibility of doing so in response to a TFC’s request for further detail.<sup>128</sup> As Superintendent (“Supt”) Stuart Ellison put it:

Question: Do you largely rely on the investigating team to ensure that the information with which you are provided, the intelligence that you are provided with, is accurate, as far as is possible, ie accurately stated, and has been assessed?

**Answer: Yes, I have to rely on the professionalism of the investigating team and their intel support to provide me with accurate information, yes.**

Question: Again, it may sound obvious, why do you have to rely largely on them?

**Answer: It is a matter of practicality. I could research each nominal off an extensive list myself, that would clearly take a long time, and we have professional people who are working in this case in a specialist department and it is a reasonable assumption that they are providing me with intelligence reports which are accurate.**

Question: It is partly because the investigating team have more time and longer access to better intelligence sources than do you?

**Answer: Yes. Invariably the investigating team have been working on or around a nominal or a subject for quite a protracted period of time and that information is all to hand.**

Question: Whereas this comes to you completely fresh, almost out of the blue?

**Answer: Yes.**<sup>129</sup>

**2.39** For reasons which Supt Ellison went on to explain, the investigation team’s obligation to provide accurate information extends to researching the factual basis of warning markers:

Question: Are you saying that you rely on [the investigation team’s] professionalism to have checked warning markers, or that when you are presented with warning markers you explore them in detail?

**Answer: Yes, and yes, which is not helpful, I know. But I routinely ask for the context behind a warning marker. A little context for you. A Foxtrot India marker for example might relate to someone who had an offence involving an air weapon as a teenager or it might involve someone who has actually been using fully automatic**

<sup>127</sup> Lapniewski, TS/520:11–521:21.

<sup>128</sup> T8 (Stuart Ellison), witness statement, 17 October 2014, Bundle H/282; Ellison, TS/1719:9–1721:20.

<sup>129</sup> Ellison, TS/1718:1–1719:1.

**weapons committing crimes, so there is a lot of context behind the marker that needs exploring properly.**

Question: The same for violent warning markers too, it can be a slap delivered in the street or a section 18 [wounding with intent to do grievous bodily harm] or a murder?

**Answer: Yes, absolutely, yes.**

Question: And it could be conviction down to intelligence?

**Answer: Yes.**

Question: Where you say here [i.e. witness statement dated 17 October 2014<sup>130</sup>], “Any warning markers are routinely explored in detail to establish potential risk and threat”, you are meaning you explore them in detail –

**Answer: Yes.**

Question: – to establish potential threat and risk?

**Answer: Yes, and I would expect the investigation team to be able to give me the context behind those marks. If they cannot, then they will be retasked to provide that information.**

Question: Is that because, putting it frankly, just writing somebody has VI next to their name doesn’t tell you anything at all?

**Answer: It gives you – well, it gives you a suggestion that someone might have some sort of propensity to violence or has demonstrated a violent streak in the past, but it really lacks context without asking the right question.**

Question: To specify in more detail my question, it doesn’t give you enough information to act on it?

**Answer: No. It is what it is, it is a warning marker, so the warning – it is right to ask the question.**

Question: Putting it another way, just because there is a weapons marker, you don’t assume that in the operation that you are currently engaged in, that subject may possess a weapon or have immediate access to a weapon?

**Answer: No.**

Question: You will wish to know what it was for, how recent it was, how serious the incident was?

**Answer: I would, and I would consider the warning marker and the context against other intelligence and the offending history.**

Question: The same for a violent marker?

**Answer: Indeed, yes.<sup>131</sup>**

Coming, as it does, from a more than usually diligent officer, that analysis commands particular respect.

**2.40** It was not that PC Griffiths had failed to look at information that might amplify or qualify the PNC warning markers. She accompanied her summary of the markers with some free text of her own composition.<sup>132</sup> In addition, she provided what she described as a short “overview”,<sup>133</sup> incorporating the following passage, which she told the Inquiry she had drawn from Mr Grainger’s OPUS record:

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<sup>130</sup> T8 (Ellison), witness statement, 17 October 2014, Bundle H/282.

<sup>131</sup> Ellison, TS/1724:1–1725:25.

<sup>132</sup> Grainger, subject profile, Bundle F/14.

<sup>133</sup> Griffiths, TS/459:2–8; TS/460:12–15.

Grainger was born in Salford, and is very well known within the Salford criminal element, particularly the Cash in transit and armed robbery fraternity. He has very strong links to the Devalda's [*sic*], David Totton, Ricky Smith, Louis and Bradley Walsh etc ...<sup>134</sup>

Although headed with the words "Risk assessment", I accept PC Griffiths' evidence that it was not so much a formal risk assessment as an overview summarising material that other officers had entered on to the OPUS database.<sup>135</sup> The fact remains, however, that her overview provided no indication of the reliability of its contents.

**2.41** In principle, there is nothing wrong with including intelligence about a subject that is not conviction based. While such information is liable to carry less weight than the details of a court finding, it may nevertheless be highly relevant to any assessment of the threat that the subject is likely to pose. Where possible, however, it is important to provide some guidance as to the likely reliability of information that is not based on a court finding. At the time of these events, the accepted method of doing so was by means of the National Intelligence Model ("NIM") "5x5x5" grading system (now superseded). Indeed, PC Griffiths had provided such gradings elsewhere in her profile of Mr Grainger and Mr Waters.<sup>136</sup>

**2.42** There were, however, no intelligence gradings in the two passages of free text to which I have referred. The "overview" section was not, in my view, objectionable. It drew attention to Mr Grainger's past and current association with criminals who had committed armed robberies, including Mr Totton, but did not positively assert that Mr Grainger had himself participated in such crimes.<sup>137</sup> In the context of the police operation for which it was specifically prepared, which was not a robbery enquiry but an investigation into the dishonest handling of the proceeds of a burglary, it may not have seemed especially significant to PC Griffiths. In fairness to her, she might well have dealt with that aspect of Mr Grainger's background more fully and with greater circumspection had she known that the profile was to be adopted for use in a robbery investigation.

**2.43** The free text commentary on Mr Grainger's PNC warning markers, however, was a very different matter. It was printed in bold red ink on the same page as the warning markers themselves:

Of Note..... Whilst there are no specific markers on PNC or OPUS regarding Firearms, Grainger has been charged in the past with cr 243085B/95 which is an armed robbery at a post office in Prestwich, where a sawn-off shotgun was used. The result of this case was that it was ordered that it lie on file for Anthony Grainger.<sup>138</sup>

That information turned out to be incorrect.

**2.44** PC Griffiths had obtained the details of this robbery ("the Prestwich robbery") from the original crime report.<sup>139</sup> In so doing, she inadvertently transposed two entries, wrongly attributing to Anthony Grainger information that actually related to his brother Stuart. The original report stated that five named men had been charged with the Prestwich robbery, namely Anthony Grainger, Stuart Grainger, David Totton and two others, Peter Anderson and Stewart Ellis. It recorded that: (i) Mr Anderson and Mr Ellis had each been acquitted; (ii) the charge had not been put to Mr Totton; and (iii) the

<sup>134</sup> Grainger, subject profile, Bundle F/13.

<sup>135</sup> Griffiths, TS/439:19–440:14.

<sup>136</sup> For example, Bundle F/20 and 23.

<sup>137</sup> Griffiths, TS/459:9–460:6.

<sup>138</sup> Grainger, subject profile, Bundle F/14.

<sup>139</sup> Bundle F/1251–1255.

charge had been ordered to lie on the court file in respect of Stuart Grainger. It was completely silent as to what had happened to the case against Anthony Grainger. As PC Griffiths candidly conceded,<sup>140</sup> she misread the entry relating to Stuart Grainger as if it applied to Anthony Grainger, whom she named as the person in respect of whom it had been ordered that the charge should lie on the court file.

**2.45** That might not have mattered had the assertion that Anthony Grainger was prosecuted for the Prestwich robbery been true. By reference to the original court papers, however, Mr Beer QC was able to demonstrate that it, too, was incorrect.<sup>141</sup> It is sufficient for present purposes to state the true position as Mr Beer established it without retracing the meticulous process by which he did so. The five defendants had originally faced an indictment containing six counts, which charged them in various combinations with one offence of conspiracy to rob (count 1), four of robbery (counts 2 to 5 inclusive) and one of attempted robbery (count 6). The Prestwich offence featured as count 5, with which only Mr Anderson and Stuart Grainger were charged. When the case came before the Crown Court, the judge stayed the original indictment at the prosecution's request and granted leave for a new bill to be preferred in its place. Count 1 of the new indictment charged Mr Anderson alone with the Prestwich robbery. Although one count was ordered to lie on the file in respect of Stuart Grainger, it did not relate to the Prestwich crime, with which he was no longer charged. As for Anthony Grainger, who had never been indicted for the Prestwich robbery in the first place, he was acquitted on the judge's direction of all the charges that he faced.

**2.46** An error of that magnitude was bad enough in the context of an enquiry into the possible dishonest handling by Anthony Grainger of stolen goods. Its introduction, without correction, into a major robbery investigation was far more serious. It created the misleading impression that Mr Grainger, who had no convictions for robbery, had once been prosecuted for a robbery in which a sawn-off shotgun had featured, raising an inference that the Crown Prosecution Service ("CPS") would not have authorised the charge unless there had been some material to support it; that, indeed, was the very inference which the Inquiry's expert witness, Ian Arundale QPM, was inclined to draw until he learned the true position.<sup>142</sup> What is more, the incorrect assertion that the charge had been ordered to lie on the file carried the even more damaging implication that there existed sufficient evidence against Mr Grainger to justify the allegation, such that in appropriate circumstances a court might permit the prosecution to revive it.

**2.47** While PC Griffiths, as she accepts, made a careless mistake in transferring information from the crime report to the subject profile, the primary blame for what happened does not lie with her. The crime report on which she quite reasonably relied had been corrupted by the incompetence with which its original author had recorded the outcome of the court proceedings in the first place.

**2.48** How did Operation Shire's investigation come to adopt the profile that PC Griffiths created for Operation Samana? Surveillance officers had first sighted Mr Grainger on Wednesday 25 January 2012;<sup>143</sup> they saw him again on Thursday 26 January.<sup>144</sup> On 7 February, DS Hurst, from GMP's Robbery Unit, asked DS Kelly whether the IDU could produce a subject profile in respect of Mr Grainger.<sup>145</sup> DS Kelly raised

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<sup>140</sup> Griffiths, witness statement, 3 October 2013, Bundle E/22; Griffiths, TS/464:7–25.

<sup>141</sup> Griffiths, TS/463:7–475:10.

<sup>142</sup> *Report of Ian Arundale QPM*, 4 November 2016, §212.

<sup>143</sup> Amalgamated surveillance log, Bundle K/108.

<sup>144</sup> Amalgamated surveillance log, Bundle K/112.

<sup>145</sup> Kelly, witness statement, 18 July 2014, Bundle E/367; Kelly, TS/620:23–621:6.

the matter at that morning's meeting of the ISD, which decided that the FIB did not have sufficient resources to meet the request. Shortly after the meeting, however, PC Griffiths told DS Kelly about the profile she had prepared some months earlier for Operation Samana. DS Kelly looked at the profile and decided it would make "a good starting point"<sup>146</sup> for the Robbery Unit. In particular, he took the view that it had been relatively recently compiled and was "in a format that was transferable to another operation".<sup>147</sup> He therefore sent it to Operation Shire's deputy SIO, DS Hurst, as an attachment to an email message:

Debbie,

Further to your request please find attached the Intelligence Profile for Anthony Grainger.

This is current up to September 2011. It includes a risk assessment and Experian checks.

It was decided at this morning's ISD pace setter meeting that any further work required to bring the profile up to date will need to be completed by yourselves. This decision was made based on staffing levels and current workloads within the department and that staff in SCD [Serious Crime Division] have full access to COPU, OPUS, FIS, etc. Any problems please get back to me.

Thanks

Russ<sup>148</sup>

DS Hurst duly forwarded the message to DI Cousen.<sup>149</sup>

**2.49** Strictly speaking, the decision that it would be for the Robbery Unit to update the profile had been taken "after", not "at" the pace setter meeting, but it is clear that DS Kelly was writing loosely and did not mean to imply that the meeting had considered the existing profile.<sup>150</sup> Of greater concern is the email's reference to the profile's "risk assessment". While PC Griffiths had indeed applied that misleading label to the "overview" section of her document,<sup>151</sup> it ought to have been obvious both to DS Kelly as the sender of the profile, and to Operation Shire's investigation team, as its recipients, that they could not safely treat the passage in question as a comprehensive risk assessment. It should have been obvious to DS Kelly because, as he himself was later to tell the Inquiry, he would have expected a profile containing a risk assessment to reproduce the intelligence on which the assessment was based together with the relevant NIM gradings.<sup>152</sup> It should equally have been obvious to the investigation team because they were aware that PC Griffiths had created the profile for a different operation, without having any knowledge of Operation Shire or its objectives.

**2.50** It is not easy to see how DS Kelly came to reach the view that the profile was "in a format that was transferable to another operation". He knew that PC Griffiths had created it for a specific operation, of which she herself was the designated intelligence officer, while she was seconded outside the IDU. All the other officers who prepared subject profiles for Operation Shire had followed a broadly similar format in accordance with the standard template then in use within the IDU,<sup>153</sup> a format to which PC Griffiths'

<sup>146</sup> Kelly, witness statement, 18 July 2014, Bundle E/368.

<sup>147</sup> *Ibid.*

<sup>148</sup> Bundle F/1228.

<sup>149</sup> Kelly, TS/626:22–627:19.

<sup>150</sup> Kelly, TS/620:18–621:12.

<sup>151</sup> Grainger, subject profile, Bundle F/13; Griffiths, TS/439:19–440:14.

<sup>152</sup> Kelly, TS/587:3–595:3.

<sup>153</sup> Kelly, TS/588:20–593:22; the other subject profiles are those of Mr Totton, Jamie Corkovic and Paul Corkovic prepared by DC Lapniewski (at Bundle F/33, K/789 and K/803 respectively) and the profile that Detective Constable Karen James prepared in respect of Robert Rimmer (at Bundle F/271).

profile of Mr Grainger plainly did not conform.<sup>154</sup> DS Kelly acknowledged as much during his oral evidence:

Question: We have heard evidence this morning from PC Griffiths to say that the ones we have just looked at in DC Lapniewski's file, the four of them in there, they were subject profiles proper, they were about a person, an individual?

**Answer: Right, sir, yes.**

Question: Whereas this profile, although it says it is a pen picture relating to Anthony Grainger, it wasn't, it was a profile about Mr Grainger and Mr Waters, Colin Waters, and was just prepared for an operation?

**Answer: Right, sir. If you are asked – in my opinion, if you are asked to provide an assessment on an individual, there is key criteria that should be included within that assessment because I – you don't know at what point that information is going to be used within the course of the investigation.**

Question: Yes?

**Answer: So there is no point just putting a few lines together for something that then could potentially get used further on down the line. So if you are asked to provide a subject profile of a person, you should include all the elements of that profile, in my opinion, sir.<sup>155</sup>**

In short, of all the subject profiles that found their way to Operation Shire's investigation team, Mr Grainger's was the only one that had been created for a different purpose and that did not identify the underlying intelligence on which it relied.

**2.51** For those reasons, while the offer of PC Griffiths' document was undoubtedly constructive and well meant, it would have been better if DS Kelly had accompanied it with a stronger cautionary warning than he provided in his email to DS Hurst. The profile of Mr Grainger did not merely need to be brought up to date by the addition of material that had come to light since its creation. It really needed to be thoroughly revised and developed to ensure that it contained all the background intelligence and material that might be relevant to Operation Shire. The problem was not, as the prosecution was later to allege in criminal proceedings against GMP, that Mr Grainger's subject profile was "not operation specific",<sup>156</sup> but the exact opposite. The profile was, in fact, so specific to the operation for which PC Griffiths had originally created it that it was not, without adaptation, readily transferable to a different police enquiry such as Operation Shire.

**2.52** In making these points, I do not mean to imply that the authorisation of Mobile Armed Support to Surveillance ("MASTS") deployments in Operation Shire could not be justified, for in the right circumstances it plainly could.<sup>157</sup> There was sufficient material to suggest a propensity to use serious violence on the part of the subjects of Operation Shire, as well as the possibility that they had access to firearms. However, the mischief wrought by historical errors of the kind traced in this chapter is that they are liable, especially in a protracted operation, to exert a subtle influence on the interpretation of current information and intelligence by investigators and firearms commanders alike, predisposing them to adopt working assumptions that may ultimately shape the approach and actions of AFOs in a critical situation. As I explain elsewhere in this Report (see references to the Preston robbery in Chapters 3, 4 and 6), that is

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<sup>154</sup> Kelly, TS/590:6–20.

<sup>155</sup> Kelly, TS/591:2–25.

<sup>156</sup> Bundle I/1080 and I/1173.

<sup>157</sup> For a fuller treatment of this topic, see Chapter 4.

precisely the effect that other inaccurate historical information was to produce on “Q9” during the fatal deployment of 3 March 2012.

## D. The command structure in MASTS operations

**2.53** There are three main sources of doctrine and guidance concerning the management of armed policing operations. They are:

- the *Code of Practice on Police use of Firearms and Less Lethal Weapons* (“the *Code of Practice*”), published by the Home Office in November 2003;
- the *Manual of Guidance on the Management, Command and Deployment of Armed Officers* (“the *Manual of Guidance*”), first published in 2009;<sup>158</sup> and
- *Guidance on Command and Control*, published by the Association of Chief Police Officers (ACPO) in 2009.

Of those documents, the last provides “generic guidance”,<sup>159</sup> whereas the *Manual of Guidance* relates specifically to incidents involving the deployment of firearms officers.<sup>160</sup> The *Code of Practice* is intended to promote greater consistency of policy and practice across all police forces, particularly with regard to the acquisition and deployment of weapons.<sup>161</sup>

**2.54** In addition to national guidance, individual police forces (including GMP) issued their own standard operating procedures. Those relevant to Operation Shire were GMP’s procedures covering Special Munitions,<sup>162</sup> Post Incident Procedures<sup>163</sup> and Mobile Armed Support to Surveillance.<sup>164</sup>

**2.55** As the phrase suggests, MASTS – Mobile Armed Support to Surveillance – is an operational method designed to support mobile surveillance with an armed officer capability. The official definition in force at the material time was that contained in the 2011 edition of the *Manual of Guidance*:

Covert operations requiring armed support for contingency or planned interception need a higher level of tactical capability than that required to conduct armed surveillance. Such operations will require the deployment of armed resources in support of armed or unarmed surveillance, with the appropriate tactical capabilities to offer effective control measures to mitigate the assessed threat. This support is called MASTS.<sup>165</sup>

<sup>158</sup> The version in force in March 2012 was the third edition (2011).

<sup>159</sup> *Report of Ian Arundale QPM*, 4 November 2016, §75.

<sup>160</sup> *Ibid.*

<sup>161</sup> *Ibid.*, §77.

<sup>162</sup> GMP, *Standard Operating Procedure 28 for the Protocol for the Authorisation of Special Munitions*, v.4, 8 February 2012, Bundle K/599.

<sup>163</sup> GMP, *Standard Operating Procedure for Post Incident Procedures*, version 15, 19 February 2010, Bundle C/834.

<sup>164</sup> GMP, *Standard Operating Procedure 8 for Mobile Armed Support to Surveillance*, 5 December 2011, Bundle F/1256.

<sup>165</sup> ACPO, ACPOS and NPIA (2011) *Manual of Guidance on the Management, Command and Deployment of Armed Officers*, third edition, §4.34.

**2.56** MASTS is supposed to provide a flexible platform; it is not a firearms “tactic”.<sup>166</sup> In common with other kinds of armed operation, MASTS has a range of generic tactical options, of which “decisive action” is only one:

6.33 Generic tactical options set out the different ways in which a particular objective can be undertaken in a manner which minimises risk and harm. Generic tactical options are broad descriptions of the options the police may have available to them when dealing with an incident which requires the deployment of armed officers. Along with the primary aim of securing public safety, consideration should be given to whether it is possible to identify, locate and contain the subject and take appropriate action to neutralise the threat posed.

6.34 Generic tactical options to consider include:

- Waiting;
- Taking mitigating action;
- Keeping the subject under observation;
- Containing the area around the subject, thereby minimising the opportunity for harm;
- Communicating with the subject;
- Taking decisive action.<sup>167</sup>

**2.57** For the most part, therefore, MASTS operations are a way of “keeping the subject under observation” with the benefit of armed support.<sup>168</sup> However, because MASTS officers and commanders are trained to a higher standard than ordinary firearms officers, they are able to deliver additional specialist tactical options known as “interception” and “intervention”, both of which are forms of decisive action.<sup>169</sup> Interception seeks to remove a threat by dealing with the subject before the commission of an offence (and therefore not in the intended victim’s presence). Intervention seeks to mitigate the threat to a potential victim by interrupting an offence and dealing with the subject while he is in the act of committing it.<sup>170</sup>

**2.58** An authorised firearms officer is “a police officer who has been selected, trained, accredited and authorised by their chief officer to carry a firearm operationally”.<sup>171</sup> Before training for the MASTS role, GMP’s AFOs first had to meet the Armed Response Vehicle (“ARV”) role requirements. A qualified MASTS officer was, in turn, eligible for training as a counter-terrorist specialist firearms officer (“CTSFO”).<sup>172</sup> Most of the AFOs deployed in Operation Shire were not only trained to the MASTS standard, but also to the higher standard of CTSFO.<sup>173</sup>

**2.59** The command structure in UK firearms operations has three levels: strategic, tactical and operational.<sup>174</sup> The strategic firearms commander (“SFC”) authorises the deployment of AFOs,<sup>175</sup> determines the strategic objectives and sets tactical

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<sup>166</sup> *Report of Ian Arundale QPM*, 4 November 2016, §129.

<sup>167</sup> ACPO, ACPOS and NPIA (2011) *Manual of Guidance on the Management, Command and Deployment of Armed Officers*, third edition, §§6.33–6.34.

<sup>168</sup> *Report of Ian Arundale QPM*, 4 November 2016, §131.

<sup>169</sup> *Ibid.*

<sup>170</sup> *Ibid.*

<sup>171</sup> ACPO, ACPOS and NPIA (2011) *Manual of Guidance on the Management, Command and Deployment of Armed Officers*, third edition, §4.0.

<sup>172</sup> *Report of Ian Arundale QPM*, 4 November 2016, §135.

<sup>173</sup> *Ibid.*, §134. For a discussion of the training and accreditation of certain officers and commanders who participated in the deployment of 3 March 2012, see Chapter 8.

<sup>174</sup> ACPO, ACPOS and NPIA (2011) *Manual of Guidance on the Management, Command and Deployment of Armed Officers*, third edition, §5.8.

<sup>175</sup> *Ibid.*, §5.20.

parameters.<sup>176</sup> The tactical firearms commander (“TFC”) is responsible for developing, commanding and co-ordinating the overall tactical response in accordance with the strategic objectives,<sup>177</sup> while the operational firearms commander (“OFC”) “commands a group of officers carrying out functional or territorial responsibilities related to a tactical plan”;<sup>178</sup> put less opaquely, the OFC commands the AFOs on the ground. It is, however, the SFC who retains strategic oversight and overall command responsibility for the operation.<sup>179</sup>

**2.60** The *Manual of Guidance* lists specific responsibilities for each level of command.<sup>180</sup> Some use the word “must”, others “should”. Wherever “must” appears, it means that “the term was approved by the ACPO ‘Chief Constables Council’ (now the National Police Chiefs Council – NPCC), thereby endorsing the need for any such action to be completed”.<sup>181</sup> By implication, the word “should” carries a somewhat less prescriptive force.

**2.61** Among the “should” requirements listed for SFCs and TFCs are those relating to tactical advice. The TFC “should consult a Tactical Advisor [*sic*] as soon as practicable”.<sup>182</sup> The SFC “should consider” doing so.<sup>183</sup> Although not expressed as a “must” requirement, the degree of exigency with which it applies may, in certain circumstances, amount to much the same thing. Not all commanders, for example, are themselves firearms practitioners. Common sense suggests that, in a complex firearms operation, such an officer would be very unwise to proceed without first consulting a tactical adviser (“TA”).

**2.62** The job of the TA is confined to providing advice:

5.25 The role of a Tactical Advisor is to advise and not to make command decisions. The responsibility for the validity and reliability of the advice lies with the advisor, but the responsibility for the use of that advice lies with the commander.<sup>184</sup>

**2.63** In practice, the usual procedure in planned firearms deployments such as those that took place in Operation Shire was for the SIO to approach a TFC with a request for armed support. The SIO would brief the TFC at a risk assessment meeting. After taking tactical advice, the TFC would, if he thought the circumstances warranted it, formulate a threat assessment and working strategy, and request the SFC’s authority to deploy armed officers. The SFC, if satisfied that the request was justified, would formally authorise the deployment and thereafter retain strategic oversight until the authority expired or was revoked.

**2.64** The *Manual of Guidance* specifies the criteria for the authorisation of an armed deployment. Those relevant to the present Inquiry are:

- Where the officer authorising the deployment has reason to suppose that officers may have to protect themselves or others from a person who:

<sup>176</sup> *Ibid.*, §5.10.

<sup>177</sup> *Ibid.*, §5.11.

<sup>178</sup> *Ibid.*, §5.12.

<sup>179</sup> *Ibid.*, §5.10.

<sup>180</sup> *Ibid.*, §§5.8–5.25. See Appendix D.

<sup>181</sup> *Report of Ian Arundale QPM*, 4 November 2016, §87.

<sup>182</sup> ACPO, ACPOS and NPIA (2011) *Manual of Guidance on the Management, Command and Deployment of Armed Officers*, third edition, §5.22.

<sup>183</sup> *Ibid.*, §5.20.

<sup>184</sup> *Ibid.*, §5.25.

- is in possession of, or has immediate access to, a firearm or other potentially lethal weapon, or
- is otherwise so dangerous that the deployment of armed officers is considered to be appropriate; or
- As an operational contingency in a specific operation (based on the threat assessment).<sup>185</sup>

**2.65** Underlying all police operations where force may be used is the principle set out in the *Code of Practice*:

Police officers responsible for planning and undertaking operations where the use of force is a possibility should plan and undertake them so as to minimise, to the greatest extent possible, recourse to force and, in particular, recourse to lethal force.<sup>186</sup>

Those words reproduce the standard legal formulation of the State's obligation to plan and conduct police firearms operations so as to protect the right to life guaranteed by Article 2 of the European Convention on Human Rights.<sup>187</sup>

## E. The MASTS operations before March 2012

**2.66** The first involvement of the TFU was on 8 December 2011. The extent of that involvement is not entirely clear. On 28 November, DI Cousen made a note in his day book recording his view that he was not in a position to request firearms support without specific intelligence suggesting that the subjects were about to commit an offence. Nevertheless, he took the precaution of asking DS Hurst to prepare a TFC briefing document, so as to avoid delay in the event that he had to apply for firearms support at short notice.<sup>188</sup> He made a further, similar, note on 1 December.<sup>189</sup>

**2.67** On the morning of 8 December, concerned that he had “no arrest capability”, DI Cousen consulted a TFC by telephone in relation to recent intelligence. Later that day, he attended at the TFU where he briefed the TFC in person in the presence of other officers, including a TA. Whether, as the official firearms incident log records,<sup>190</sup> a firearms authority was formally refused, or whether it was never actually applied for, as a handwritten note on the frontispiece of the TA policy log states,<sup>191</sup> may not matter very much; the practical upshot was the same: no firearms deployment was authorised. The TA log suggests that by the time of the meeting at the TFU, the threat had already diminished, with the result that the firearms officers who had been allocated to the incident in anticipation of a possible deployment were “stood down”.

**2.68** There is no reason to believe that there was anything amiss with the approach that the TFC and TA took on this occasion. Even in planned armed deployments, extreme urgency may require a firearms team to be readied for possible deployment pending formal authorisation. Provided the officers are not briefed or deployed until after the appropriate commander – usually an SFC – has taken a properly considered and contemporaneously documented decision to authorise, I see no objection to that course. It should not, of course, be confused with the objectionable “authorise first, think later” mentality criticised later in this Report.

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<sup>185</sup> *Ibid.*, §4.20.

<sup>186</sup> Home Office (2003) *Code of Practice on Police use of Firearms and Less Lethal Weapons*, §3.4.4.

<sup>187</sup> *McCann and Others v United Kingdom* [1995] 21 ECHR 97.

<sup>188</sup> Cousen, day book, Bundle K/1136–1137.

<sup>189</sup> Cousen, day book, Bundle K/1142.

<sup>190</sup> Bundle G1/1585.

<sup>191</sup> Bundle K/150.

- 2.69** On 12 December, DI Cousen again approached the TFU for assistance. This time, an SFC (Assistant Chief Constable (“ACC”) Garry Shewan) granted a firearms authority (365/11). Again, the proposed operation was directed exclusively against the Corkovic OCG, which was thought to be intent on committing a “cash-in-transit” robbery.<sup>192</sup> There is no reference to Mr Totton or Mr Grainger in any of the firearms logs. Superintendent Leor Giladi, the TFC, identified the individuals posing a threat as Aaron Corkovic, Jamie Corkovic, Anthony Corkovic, Adam Brown and Paul Corkovic.<sup>193</sup> No firearms operation took place pursuant to Authority 365/11 until the morning of 15 December, when the TFU assembled and briefed a firearms team for deployment later that day. The slide presentation used for the briefing named Mr Totton as one of the subjects of the operation, whereas Paul Corkovic featured only as an “associate”. I note in passing that Q9, the officer who was to shoot and kill Mr Grainger on 3 March 2012, was one of the firearms officers who attended the briefing.
- 2.70** In the event, surveillance officers observed no significant movements of any of the subjects. After an uneventful morning, the day’s operation was “stood down” and the firearms authority rescinded.<sup>194</sup>
- 2.71** On 12 December 2011, the very day that Authority 365/11 was granted, thieves stole a blue BMW car, registration number S31 STF, in Cheadle. The following day, a red Audi A6 car, registration number X5 JEF, was stolen in Bolton. It was not until 23 January 2012 that officers managed to trace the two vehicles to the Salford area. By then, they were both carrying cloned registration plates, the BMW displaying the number YA06 ZDT and the Audi RO08 LOD. At that stage, DI Cousen’s working assumption was that the Corkovic OCG might be using them.<sup>195</sup> Instead of recovering the vehicles, he decided to mount a systematic surveillance operation. With effect from 25 January, officers from GMP’s DSU began to carry out occasional covert observations of the stolen cars to find out who was using them and for what purpose. In addition, Operation Shire’s investigation team deployed authorised covert tracking and positioning equipment to monitor the whereabouts and movements of the vehicles themselves. Quite apart from the DSU observations, therefore, the investigators had constant access to a continuous stream of data enabling them to know where each car was at any given moment.
- 2.72** Early on the morning of 25 January 2012, the first day of the surveillance operation, the two stolen cars travelled together to the Stoke-on-Trent area. It was on that day that the first sighting of Mr Grainger occurred; shortly after the vehicles had returned from Stoke to Salford, Detective Constable Andrew Crawford saw Mr Grainger sitting in the driver’s seat of the blue BMW, which was stationary in Worsley.<sup>196</sup> Examination of CCTV footage enabled the team to identify the driver of the red Audi as Mr Totton.<sup>197</sup> It is impossible to be sure of the precise purpose of the expedition to Stoke. It was certainly connected with some form of criminal conspiracy, probably to commit armed robbery, a potential target being a security van delivering cash or other valuables.
- 2.73** Having reasonable grounds to believe that a “cash-in-transit” robbery was imminent, DI Cousen decided to seek armed assistance from the TFU.<sup>198</sup> He telephoned Supt

<sup>192</sup> Leor Giladi, TFC policy log, Bundle G1/2457.

<sup>193</sup> Giladi, TFC policy log, Bundle G1/2457 and 2471.

<sup>194</sup> Firearms incident log, 15 December 2011, Bundle G1/1575.

<sup>195</sup> Cousen, day book, Bundle K/1187.

<sup>196</sup> Andrew Crawford, witness statement, 12 March 2012, Bundle J/80.

<sup>197</sup> Cousen, day book, Bundle K/1191.

<sup>198</sup> *Ibid.*

Ellison and, at the superintendent's request,<sup>199</sup> arranged to brief him at a firearms risk assessment meeting that afternoon.<sup>200</sup> Supt Ellison had trained and qualified as a TFC while serving with a different force, Lancashire Constabulary.<sup>201</sup> Although he had no experience of performing live firearms roles,<sup>202</sup> his performance as a commander – in this instance, at least – was conspicuously better than that of his colleagues who dealt with later firearms deployments in Operation Shire. He kept a detailed contemporaneous record of his thought processes and used the printed log template as an *aide memoire* so as to ensure that he reached his decisions applying the correct criteria in accordance with the principles set out in the then-current edition of the *Manual of Guidance*.<sup>203</sup>

**2.74** The risk assessment meeting took place at GMP's Nexus House. It began at 14:00 and lasted approximately two and a half hours. Present, apart from Supt Ellison and DI Cousen, were "J4" (a TA), Detective Sergeant David Johnstone (a member of the DSU team) and Police Sergeant Neil Cook (Assistant Chief Constable Terry Sweeney's staff officer).<sup>204</sup> DI Cousen started by giving a briefing about the activities of the subjects of Operation Shire. Supt Ellison made a careful note of the intelligence and information with which he was provided, slowing DI Cousen down when necessary to ensure that he presented the history in chronological order.<sup>205</sup> He took care to record the NIM "5x5x5" grading of each item, where it was available:

Question: In general terms, why is the ... assessed reliability of the intelligence with which you are provided important?

**Answer: I think it is vital to me as a TFC in terms of making a decision to put armed officers on to a street, whether it is an advanced tactic or a more basic firearms tactic is a big decision to make. I have to make sure that that tactic that we are going to use is proportionate to the degree of threat that we are facing. To decide if the threat is going to be proportionate or not, I have to understand the credibility of the intelligence that supports the threat.**<sup>206</sup>

**2.75** Not all the information that Supt Ellison received during the meeting had the benefit of NIM gradings. The sole subject of DI Cousen's briefing was Mr Totton, who was the only occupant of the two stolen cars whose identity had by then been confirmed.<sup>207</sup> The others were still unknown associates at that stage. Concerned at what he called the "unknowns",<sup>208</sup> Supt Ellison "put his foot on the ball"<sup>209</sup> and asked for more information. In response to that request, DI Cousen invited DC Clark, who as Operation Shire's intelligence officer had much experience of dealing with Salford-based OCGs, to join the meeting.<sup>210</sup>

**2.76** Having received no warning that he might be called upon to brief a firearms commander that afternoon, DC Clark had to rely on his memory unaided by notes or prior reference

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<sup>199</sup> Ellison, TS/1709:14–19.

<sup>200</sup> Ellison, TS/1704:14–19.

<sup>201</sup> Ellison, TS/1697:3–1698:20.

<sup>202</sup> *Ibid.*

<sup>203</sup> ACPO, ACPOS and NPIA (2011) *Manual of Guidance on the Management, Command and Deployment of Armed Officers*, third edition.

<sup>204</sup> Ellison, TS, 1709:20–1712:11.

<sup>205</sup> Ellison, TS/1715:13–21.

<sup>206</sup> Ellison, TS/1717: 2–14.

<sup>207</sup> Ellison, TS/1747:2–6; Clark, TS/1870:10–14.

<sup>208</sup> Ellison, TS/1737:1–7.

<sup>209</sup> *Ibid.*

<sup>210</sup> Cousen, TS/1303:12–25; TS/1500:21–1501:13; Ellison, TS/1736:8–1737:21.

to crime reports.<sup>211</sup> According to Supt Ellison's TFC log, DC Clark presented four items of information:

History supporting threat of potentially lethal force by Totton +/- or associates.

- (1) SOCG [serious organised crime group] intel. of Totton [redacted text] being chased into a property in Lwr. Broughton in 1998 + found close to hidden pump-action shotgun. Not prosecuted, despite neighbours housing males at the address.
- (2) Op. Ascot 2005 investigated kidnap robbery of banks in Culcheth + Blackpool areas. Totton believed (SOCG) to be involved in planning + recce of both premises, without actually committing offence. Two associates received 12 yr sentences. Totton not prosecuted. Firearms used.
- (3) Op Botany 2002. Totton implicated in kidnap of male with firearm but not prosecuted.
- (4) Op Adequate 2010. Totton observed picking up a car with another male + observing staff leaving bank premises SOCG intel suggests they were planning a kidnap.<sup>212</sup>

All four items concerned Mr Totton alone, leaving Supt Ellison none the wiser as to the identity or background of his current associates.<sup>213</sup> Supt Ellison formed the opinion that "this risk assessment meeting was about David Totton and potentially three from any one of five or six other males".<sup>214</sup>

**2.77** Although not recorded in his log, Supt Ellison agreed in his evidence to the Inquiry that DC Clark did mention Mr Grainger during the meeting:

Question: Was Mr Grainger mentioned?

**Answer: There was mention of an offence involving Stuart Grainger and Anthony Grainger, but it was an offence that Stuart Grainger was convicted of.**

Question: What was that?

**Answer: It was an offence involving – it was a robbery and there was a MAC-10 fully automatic weapon involved and also the discharge of shotgun pellets towards officers.**

Question: The same incident?

**Answer: Yes.**

Question: You haven't made a note of that here, any reason?

**Answer: I can't offer a reason now. I don't recall why I would have made that decision at the time.**

Question: This was from DC Clark, was it?

**Answer: Yes.**

Question: What did he tell you about this?

**Answer: In relation to the Stuart Grainger and Anthony Grainger?**

Question. Yes.

**Answer: Precisely what I have just said, in terms of he was connected to an offence involving a shotgun.**

Question: Who was – Anthony Grainger?

**Answer: Yes.**

Question: He was connected to the offence? What does "connected to" mean?

<sup>211</sup> Ellison, TS/1737:10–21; Clark, TS/1834:11–21; TS/1884:1–4.

<sup>212</sup> Ellison, TFC policy log, Bundle G1/2321.

<sup>213</sup> Ellison, TS/1739:15–17.

<sup>214</sup> Ellison, TS/1739:18–1740:2; TS/1743:5–13.

**Answer: It was believed that – well, there was a Stuart and Anthony Grainger mentioned. However, as I probed further it became clear that Stuart Grainger was the one convicted of that offence, not Anthony Grainger, and that was the context I was looking for. There was not further detail available about Anthony’s precise involvement.**

Question: Did he say whether Anthony Grainger had been charged with that offence?

**Answer: I don’t recall that conversation, no. What I do recall was that Stuart Grainger was convicted; whether Anthony was charged or not I don’t know.**<sup>215</sup>

That summary matches the description of a robbery that had taken place in Bolton (“the Bolton robbery”) in 2000. However, the crime report<sup>216</sup> does not refer to Anthony Grainger as a suspect in the case and shows that his brother Stuart was ultimately acquitted. Nor does it contain any reference to Mr Totton.

- 2.78** After the lapse of five years, it is hardly surprising that Supt Ellison should struggle to recall the reason why he did not mention the Bolton robbery in his TFC log. The omission is unlikely to have resulted from oversight. Supt Ellison struck me as a meticulous officer, who insisted on slowing DC Clark down when necessary,<sup>217</sup> and I think he took a considered decision not to make a note. It is possible that he regarded the information about Stuart and Anthony Grainger as having little or no relevance to his immediate task because – unlike the other information which DC Clark gave him – it did not implicate Mr Totton, who at the time of the meeting was the only occupant of the two stolen vehicles to have been identified.
- 2.79** The significance of DC Clark’s inaccurate reference to the Bolton robbery lies in the fact that it came to the attention of Q9 by a route described elsewhere in this Report (see Chapter 6). Further, it featured in a firearms briefing on 1 February at which Q9 was present.<sup>218</sup>
- 2.80** DC Clark gave evidence<sup>219</sup> that, during the risk assessment meeting on 25 January 2012, he had told Supt Ellison about several historical crimes, including the Bolton robbery in 2000. Some corresponded to items in Supt Ellison’s numbered list.<sup>220</sup> Others, such as Operation Vulture<sup>221</sup> (1996), did not. Without a contemporaneous note to help him when he gave evidence to the Inquiry, DC Clark did not always succeed in distinguishing between, on the one hand, his recollection of what he knew or had learned subsequently from research undertaken after the death of Mr Grainger and what, on the other hand, he had told Supt Ellison at the time.
- 2.81** In fact, the first note DC Clark made was in a report, dated 18 July 2012, which he compiled in response to a request from the Operation Idris team.<sup>222</sup> He told the Inquiry that he had drafted the report from memory, without reference to any written records.<sup>223</sup> It exhibits the same defects as his oral testimony, in that it fails to distinguish what he

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<sup>215</sup> Ellison, TS/1741:9–1743:13.

<sup>216</sup> Bundle G2/1400.

<sup>217</sup> Clark, TS/1838:20–1839:11.

<sup>218</sup> Bundle F/1148; Cousen, TS/1500.

<sup>219</sup> Clark, TS/1862:9–1866:7.

<sup>220</sup> Clark, TS/1855:19–21.

<sup>221</sup> Operation Vulture was an investigation into the commission of a number of armed robberies at banks and post offices in and around Salford, Prestwich and Bury.

<sup>222</sup> Clark, TS/1839:23–1840:1. Operation Idris prepared GMP’s defence in response to the prosecution of Sir Peter Fahy, in his capacity as Chief Constable, for an alleged offence contrary to the Health and Safety at Work etc. Act 1974, arising out of the events leading to Mr Grainger’s death; it is also the team that prepared for the Inquest/Inquiry on behalf of GMP.

<sup>223</sup> Clark, TS/1843:12–17.

knew about the incidents at the time he wrote the report from what he remembered having told Supt Ellison during the risk assessment meeting on 25 January. The same applies, even more forcibly, to a written statement that DC Clark made in September in relation to the same matters,<sup>224</sup> which purports to set out the information he had provided to Supt Ellison at the meeting. By the time he made that statement, DC Clark had researched the relevant documentary records. During his evidence to the Inquiry, he proved unwilling to recognise the obvious danger of confusion between what he had told Supt Ellison and the fruits of his later research.<sup>225</sup> The upshot was that it proved quite impossible to tell from DC Clark's report, or his later statement, or his evidence to the Inquiry, precisely what it was that he had said to Supt Ellison at the meeting on 25 January. I have to say that I found Supt Ellison a far more reliable and convincing witness on these matters than DC Clark. Bearing in mind the fact that he – unlike DC Clark – had made a contemporaneous note of their conversation, I have no hesitation in preferring his evidence where it appears to conflict with that of DC Clark.

**2.82** Briefing a TFC from memory was not a satisfactory procedure. Supt Ellison was, after all, trying to assess the identity, capability and intent of Mr Totton's associates with a view to seeking an authority to deploy armed officers and preparing a working strategy. Supt Ellison's desire for additional information was therefore entirely understandable, as was DI Cousen's suggestion that DC Clark should come into the briefing. For his part, DC Clark found himself in a difficult position. The summons he received was an unexpected one. It was not his fault that he had no notes to which he could refer. All the same, he should have accompanied his briefing with a clear warning as to the likely limitations of the information he was providing, and, as he reluctantly conceded,<sup>226</sup> he should have made a note of that information immediately after leaving the risk assessment meeting. As it was, he made no notes at all, and the only warning he gave to Supt Ellison was that his dates might be "a bit out".<sup>227</sup> I am sorry to say that DC Clark's admission to Pete Weatherby QC that he had made hardly any entries in his case book relating to Operation Shire between 25 January and 6 March 2012<sup>228</sup> only served to confirm my impression that DC Clark has a casual, if not cavalier approach to maintaining accurate records.

**2.83** At 16:45 on 25 January, the risk assessment meeting having concluded, Supt Ellison briefed an SFC, ACC Shewan. Like Supt Ellison, ACC Shewan made a detailed note of the key intelligence, including the relevant NIM gradings, and named the "principals" as Mr Totton, Aaron Corkovic and Jamie Corkovic.<sup>229</sup> At 17:10, ACC Shewan granted his authority (27/12) for a MASTS operation.<sup>230</sup> On Monday 30 January, having extended that authority over the weekend, ACC Shewan handed over the SFC role to Assistant Chief Constable Steven Heywood,<sup>231</sup> and Superintendent Chris Hankinson took over from Supt Ellison as TFC. The authority remained in force until 3 February.<sup>232</sup> In the

<sup>224</sup> Clark, witness statement, 19 September 2012, Bundle E/38–41.

<sup>225</sup> Clark, TS/1847:21–25.

<sup>226</sup> Clark, TS/1910:25–1911:21.

<sup>227</sup> Clark, TS/1836:4–5.

<sup>228</sup> Clark, TS/1909:25–1913:24.

<sup>229</sup> Garry Shewan, SFC policy log, Bundle G1/2275–2276. Mr Rimmer appears as a subject at G1/2283.

<sup>230</sup> Ellison, witness statement, 19 October 2012, Bundle H/199.

<sup>231</sup> *Ibid.*

<sup>232</sup> Bundle G1/1565. See also Bundle G2/692.

period between 25 January and 3 February, there were seven deployments<sup>233</sup> but the MASTS team moved on only one occasion.

**2.84** The first of those deployments was on 26 January,<sup>234</sup> when the MASTS team travelled to Staffordshire in anticipation of a possible robbery at a cash depot in the Hanley area of Stoke-on-Trent.<sup>235</sup> By the time the officers were briefed that morning, Mr Rimmer and Mr Grainger had been added as named subjects of Operation Shire.<sup>236</sup> The briefing presentation also included slides relating to Aaron Corkovic, Jamie Corkovic, Anthony Corkovic and Adam Brown, all of whom were still described as “subjects”, and Paul Corkovic, who was referred to as an “associate”;<sup>237</sup> there had been no sightings of any of those individuals in connection with either of the stolen vehicles or in company with Mr Totton, Mr Rimmer or Mr Grainger, nor were there to be any such sightings at any time thereafter. Although the two stolen cars left Salford early that morning, and travelled some distance into Cheshire, their occupants showed no overt sign of suspect activity, with the result that the firearms team was eventually recalled to Manchester without incident.<sup>238</sup> Shortly afterwards, surveillance officers saw the stolen BMW stationary and unattended in Bolton.<sup>239</sup> There was a yellow-handled sledgehammer in the rear footwell.<sup>240</sup> Mr Grainger was seen on foot nearby.<sup>241</sup>

**2.85** By this time, DI Cousen understood that during the coming days he would be calling on costly specialist resources, including officers from the DSU and TFU. Anxious not to incur such expense without first checking that he did not already have sufficient evidence to prefer charges,<sup>242</sup> he decided on 26 January to consult the CPS by telephone. The lawyer to whom he spoke was Nicola Moore. After speaking to her own line manager, she advised DI Cousen that there was not, in her view, sufficient evidence for a charging decision.<sup>243</sup> In a witness statement dated 25 June 2014, Ms Moore said that during one of several conversations (she did not specify which) with DI Cousen or DC Talbot, she had been told that “they were under a lot of pressure from their superiors because the investigation was resource-heavy”. By the time she gave her oral evidence to the Inquiry, her original notes had gone astray in an office move<sup>244</sup> and she could no longer recall the exact details of the discussion.<sup>245</sup> Nevertheless, she agreed with DI Cousen’s evidence that he had told her he did not wish to waste valuable police resources if he already had enough evidence for a charging decision.<sup>246</sup> In that context, it is unnecessary for me to resolve the question of whether DI Cousen specifically mentioned “pressure” from his superiors; if and in so far as he did so, I accept that he did not mean improper pressure to make swift arrests, but entirely legitimate pressure to justify his use of expensive police

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<sup>233</sup> Following the practice adopted by Counsel to the Inquiry when questioning witnesses, I use the word “deployment” in this context to refer to the briefing of a MASTS team pursuant to an SFC’s authorisation, irrespective of whether the team physically left the TFU’s premises. See Mark Nutter, TS/6570:1–2; X9, TS/3920:12–17. See also Bundle G2/692.

<sup>234</sup> Prior to January, there were two firearms authorities/briefings in December 2011 (see Appendix E).

<sup>235</sup> Briefing slide presentation, 26 January 2012, Bundle G1/2783.

<sup>236</sup> Briefing slide presentation, 26 January 2012, Bundle G1/2761.

<sup>237</sup> Briefing slide presentation, 26 January 2012, Bundle G1/2775–2779.

<sup>238</sup> *Ibid.*

<sup>239</sup> Amalgamated surveillance log, Bundle K/112.

<sup>240</sup> *Ibid.*

<sup>241</sup> *Ibid.*

<sup>242</sup> Cousen, TS/1391:22–1392:21.

<sup>243</sup> Nicola Moore, TS/1629:19–1635:21.

<sup>244</sup> Moore, TS/1626:5–11.

<sup>245</sup> Moore, TS/1632:25–1633:13.

<sup>246</sup> Moore, TS/1631:16–24.

resources. That interpretation is fully consistent with DC Talbot's evidence that a TFC may not agree to a request for armed support where sufficient evidence already exists to justify a conventional arrest strategy without the deployment of firearms officers.<sup>247</sup>

- 2.86** Another MASTS operation was scheduled for the following day, 27 January, and Supt Ellison conducted a briefing of AFOs early that morning. Once again, the briefing included a reference to the Corkovic OCG. In the absence of any movement by the subjects, however, the firearms team was "stood down" at 07:30 without leaving the TFU.
- 2.87** MASTS teams were assembled and briefed on 27 January, 30 January and 31 January, but the surveillance officers detected no significant activity. During the early hours of 31 January, however, Detective Constable Andrew Charnock saw an article that appeared to be a knife sheath in the back of the stolen Audi, which was then parked and unattended in a cul-de-sac in Bolton.<sup>248</sup> Further MASTS briefings took place on the mornings of 1 February, 2 February and 3 February, but in the absence of significant observations, the AFOs remained on stand-by without leaving the TFU's premises.<sup>249</sup> At those briefings, although the accompanying slides continued to describe the Corkovic OCG members as "subjects" of the operation, the transcripts of the oral presentation show that they were treated as "associates", rather than "subjects". On 1 February, the officer conducting the briefing warned his team that the associates "may or may not appear in the operation today, but there's no specific intelligence linking them to it at this moment in time".<sup>250</sup> His counterpart on 3 February displayed no such circumspection, however, merely asserting, baldly, that "there are a number of other members of the OCG, mainly the Corkovic family". He did not go into detail, leaving his listeners with the wholly inaccurate impression that Mr Totton, Mr Rimmer and Mr Grainger were all members of the same OCG as Aaron Corkovic, Jamie Corkovic, Anthony Corkovic, Adam Brown and Paul Corkovic.
- 2.88** The MASTS briefing of 3 February was the last before March. Of all the MASTS briefings that took place before 3 March 2012, the only three that Q9 had attended were those that took place on 15 December 2011,<sup>251</sup> 26 January<sup>252</sup> and 1 February 2012.<sup>253</sup>

## F. Events after 3 February 2012

- 2.89** Thereafter, the subjects of Operation Shire remained relatively inactive until the end of February. On 2 February, the Robbery Unit received intelligence interpreted as suggesting that Mr Totton was committing robberies with Iain Parkinson ("Idgy") and twin McLennan brothers ("Aaron and Bradley") and Mr Grainger ("Anthony Granger"):

1. DAVID TOTTON IS PLANNING TO COMMIT OFFENCES OF ROBBERY WITH HIS CLOSE FRIEND IDGY AND OTHERS INCLUDING ANTHONY GRANGER AND TWIN BROTHERS KNOWN AS AARON AND BRADLEY. 2. DAVID TOTTON IS ALSO HEAVILY INVOLVED IN THE LARGE SCALE MOVEMENT OF COCAINE WITH A CRIMINAL ASSOCIATE KNOWN AS RIMMER.<sup>254</sup>

<sup>247</sup> Talbot, TS/999:20–1001:18.

<sup>248</sup> Andrew Charnock, witness statement, 8 March 2012, Bundle E/303; amalgamated surveillance log, 31 January 2012, Bundle O2/691.

<sup>249</sup> Bundle G2/692.

<sup>250</sup> Bundle F/1155.

<sup>251</sup> Bundle F/1132.

<sup>252</sup> Bundle G1/317.

<sup>253</sup> Bundle F/1146.

<sup>254</sup> Bundle S/8.

That was plainly incorrect, for the surveillance operation produced no sightings of Mr Parkinson or the McLennan twins.<sup>255</sup> Although surveillance also failed to reveal any evidence to support the suggestion that Mr Totton and Mr Rimmer were engaged in drug trafficking,<sup>256</sup> it is right to point out that there were other methods by which that intelligence might have been (but was not) investigated.

**2.90** By this time, there had been nine firearms deployments in Operation Shire, only one of which related to Mr Totton, Mr Rimmer and Mr Grainger; the remainder were in connection with the Corkovic OCG. On 20 February, the investigation team sought a charging decision from the CPS.<sup>257</sup> Ms Moore replied by email the following day,<sup>258</sup> advising that the evidence as it then stood did not pass the charging threshold.

**2.91** On the evening of 21 February, surveillance officers monitored the stolen Audi's movements as it visited St Helens and Newton-le-Willows. It had two occupants. The driver was Mr Grainger and the passenger almost certainly Mr Totton.<sup>259</sup>

**2.92** On 22 February, DI Cousen finally decided to split Operation Shire into two distinct strands.<sup>260</sup> After that, he did not brief firearms commanders about the Corkovics.<sup>261</sup>

**2.93** As Deputy SIO, it was DS Hurst's responsibility to maintain the intelligence chronology, the vast majority of entries in which related solely to the Corkovic OCG and had no connection to the activities of Mr Totton and his associates. In its original form, therefore, the chronology was an unbalanced document with the potential to mislead anyone – including firearms commanders<sup>262</sup> – who might come to it without a detailed knowledge of the history and development of Operation Shire. It would have been a perfectly simple matter to remove any material that was no longer relevant to the investigation into Mr Totton.<sup>263</sup> In her evidence to the Inquiry, however, DS Hurst admitted that it had not occurred to her to edit the intelligence chronology in that way.<sup>264</sup> While there was no guarantee that Mr Totton and Aaron Corkovic would not engage in joint criminal activity, the retention within the chronology of a simple marker or alert would have been enough to meet that risk. As it was, DS Hurst did not even consider editing the intelligence chronology so as to restore its balance by focusing its contents upon the suspected activities of Mr Totton.<sup>265</sup>

**2.94** Before leaving the early history of Operation Shire, two further topics require separate attention. The first relates to a statement that DC Talbot made on 7 August 2014, for the purposes of GMP's defence in response to the prosecution of Sir Peter Fahy, in his capacity as Chief Constable, for an alleged offence contrary to the Health and Safety at Work etc. Act 1974, arising out of the events leading to Mr Grainger's death.<sup>266</sup> The statement includes a passage relating to Operation Ascot, an investigation that dated back to 2006:

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<sup>255</sup> Cousen, TS/1385:15–1387:10.

<sup>256</sup> Cousen, TS/1091:13–24.

<sup>257</sup> Bundle W/423.

<sup>258</sup> Bundle W/430.

<sup>259</sup> Amalgamated surveillance log, Bundle O2/692–693; the passenger was last seen entering the Manchester apartment block in which Mr Totton was then living.

<sup>260</sup> Cousen, TS/1256:21–1259:1.

<sup>261</sup> Cousen, TS/1259:2–4.

<sup>262</sup> Hurst, TS/5070:12–5071:14; Granby, TS/3520; TS/3572:10–19; TS/3576:17–3578:15.

<sup>263</sup> Hurst, TS/5069:15–5070:11.

<sup>264</sup> Hurst, TS/5066:10–5067:10.

<sup>265</sup> Hurst, TS/5067:18–24.

<sup>266</sup> Talbot, witness statement, 7 August 2014, Bundle H/154; Talbot, TS/974:8–21; TS/1047:18–1049:14.

David Totton, Anthony Grainger and others were also involved in Operation Ascot in 2006. Operation Ascot related to another investigation involving armed robberies. On one occasion during this operation I am aware that both David Totton and Anthony Grainger were in separate stolen vehicles on false plates, with others, driving towards Culcheth. It was believed at the time that they were planning to commit a robbery/act of criminality. At this time, they were subject of aerial surveillance. For no apparent reason the vehicles carrying David Totton and Anthony Grainger suddenly stopped and turned around, and they appeared to abort whatever activity they were planning to carry out. Although there was not intelligence or evidence to support this, it was felt by the investigation team that the subjects had become aware of the aerial surveillance, and this was the reason why they had aborted their plans.

On Thursday 26th January 2012 Anthony Grainger and David Totton were surveilled to travel from Worsley/Boothstown to Stoke in separate vehicles. They met up in the immediate vicinity of the G4S depot at Berryhill, Stoke. It was believed that they were planning to commit a robbery/act of criminality. At this time they were subject to aerial surveillance. Again for no apparent reason, they returned to Manchester without committing an armed robbery. Although there was no intelligence or evidence to support this, it was felt by the investigation team that the subjects had become aware of the aerial surveillance and this was the reason why they aborted their plans.<sup>267</sup>

- 2.95** Although the statement avoids saying so in as many words, anyone reading those words in the context of the prosecution of Sir Peter Fahy might be forgiven for supposing that the 2006 incident had been a factor in the thinking of Operation Shire's investigators in March 2012. Otherwise, it is not easy to see what relevance the incident had to the proceedings at which this statement was apparently directed. The true position, however, was this. DC Talbot had not been involved in Operation Ascot – indeed, he had not been a member of the Robbery Unit at the time.<sup>268</sup> It was a colleague, Detective Sergeant John Mulvihill, who had provided DC Talbot with the information about Operation Ascot, apparently for the purpose of the 2014 statement.<sup>269</sup>
- 2.96** As it happens, with the sole possible exception of the passing reference recorded by Supt Ellison in his TFC log for 25 January 2012,<sup>270</sup> no incident matching the circumstances that DC Talbot attributed to Operation Ascot featured in any of the Operation Shire risk assessment meetings or briefings or in any of the contemporaneous documentation. At the time, the perceived relevance of Operation Ascot related to the use of a hacksaw to commit a “lie-in-wait” robbery in the Preston area.<sup>271</sup> Mr Grainger's OPUS record contains no reference to Operation Ascot, suggesting either that Ascot's investigators did not have sufficient reason to suspect Mr Grainger of involvement to warrant placing a marker on his OPUS record or that he was subsequently eliminated as a suspect.<sup>272</sup>
- 2.97** Against that background, I find the submission of DC Talbot's witness statement of 7 August 2014 to a court that had to consider and determine criminal charges arising out of GMP's conduct of Operation Shire somewhat disquieting.
- 2.98** The second matter I wish to mention concerns a troubling aspect of DI Cousen's evidence to the Inquiry. When DI Cousen was answering questions from Mr Beer QC about the errors in Mr Grainger's subject profile concerning the Prestwich robbery, he

<sup>267</sup> Talbot, witness statement, 7 August 2014, Bundle H/154.

<sup>268</sup> Talbot, TS/973:4–10.

<sup>269</sup> Talbot, TS/974:22–975:16.

<sup>270</sup> Bundle G1/2321.

<sup>271</sup> Mills, TS/932:22–935:10.

<sup>272</sup> Talbot, TS/976:15–978:14. It seems, in fact, that Mr Grainger was never a suspect, but only Mr Totton: Mills, TS/936:13–21.

volunteered that he had used the old GMPics system to find out additional information about that matter.<sup>273</sup> That, as far as it went, was entirely true; indeed, DI Cousen was able to produce a recent printout.<sup>274</sup> He knew of its likely relevance because, in common with many other witnesses, he had been following the proceedings by reference to the daily transcripts uploaded to the Inquiry website, which included the evidence of PC Griffiths. For some reason, DI Cousen went on to claim that he had made those enquiries in 2012, shortly after receiving the profile of Mr Grainger that PC Griffiths had created:

Question: So, back in 2012 –

**Answer: Yes.**

Question: – you access GMPics to look at this?

**Answer: Yes.**

Question: Is the printout that you have now, the print from 2012?

**Answer: No, because, to be fair, I wouldn't have printed it out back in 2012. I would have just – I would have looked – because that entry that Rachel [PC Griffiths] made gave a crime number, because I knew that the crime would contain more information on GMPics, that is what I would have looked at and that is what I would have seen. It is the same thing. It is a really old system, so whatever I print off today would be the same to whatever had I printed it off, but I wouldn't have printed it off.**

Question: So you looked at it on the system, and why did you do that?

**Answer: Because it contained more information than what the OPUS would contain.**<sup>275</sup>

**2.99** DI Cousen, who had never previously mentioned consulting GMPics about the Prestwich robbery in February 2012, went on to repeat the assertion more than once during his evidence.<sup>276</sup> Unfortunately, it was incorrect. An electronic audit of the GMPics system later confirmed that the only occasion on which DI Cousen had ever accessed GMPics was on 12 February 2017, just two days before he started giving his oral evidence to the Inquiry. When, several days later, DI Cousen was challenged on the point in the light of the audit's result, he revealed that since first making the assertion he had spoken by telephone to Detective Superintendent (“D Supt”) Anthony Creely to seek his advice.<sup>277</sup> His explanation was that he had made an honest mistake, believing what he was saying to be the truth. On realising that it was or might be mistaken, he had sought guidance from D Supt Creely, who advised him to raise his concerns with “the legal team” (presumably a reference to GMP's lawyers) or the Chairman. In the event, upon returning to resume his evidence on Friday 17 February 2017, he spoke to Leading Counsel for GMP, Anne Whyte QC.

**2.100** There are, it seems to me, two ways of looking at DI Cousen's decision to volunteer the fact that he had given inaccurate evidence to the Inquiry. One is that, upon realising detection was inevitable, he attempted to forestall criticism by bringing the matter into the open himself. The other is that his conscience pricked him into correcting the misleading impression he knew he had given. He would only have anticipated detection if he knew that an electronic audit of the GMPics system was possible (in which case it is not easy to understand why he would have told such a lie in the first place), or if some colleague had told him about the Inquiry team's request (a serious matter which might well involve the commission of a criminal offence).

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<sup>273</sup> Cousen, TS/1156:17–1157:8.

<sup>274</sup> *Ibid.*; Cousen, TS/1163:15–16.

<sup>275</sup> Cousen, TS/1158:20–1159:13.

<sup>276</sup> For example, Cousen, TS/1160:20–21; 1372:14–19.

<sup>277</sup> Cousen, TS/1610:13–14.

- 2.101** The sequence of events inevitably raises a suspicion that news of the audit and its outcome somehow reached DI Cousen before he resumed his evidence on Friday 17 February. There is, however, no evidence to suggest that anyone “tipped him off”, and the Inquiry did not explore the issue. On balance, I prefer to think that DI Cousen genuinely regretted misleading the Inquiry and – albeit belatedly – did what he could to put it right. I cannot, however, accept his explanation that his false claim to have accessed GMPics in 2012 was the result of a mistake. I think that he succumbed to an impulse “to smooth the ice”<sup>278</sup> by adding something that he knew was untrue. It was an isolated lapse from his characteristic truthfulness and one that I believe he immediately regretted.
- 2.102** In other respects, apart from some unnecessary verbal fencing with Leading Counsel to the Inquiry, DI Cousen coped well with the experience of testifying at length and under considerable pressure. Except where I have indicated otherwise, I accept his account of events. For the avoidance of doubt, I do not believe that DI Cousen consciously exaggerated the threat posed by the subjects of Operation Shire. He had no motive to do so. In so far as he provided inaccurate information to firearms commanders, he did so in good faith, relying on what others had told him. His meticulously maintained day books reveal a dedicated, efficient and talented investigator.
- 2.103** There are only two significant criticisms I have to make of DI Cousen’s conduct of Operation Shire. Neither of them contributed to the death of Mr Grainger. The first is that DI Cousen failed to ensure that someone from his team researched (or “developed”) PC Griffiths’ profile of Mr Grainger. The second is that he should have divided Operation Shire into two distinct strands sooner than he did.
- 2.104** As to the first of those points, I have some sympathy with DI Cousen’s view that an investigator has to operate on the basis that those who maintain the warning marker databases have done their jobs properly,<sup>279</sup> while such markers may reflect a wide range of possibilities, an investigator should only research them on a case-by-case basis, not as a matter of routine.<sup>280</sup> However, knowing – as he ought to have done – that PC Griffiths had created Mr Grainger’s profile with a specific, wholly different investigation in mind, DI Cousen should have regarded it as one of those individual cases in which further research would, indeed, be necessary. The blame for not doing so does not lie entirely with DI Cousen. His deputy, DS Hurst, was also at fault; she, after all, was the very officer whom PC Griffiths had warned about the need to update Mr Grainger’s profile, and as the officer within the team who was responsible for such profiles,<sup>281</sup> she should have done more than – at best – “flick through” the document<sup>282</sup> before placing it on the S: drive. Nevertheless, it is DI Cousen, as Operation Shire’s SIO, who must bear the final responsibility.
- 2.105** Making all proper allowance for the privilege of hindsight which this Inquiry enjoys, I think that DI Cousen was unduly slow to act on the early indications that Mr Totton, Mr Rimmer and Mr Grainger were not part of the Corkovic OCG. The absence of a link between the two groups was something he himself recognised in his investigative assessment. DC Talbot commented on it in his intelligence summary. By late January 2012, investigators were in possession of intelligence that discredited the idea of

<sup>278</sup> William Shakespeare, *King John*, IV. ii. 13.

<sup>279</sup> Cousen, TS/1176:25–1178:1.

<sup>280</sup> Cousen, TS/1184:1–1186:8.

<sup>281</sup> Hurst, TS/5076:14–21.

<sup>282</sup> Hurst, TS/5088:7–11. In fact, DS Hurst seems not to have read Mr Grainger’s profile: Hurst, TS/5100:2–16; 5102:14–17.

such a link. As soon as it became clear that it was Mr Totton and his associates, and not the Corkovic OCG, who were using the two stolen cars, DI Cousen should have reassessed the entire basis of Operation Shire. Had he done so, he would have divided the investigation into two separate strands by the end of January at the latest. I accept that after 22 February he did not brief firearms commanders about the activities of the Corkovic OCG,<sup>283</sup> but that was not enough. He should have made it clear that the Corkovics could no longer be regarded as associates of Mr Totton, let alone as fellow subjects.

**2.106** In the event, it was not until 22 February that DI Cousen took the decision to divide Operation Shire into two distinct strands.

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<sup>283</sup> Cousen, TS/1259:2–4.

# Chapter 3: The MASTS<sup>1</sup> Deployment of 1–2 March 2012

## A. Background

- 3.1** On 22 February 2012, having realised there was no evidence to suggest that David Totton, Anthony Grainger and Robert Rimmer were associating with the Corkovics, Detective Inspector (“DI”) Robert Cousen, Operation Shire’s Senior Investigating Officer (“SIO”), decided to divide the investigation into two separate strands.<sup>2</sup> From that point on, he did not brief the Tactical Firearms Unit (“TFU”) about any intelligence or other information relating to the Corkovics.<sup>3</sup> As I have already noted (see Chapter 2), however, the intelligence chronology retained its original form as a single document incorporating information relevant to both strands of the investigation.
- 3.2** Between about 20:15 and 20:45 on Monday 27 February, unobserved by surveillance officers, the stolen red Audi made the first of several return trips from Salford to Culcheth. The relevant vehicle tracking data (“VTD”)<sup>4</sup> suggests that it approached the town centre from the north-west and travelled along Common Lane, passing Jackson Avenue on its right-hand side. If it stopped at all, it cannot have done so for more than a few seconds. The overwhelming likelihood is that Mr Grainger was the driver and Mr Totton the front passenger.
- 3.3** Two days later, on the evening of Wednesday 29 February, Mr Totton and Mr Grainger again travelled in the stolen Audi to Culcheth. This time, they visited the public car park in Jackson Avenue.<sup>5</sup> They were observed throughout by officers from the Dedicated Surveillance Unit (“DSU”) of Greater Manchester Police (“GMP”).<sup>6</sup> On their return to Salford, an officer of the DSU reported seeing Mr Totton transfer an article (later assessed from video footage to be a hacksaw) from the boot of a different silver Audi, registration number MT11 ONO,<sup>7</sup> to the rear passenger compartment of the same vehicle before driving off.<sup>8</sup> Despite filming the episode, that officer’s report of the sighting was confused, a problem compounded by the imprecise fashion in which it was later conveyed to DI Cousen.
- 3.4** The DSU officer who made the report was Detective Constable (“DC”) Jerry Connors. In his first statement, following the relevant surveillance log entry, he described what he saw in these terms:

At 1959 hours that same day I saw David John Totton b. 08/01/1979 wearing a black bob hat, black gloves, a dark top and bottoms walk from the direction of Hazelhurst Road onto Beatrice Road and towards the Audi MT11 ONO. He was in company with a white male wearing dark clothing. I saw Totton walk to and open the boot of the Audi MT11 ONO and remove something which he then placed into the rear of the vehicle. He also removed his bob hat before getting into the driver’s seat and driving off onto Broad Oak Road.<sup>9</sup>

<sup>1</sup> MASTS = Mobile Armed Support to Surveillance.

<sup>2</sup> Robert Cousen, TS/1259:2–1260:18.

<sup>3</sup> *Ibid.*

<sup>4</sup> VTD download, Bundle K/1044.

<sup>5</sup> Amalgamated surveillance log, Bundle F/1199.

<sup>6</sup> Bundle K/117–119.

<sup>7</sup> A legitimate vehicle which Mr Totton had borrowed from an acquaintance: Bundle K/119.

<sup>8</sup> Bundle F/1200–1201.

<sup>9</sup> Bundle E/322.

**3.5** I have viewed the video clip, the contents of which do not match DC Connors' description as recorded in the surveillance log. The footage, which is of poor quality, was obtained from behind the parked Audi MT11 ONO. Two men are seen walking along the nearside of the vehicle towards the camera. One opens the front nearside door and gets in. The other, identified as Mr Totton, opens the boot and places inside it an elongated, flat, apparently rigid article of about the same size and proportions as a standard vehicle number plate, before closing the boot, getting into the driver's seat and driving away. It is impossible to identify the item that he had placed inside the boot. Its size and shape are certainly consistent with those of a large hacksaw (or indeed a wood saw), but it could equally be an entirely different type of article of similar dimensions, including a vehicle number plate. On any view, the clip does not show Mr Totton transferring something from the boot of the car to its passenger compartment. It is clear that he was already carrying the item before he reached the stationary Audi.

**3.6** Detective Constable Andrew Talbot, Operation Shire's case officer, attended the DSU debrief that evening and viewed the footage.<sup>10</sup> It was his view that the object which David Totton had placed in the boot of the silver Audi car had the appearance of a hacksaw:

From my recollection of the footage, you observe Mr Totton walking from Hazelhurst towards his vehicle, the MT11 Audi. He activates the alarm so the cars are illuminated. As he walks round the car, you'll see under the headlights the clear shape which is, seems, quite a large hacksaw; opens his boot, puts that within the boot and then takes out another item which he then puts into the back of the car.<sup>11</sup>

**3.7** Aware that Mr Totton had been sighted in Culcheth in the stolen red Audi less than 40 minutes earlier,<sup>12</sup> and assuming that he must therefore have transferred the article from that vehicle to the silver Audi, DC Talbot told DI Cousen that Mr Totton had been "seen moving it from one vehicle to another".<sup>13</sup>

**3.8** That Mr Totton had been in possession of the article in Culcheth earlier that evening was certainly a strong possibility or, in DI Cousen's phrase, a "fair assessment".<sup>14</sup> It was also entirely possible that the article in question was a large hacksaw. Neither assumption, however, accurately reflected what the DSU officer had actually seen and reported. Nevertheless, the last entry in DI Cousen's day book for 29 February<sup>15</sup> records that "DT has been seen carrying an item in a black bin liner **from one vehicle to another**" (my emphasis). The first entry for the following day reads as follows:

Update from DC Talbot

[Mr Totton] was seen moving a hacksaw from one vehicle to another (stolen to legitimate). It is believed that this is what he was carrying when seen leaving [Mr Rimmer's] home address.<sup>16</sup>

**3.9** I have been unable to find a record in the amalgamated surveillance log for that day of an earlier sighting of Mr Totton (or anyone else for that matter) carrying an article of any description, although a graded intelligence report<sup>17</sup> describes Mr Totton, prior to leaving The Pines apartments in Blackley earlier that day, as having placed an

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<sup>10</sup> Andrew Talbot, TS/1008:19–23.

<sup>11</sup> Talbot, TS/1009:25–1010:7.

<sup>12</sup> Talbot, TS/1011:17–1012:4.

<sup>13</sup> Talbot, TS/1014:11–17.

<sup>14</sup> Cousen, TS/1279:14.

<sup>15</sup> Bundle K/1235.

<sup>16</sup> Bundle K/1236.

<sup>17</sup> Bundle G1/2989.

“object” wrapped in a black bin liner inside the boot of the silver Audi, MT11 ONO. Repeated requests by the Inquiry team for the original intelligence product on which that report was based have failed to reveal any foundation for it.

**3.10** On the morning of 1 March, Detective Constable Gary Mills, an officer in the Robbery Unit, viewed the previous evening’s video footage. In evidence, he was unable to say whether he was the first person to identify the article as a hacksaw, or whether he was aware that others – such as DC Talbot – had already drawn the same conclusion, but he told the Inquiry that in his view “it appeared to be a hacksaw”.<sup>18</sup> It was certainly DC Mills who suggested a possible connection with Operation Ascot, an earlier investigation into a bank robbery (“the Preston robbery”) that had taken place some years earlier in Kirkham, Preston. He happened to remember the case because he had been one of the investigating officers.<sup>19</sup> Recalling that the modus operandi of the robbers had involved sawing through the bank’s window bars, DC Mills retrieved a report of the Preston robbery from the Operation Ascot folder and, at 07:14, forwarded it by email to DI Cousen:

Offenders attack bank from rear cutting bars on windows gaining access to toilets (0325 hrs).

Offenders hide in toilets and await arrival of bank staff.

Two members of staff arrive and enter bank conduct security checks. Two offenders then confront staff and threaten them with firearm. Demand keys for secure vault. Staff then searched and photos/addresses revealing identities are commented on by robbers. Staff tied up with plastic ties ...

Further members of staff were then admitted and imprisoned by the robbers.

Robbers communicated by way of hands free mobile phones/walkie talkies.

Keys for vault obtained and substantial amount of cash stolen.

CCTV recordings stolen.

Offenders make good escape in stolen Vauxhall Vectra on false plates ...<sup>20</sup>

**3.11** The report, which correctly recorded the date of the crime as 26 August 2005, went on to indicate<sup>21</sup> that after the robbery Mr Totton and a man called David Cullen went out celebrating and spent a substantial amount of money.

**3.12** Connecting DC Mills’ message about the Preston robbery with the previous evening’s sighting of Mr Totton in possession of an item identified as a hacksaw, DI Cousen concluded (without discounting other possibilities) that the subjects of Operation Shire were in the advanced stages of planning a similar robbery, with the same modus operandi, in the Culcheth area. He therefore caused enquiries to be made as to whether there was any damage to the premises reconnoitred by the subjects during the previous evening, and decided to request assistance from the TFU, but he also took the precaution of seeking details of forthcoming cash deliveries in Culcheth. In view of the uncertain nature of the threat he anticipated, those were all sensible, indeed necessary measures. The enquiries revealed that there was no visible damage to any of the potential target premises,<sup>22</sup> and that the latest time at which the security company G4S would be moving cash on any day between Monday and Friday was

<sup>18</sup> Gary Mills, TS/932:22–933:8.

<sup>19</sup> Mills, TS/934:13–935:10.

<sup>20</sup> Bundle R/11.

<sup>21</sup> *Ibid.*

<sup>22</sup> Bundle K/1237.

3 p.m.,<sup>23</sup> although an entry in DI Cousen's day book records that a delivery to Culcheth post office was due to take place at 4 p.m. the following day (Friday 2 March).

**3.13** DI Cousen's day book for 1 March shows that he spoke to an officer at the TFU, "X7", at 08:00 and told him about the previous night's "activity".<sup>24</sup> He arranged to brief the duty tactical firearms commander ("TFC"), Chief Inspector ("CI") Michael Lawler, at a risk assessment meeting with a view to seeking a firearms authority.<sup>25</sup> The use of armed officers that DI Cousen had in mind differed in two important respects from previous deployments, all of which had taken place in the Stoke-on-Trent area during the hours of daylight. This, by contrast, would be the first night-time deployment and the first to be undertaken in the Culcheth area.

**3.14** At 10:45 on 1 March, on the instructions of DI Cousen,<sup>26</sup> DC Talbot spoke to Nicola Moore, a Crown Prosecution Service ("CPS") lawyer, and told her about the sighting of Mr Totton placing a "hacksaw" in the boot of his car.<sup>27</sup> As she had previously advised (see Chapter 2),<sup>28</sup> Ms Moore remained of the view that, without more, there was insufficient evidence to justify charging the subjects of Operation Shire with conspiracy to rob. DC Talbot conveyed Ms Moore's opinion to DI Cousen, who recorded it in his day book:

CPS advice from Nicky Moore – Not sufficient for charge. Acts are no more than merely preparatory.<sup>29</sup>

**3.15** Meanwhile, at about 11:00, X7 and three other firearms officers visited Culcheth to familiarise themselves with the area "and reconnoitre a number of financial institutions".<sup>30</sup>

**3.16** At 11:57, DI Cousen sent CI Lawler an email to which he attached an information pack comprising subject profiles for Mr Totton, Mr Rimmer and Mr Grainger, three graded items of intelligence prepared by DC Talbot,<sup>31</sup> and a copy of the Operation Shire intelligence chronology.<sup>32</sup> One of the graded intelligence reports summarised the previous evening's observations of Mr Totton thus:

29th February 2012 – David Totton is seen going into the Pines apartments, Ainsbrook Avenue, Blackley, stays for about 45 minutes and then leaves in silver Audi A4 MT11 ONO, although prior to leaving places an object into the boot of the vehicle which is wrapped in a black bin bag.

Anthony Grainger drives legitimate Renault Megane HK03 FNF onto Sandringham Road, Boothstown, and gets into stolen Audi displaying RO08 LOD.

RO08 LOD drives to the Culcheth area of Cheshire and parks in close proximity to a Building Society and a Post Office, where it stops for 20 minutes.

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<sup>23</sup> Bundle W/275.

<sup>24</sup> Bundle K/1236.

<sup>25</sup> Cousen, witness statement, 30 May 2012, Bundle E/4–6. Note that DI Cousen uses the initials "SFC" as an abbreviation for "Silver Firearms Commander", i.e. the tactical firearms commander: see his witness statement dated 7 September 2012, Bundle E/10. For the sake of consistency, this Report refers throughout to the tactical firearms commander by the initials "TFC"; it uses SFC only for the strategic firearms commander.

<sup>26</sup> Bundle K/1236.

<sup>27</sup> Talbot, TS/1019:21–1020:11.

<sup>28</sup> Nicola Moore, TS/1629:19–1630:25; TS/1635:23–1646:21.

<sup>29</sup> Bundle K/1237. The use of the expression "merely preparatory" suggests that, in addition to the offence of conspiracy to rob, Ms Moore must also have considered whether there was sufficient evidence to justify a charge of attempt: Moore, TS/1650:23–24.

<sup>30</sup> X7, witness statement, 9 March 2012, Bundle E/86. See also X7, TS/5415:20–5416:15.

<sup>31</sup> Cousen, TS/1288:10–16.

<sup>32</sup> Bundle W/79. See also section A of Chapter 2.

The Audi does a loop around a car park which offers a view to the rear of the Building Society and Post Office, and returns to the same car park as previous, and waits another 15 minutes before leaving.

The Audi then drives along the East Lancs<sup>33</sup> and drives to Worsley where Totton is dropped off at his own Audi MT11 ONO and is observed to place a large hacksaw into the boot of his car. Totton drives away.

Grainger drives the RO08 LOD Audi back to Boothstown, leaves the veh and drives away in his own legitimate Megane HK03 FNF.<sup>34</sup>

## B. The risk assessment meeting

**3.17** The risk assessment meeting on 1 March took place at the TFU's headquarters.<sup>35</sup> It began at about 12:30.<sup>36</sup> Those present (apart from DI Cousen and CI Lawler) were, according to the note DI Cousen made in his policy book,<sup>37</sup> Inspector Andrew Fitton (tactical adviser – "TA"), X7 (operational firearms commander – "OFC"), Detective Sergeant ("DS") David Johnstone (an officer from the DSU) and Operation Shire's deputy SIO, Detective Sergeant Deborah Hurst.

**3.18** Not all those persons were continuously present from the meeting's beginning to its very end. The presence of a DSU officer, in particular, would not have been essential at all stages of the discussion. It is therefore probable that DS Johnstone only attended part of the meeting.<sup>38</sup> That was certainly Inspector Fitton's recollection.<sup>39</sup> In his first witness statement, X7 said that after returning to the TFU from Culcheth, he had "participated in a risk assessment meeting concerning Operation Shire",<sup>40</sup> and he said the same in evidence to the Inquiry.<sup>41</sup> However, in a statement that he made more than 30 months after his first account, he denied that he had attended the risk assessment meeting, but said that he "did pop in from time to time to speak to Mr Lawler".<sup>42</sup> When he was interviewed by Operation Idris as a potential witness for the defence,<sup>43</sup> he said:

**X7:** There was two meetings as I recall. There was the first one in the morning where they looked at it and the information's put on, and then, because it was quite a strict time restraint, or constraints I should say, so I left that meeting halfway through to go, and I went down to Culcheth and had a drive round there. I came back and we started putting the briefing together. There was a second one that afternoon which I was in and out of, but I wasn't part of that ...

**IF [Iain Foulkes, of the Operation Idris team]:** Were you involved in any of the risk assessments on the 1st, then, and the discussions to do with that?

**X7:** I can't recall.<sup>44</sup>

<sup>33</sup> The local name for the A580 road between north Liverpool and Salford.

<sup>34</sup> Bundle W/93.

<sup>35</sup> Cousen, TS/1315:25–1316:1.

<sup>36</sup> Actually 12:35, according to DS Deborah Hurst's note in her day book: Bundle P/175.

<sup>37</sup> Bundle K/1237.

<sup>38</sup> Andrew Fitton, TS/2543:17–19.

<sup>39</sup> Fitton, TS/2542:19–23; TS/2543:17–19.

<sup>40</sup> X7, witness statement, 9 March 2012, Bundle E/86.

<sup>41</sup> X7, TS/5429:6–7.

<sup>42</sup> X7, witness statement, 3 October 2014, Bundle E/490.

<sup>43</sup> Operation Idris prepared GMP's defence in response to the prosecution of Sir Peter Fahy, in his capacity as Chief Constable, for an alleged offence contrary to the Health and Safety at Work etc. Act 1974, arising out of the events leading to Mr Grainger's death; it is also the team that prepared for the Inquest/Inquiry on behalf of GMP.

<sup>44</sup> Bundle L/63.

**3.19** There is no evidence from any other source to support X7's assertion in his Operation Idris interview that there was more than one risk assessment meeting on 1 March; the only such meeting for which any written records exist is the one that took place at 12:30. The likelihood is that X7 was referring to a series of preliminary conversations he had with other individual officers during the morning of 1 March. He had summarised those contacts in the initial account he provided during the night of 3–4 March 2012:

I contacted the SIO on the morning of March 1st, 2012. I had a message left for me to contact the SIO for him to provide me with an update on this operation, being the only supervisor available at that time.

Following that conversation, I spoke to the on-duty tactical firearms commander and I updated him. I also spoke to the firearms tactical adviser and updated him.

Following these updates, I made to the Culcheth area in company with three other officers. This was in order to familiarise ourselves with the location. That afternoon, we had a threat assessment meeting which included the SIO, the TFC, the firearms TAC adviser and myself. Following the meeting I was tasked with planning a firearms operation. This was completed before I retired from duty at 1730 that day.<sup>45</sup>

**3.20** I have seen some rough notes<sup>46</sup> that X7 made during the 12:30 risk assessment meeting. Understandably, they are not comprehensive, but they include much detail about the intelligence background and show that X7 must have been present throughout that and other important portions of the discussion. Inspector Fitton's TA log lists X7 as having attended the risk assessment meeting in the capacity of "planner".<sup>47</sup> In his evidence to the Inquiry, Inspector Fitton confirmed that X7 had been present:

My recollection is that he was there. Now, whether he was there for the entire time, I can't remember.<sup>48</sup>

**3.21** I think X7 did more than merely "pop in from time to time". The whole point of his attendance was to listen to the intelligence background,<sup>49</sup> and he was certainly present for most of the meeting, participating actively in his capacity as OFC and planner.

**3.22** There is no clear evidence as to how long the risk assessment meeting lasted because, with the exception of some handwritten notes made by Inspector Fitton and X7, no strictly contemporaneous record of it has survived. Assistant Chief Constable ("ACC") Steven Heywood's strategic firearms commander ("SFC") log suggests that it must have concluded by 13:45, for that is the time shown against his note of the briefing that he received from CI Lawler. Regrettably, however, ACC Heywood's log is not contemporaneous with the events it narrates and, for reasons explained later in this chapter, is not a trustworthy source. The same applies to CI Lawler's log, which he compiled after the event from notes that he later destroyed.<sup>50</sup>

**3.23** The earliest written records of the risk assessment meeting are contained in X7's rough notes,<sup>51</sup> and in the handwritten notes<sup>52</sup> which Inspector Fitton made in his day book and which later formed the basis for his TA log. Inspector Fitton's notes, which are difficult to decipher in places, occupy three sides of A4 paper. They were clearly jotted down as the meeting proceeded. They contain some details that do not appear

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<sup>45</sup> Bundle F/495–496.

<sup>46</sup> Bundle R/559–563.

<sup>47</sup> Bundle G1/2917.

<sup>48</sup> Fitton, TS/2543:8–9.

<sup>49</sup> X7, TS/5429:8–9.

<sup>50</sup> For a more detailed treatment of the firearms commanders' logs, see section F of this chapter.

<sup>51</sup> Bundle R/559–563.

<sup>52</sup> Bundle G2/103A–C.

in the log, including the observation “nothing to suggest f/arm [i.e. firearm] at present”. Unsurprisingly, the log itself is set out in a more organised and logical fashion. Apart from a reference to the fact that the CPS was “not yet happy that evidential threshold has not [*sic*] yet been met”, there is nothing of consequence in the TA log that cannot be traced back to Inspector Fitton’s original jottings. In those circumstances, I see no reason to doubt his evidence that he compiled the relevant log entry from his notes, some time after the risk assessment meeting had finished. X7’s jottings were also clearly made contemporaneously. Like Inspector Fitton, X7 noted that there was “no current intelligence to put subjects in possession of firearms”.<sup>53</sup> That information, which was accurate, almost certainly came from DI Cousen.

## C. The MASTS authorisation

**3.24** The duty SFC on 1 March was ACC Heywood. Shortly (probably immediately) after the risk assessment meeting, CI Lawler briefed ACC Heywood by telephone<sup>54</sup> and obtained his authorisation (Authority 75/12) for a Mobile Armed Support to Surveillance (“MASTS”) deployment. CI Lawler’s TFC log gives the time at which he briefed ACC Heywood as 13:30 – the same time as he had recorded for the conclusion of the risk assessment meeting – and the time of authorisation as 14:00. ACC Heywood’s SFC log records the time at which the threat assessment was carried out as 13:55 and the time of authorisation as 14:05. For reasons discussed elsewhere in this chapter (see section F), there is good reason to doubt the contemporaneity and reliability of both logs.

**3.25** Since Culcheth is in Cheshire, there was an obvious possibility that GMP firearms officers might find themselves operating within the territory of the neighbouring force, Cheshire Constabulary. At 14:53, therefore, CI Lawler telephoned his opposite number in Cheshire, Superintendent (“Supt”) Nicholas Bailey, to inform him of the proposed deployment and to warn him that it might become necessary for GMP firearms officers to carry out a “strike”, or intervention, in Cheshire.<sup>55</sup>

**3.26** In common with other officers of Cheshire Constabulary, Supt Bailey kept a meticulous record of his actions and decisions.<sup>56</sup> I am sure that the time he gave for his discussion with CI Lawler (14:53) is correct. CI Lawler told him that GMP was conducting Operation Shire against a “team of armed villains” from Salford who had been reconnoitring potential targets for armed bank or “cash-in-transit” robberies in Lancashire and Staffordshire.<sup>57</sup> Although CI Lawler denied that the phrase “armed villains” was his terminology, I accept the evidence of Supt Bailey, based on his contemporaneous note,<sup>58</sup> that those were the words used. CI Lawler named “Totton”<sup>59</sup> as a subject of the operation but did not refer to Mr Rimmer or Mr Grainger by name or provide any information about other subjects.<sup>60</sup> He told Supt Bailey that the organised crime group

<sup>53</sup> Bundle R/560.

<sup>54</sup> Michael Lawler, witness statement, 1 May 2012, Bundle E/42. DI Cousen also participated in this telephone conference: Cousen, TS/1311:12–1312:23.

<sup>55</sup> Nicholas Bailey, TS/2467:15–2468:5.

<sup>56</sup> Bundle M1&2/5–10.

<sup>57</sup> Bailey, TS/2459:25–2460:22.

<sup>58</sup> Bundle M1/8–9. Supt Bailey wrote down such details as he could during the conversation, completing his note immediately after it had finished: TS/2461:13–2463:5.

<sup>59</sup> Supt Bailey was not sure whether CI Lawler had mentioned Mr Totton’s first name: TS/2468:12–16.

<sup>60</sup> Bailey, TS:2472:13–17.

("OCG") had already been to Culcheth with a hacksaw,<sup>61</sup> and that GMP anticipated a robbery taking place that night or early the following morning.<sup>62</sup>

**3.27** Having received that briefing from CI Lawler, Supt Bailey made a telephone call at about 15:00 to Police Constable ("PC") Phaedra McClean, Cheshire's duty TA, and arranged to consult her in a face-to-face meeting later that afternoon.

**3.28** At 15:21, DS Hurst notified Robbery Unit staff by email that "Op Shire will be running throughout the night with DSU support and a firearms authority from midnight", adding that she and "Tolly" (presumably a reference to DC Talbot) would be on duty from midnight.<sup>63</sup>

**3.29** At 15:39, CI Lawler sent his threat assessment and proposed working strategy by email to ACC Heywood, announcing that the briefing for authorised firearms officers ("AFOs") would begin at 01:00 and adding that, in the event of the subjects moving towards target premises before that time, "we have mitigation plans in place".<sup>64</sup> Because CI Lawler's email message features not only in the events of 1–2 March, but also in the final deployment on 3 March, it is an especially important document, the relevant portion of which reads as follows:

#### Threat Assessment

- General public at point of police interception – Low (will be higher at the point of any containment/interception, should the subjects get inside any premises)
- General public at Culceth [sic] Parade, Culceth, Warrington – Medium
- General public – High (this is if the subjects are not arrested and police fail to arrest/deter them from their criminal enterprise)
- Untasked police officers – Low
- Tasked police officers – Medium
- Subjects, Grainger/Rimmer/Totton – Medium (at point of police interception)
- Overall – High

#### Working Strategy

- Minimise risk to the general public, especially in the area of any police intervention and in the area of Culceth Parade.
- Minimise risk to the public in Greater Manchester and adjoining force areas by preventing this OCG causing harm.
- Maximise the safety of untasked officers by ensuring they are briefed in both Cheshire and Greater Manchester.
- Maximise the safety of tasked officers by ensuring appropriate tactics are used.
- Minimise the risk to the subjects by ensuring tasked officers are trauma trained and have a less lethal option.
- Where appropriate arrest the subjects on suspicion of relevant offences.
- Recover any firearms or other weaponry.
- Recover any evidence of further offences.
- Continue to develop the intelligence picture to ensure the tactics remain appropriate.

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<sup>61</sup> Bailey, TS/2466:13–22.

<sup>62</sup> Bailey, TS/2464:13–18; see also Bundle M1/8.

<sup>63</sup> Bundle W/274.

<sup>64</sup> Bundle W/276–277.

- Liaise with divisional and force colleagues to address any community issues as appropriate.
- Return to normality maintaining public confidence in GMP and Cheshire police forces.

The current tipping points are:

1. One or more of the subjects are in the stolen Audi bearing false plates RO08 LOD and moving towards Culceth
2. Further information or intelligence to corroborate previous intelligence that the subjects are committing acts, which are more than preparation, for the commission of a robbery
3. The assessment from the SIO and the TFC that the subjects are engaged in a significant criminal enterprise, and their behaviour is indicative of this
4. The proximity of the subjects to Culceth Parade, Warrington

The tipping points can be applied individually or together.

Additionally I have authorised special munitions if we move to amber which will only be used after full consideration by the SFOs [specialist firearms officers] deployed. I have also authorised if necessary the deployment of [redacted] CROPS [Covert Rural Observation Post] officers if safe to do so

I have also contacted Cheshire and informed them of the nature of the operation, the area where it is anticipated it will take place and your and mine [*sic*] contact details. Once our full briefing template is established will forward to their TFC, Nick Bailey, and if required field further questions from there.

I will review the authority with you if that is in order at 0700 on the 2nd March or if we have a result, let you know by text ...<sup>65</sup>

- 3.30** The reader will note that “Culcheth” is consistently misspelled as “Culceth”, but the (false) registration mark of the stolen Audi is correctly given as RO08 LOD, not L08 L08, as in Inspector Fitton’s log (see paragraph 3.65).
- 3.31** A few minutes before Supt Bailey was due to meet PC McClean, CI Lawler forwarded him the email containing his threat assessment and working strategy,<sup>66</sup> also copying the message to “H9” with instructions to send Supt Bailey a copy of the AFOs’ PowerPoint briefing presentation as soon as it was ready.<sup>67</sup>
- 3.32** Supt Bailey and PC McClean held their meeting at 16:44.<sup>68</sup> Supt Bailey handed PC McClean a hard copy of the risk assessment and working strategy that CI Lawler had forwarded a few minutes earlier.<sup>69</sup> At 17:11, X7 sent Supt Bailey a version of the PowerPoint slide presentation drafted for briefing purposes (referred to as the “operational order” in the email to which it was attached);<sup>70</sup> Supt Bailey forwarded it to his successor as TFC, Chief Inspector Peter Crowcroft, at 18:17.<sup>71</sup> It was not, however, an identical copy of the version that was used at the following morning’s briefing of AFOs. Oddly, it omitted all reference to the Preston robbery, which was the underlying basis of the decision to mount an overnight MASTS operation as well as of the risk assessment and working strategy for that deployment.<sup>72</sup>

<sup>65</sup> *Ibid.*

<sup>66</sup> Bundle M1/14.

<sup>67</sup> *Ibid.*

<sup>68</sup> Bailey, witness statement, Bundle M1/3; Bailey, TS/2469:16–2470:14; Phaedra McClean, TS/2267:22–2268:9. See also McClean’s TA log, Bundle M1/22.

<sup>69</sup> McClean, TS/2270:2–18.

<sup>70</sup> Bundle Y/220–253.

<sup>71</sup> Bundle M1/19.

<sup>72</sup> Bundle Y/223.

**3.33** Knowing that his own tour of duty as TFC was due to end at 19:00,<sup>73</sup> Supt Bailey met CI Crowcroft and Cheshire Constabulary's designated SFC, Deputy Chief Constable ("DCC") Graeme Gerrard, to discuss the position. They concluded that, while it made sense for GMP to conduct the MASTS operation, command and control should pass to Cheshire Constabulary in the event of the subjects entering a building.

**3.34** Following that discussion, Supt Bailey sent CI Lawler an email, timed at 18:35, in which he asked CI Lawler to make contact with the new Cheshire TFC, CI Crowcroft, and summarised the position with regard to contingencies in a series of bullet points:

I have briefed DCC Gerrard regarding this incident, the below represent some of the contingency matters we discussed.

- The information relates to Op Shire as forwarded.
- In the event that TOTTON or the Audi move prior to Op Shire then there is a contingency in place for a GMP ARV [Armed Response Vehicle] in Leigh to intercept.
- In the event the tipping points are met in the GMP area the intention is to intercept prior to any criminal activity at Culcheth Parade area.
- There is no information or intelligence that warrants Cheshire Police to take any mitigating action prior to further updates from Op Shire TFC in relation to the deployment of unarmed or armed patrol in the Culcheth area of Warrington.
- In the event that Op Shire enters Cheshire at an appropriate time you will inform the Force Incident Manager and TFC CI Peter Crowcroft.
- In the event that a containment situation arises in Cheshire the Cheshire TFC is to be informed to assess feasibility of deploying as a spontaneous incident Cheshire ARV patrols.
- Could I ask that in the event an interception is made CI Peter Crowcroft is informed at a convenient time.<sup>74</sup>

**3.35** The broad effect of that message, to which Supt Bailey received no reply,<sup>75</sup> was to confirm Cheshire Constabulary's understanding that, although GMP's primary plan was, if possible, to conduct any strike in Salford, the Force had an Armed Response Vehicle ("ARV") ready at Leigh Police Station to deal with the contingency of the stolen Audi setting off before the MASTS team was in position. Further, should the subjects venture into Cheshire, GMP undertook to keep Cheshire Constabulary informed.

## D. The unexpected visit to Culcheth

**3.36** As it turned out, by the time Supt Bailey sent his email to CI Lawler at 18:35, the stolen Audi was already on the move. The Operation Shire investigating team was able to monitor its movements by reference to the live VTD download.<sup>76</sup> In any event, there was a DSU team keeping the vehicle under observation. They saw that the Audi contained "at least two occupants".<sup>77</sup> Mr Grainger was driving, and the front seat passenger was Mr Totton.<sup>78</sup> The car arrived in Culcheth a few minutes before 19:00. It drove into the Jackson Avenue car park (see Figure 1), but left moments later by the Thompson Avenue vehicle exit. For no obviously innocent reason, it paused for about 30 seconds at the end of Thompson Avenue, at the T-junction with Jackson

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<sup>73</sup> Bailey, TS/2471:23–24.

<sup>74</sup> Bundle M1/13.

<sup>75</sup> Bailey, TS/2487:19–23.

<sup>76</sup> VTD download, Bundle K/1049.

<sup>77</sup> Amalgamated surveillance log, Bundle F/1202.

<sup>78</sup> Amalgamated surveillance log, Bundle O2/698, §130.

Avenue, where a DSU officer saw Mr Totton and Mr Grainger looking at the shopping centre loading area. Having turned on to Jackson Avenue, the Audi then headed back to Salford.

**Figure 1: Map of Culcheth showing the Jackson Avenue car park**



**3.37** DI Cousen learned of that evening's trip to Culcheth at 19:55.<sup>79</sup> He summarised the stolen Audi's movements, as recorded by surveillance officers<sup>80</sup> and the vehicle's tracking device,<sup>81</sup> in his day book.<sup>82</sup> Apart from a note recording a further observation at 20:00, the next entry in DI Cousen's day book relates to the 01:00 briefing of AFOs, at which he was present. Since CI Lawler specifically referred to the trip to Culcheth at that briefing,<sup>83</sup> DI Cousen, or one of his subordinates, must have updated the TFU about it; not to do so would have been an extraordinary omission. There is, however, no clear evidence as to when the investigating team updated firearms commanders, nor has the Inquiry been able to find any evidence that the new information prompted a reconsideration of the threat assessment or proposed working strategy in line with the National Decision Model. DS Hurst, who was on duty throughout the night of 1–2 March, confirmed that by morning she had known of the trip to Culcheth, but she was unable to recall when or even precisely how she found out about it.<sup>84</sup>

**3.38** Nowhere in the logs of ACC Heywood, CI Lawler or Inspector Fitton is there any reference to a review of the threat assessment and working strategy in the light of the subjects' movements during the early evening of 1 March. Given that those movements had become known, at least in part, as a result of conventional surveillance, the absence of any such reference in commanders' logs cannot be adequately explained by a need to preserve secrecy. It is true that, by the time DI Cousen learned of the subjects' visit to Culcheth, CI Lawler and Inspector Fitton had gone off duty, but even if they could not be contacted by telephone, they returned to duty before midnight, well before the briefing for the proposed MASTS deployment was due to begin. In any event, ACC Heywood retained overall responsibility as duty SFC throughout the night.

<sup>79</sup> Cousen, timed day book entry, Bundle K/1240.

<sup>80</sup> Bundle F/1202–1204.

<sup>81</sup> Bundle K/1049–1050.

<sup>82</sup> Bundle K/1240–1242.

<sup>83</sup> Bundle F/1176.

<sup>84</sup> Hurst, TS/5118:25–5119:12.

**3.39** Whether such a review – which need not have required anything as formal as a face-to-face meeting – would have produced any change in the threat assessment or working strategy is beside the point. The fact is that there is, in the surviving logs and day books, no indication that the matter was ever considered before the AFOs’ briefing. It was certainly something that merited discussion, for the fact that the subjects had returned to exactly the same spot at exactly the same time on successive evenings might be thought capable of casting doubt on the assessment that they were bent on carrying out a “lie-in-wait” robbery during the early hours of the morning.

## E. The firearms briefing

**3.40** As OFC, it was X7 who had the job of preparing the PowerPoint slide presentation to be used at the briefing of the AFOs, but his shift was due to end at 17:30,<sup>85</sup> and he had delegated some of the work to other officers, including H9. H9 told the Inquiry that the task of preparing briefings for AFOs was not the subject of written protocols, the relevant skills being passed on from one officer to another.<sup>86</sup> By March 2012, however, he had acquired considerable personal experience in preparing such briefings.<sup>87</sup> He explained that the job was usually undertaken by a team of officers, rather than being left to a solitary individual:

Question: How was it in fact done? If you were told, “There is a briefing tomorrow at 0700 in the morning. You are going to be doing the briefing, H9”, what would you do?

**Answer: It was rare that it was down to a single person, so it very often was a team game in relation to preparing that. Numerous elements of that briefing would then have to be in place, so recces would be conducted, and likely that pictures would be added to the briefing to represent those recces, be that of premises or routes or items that we knew. There would be a form of words for intelligence that was put on.**

Question: Where would the form of words for intelligence come from?

**Answer: From the TFC. For the initial intelligence, they would dictate how much or how little would go on there in terms of why we were here. So, sometimes they were quite short, other times there was a lot more information in there.**

Question: When you say “dictate”, do you mean dictate in the true sense of the word – say it out loud and you type it up – or do you mean they would control?

**Answer: Both, sir. Depending on the individual and the circumstances, on some occasions it would be “dictate” in the truest sense of, “This is exactly what I wish for you to put down”. Other times it would be left for myself, if I was briefing, to put down a form of words that I thought covered it sufficiently, and then that would be checked with the TFC to make sure that they were happy with that form of words.<sup>88</sup>**

**3.41** The result was that the TFC would either draft the intelligence and information section of the briefing himself or would personally check its accuracy.<sup>89</sup> It would be for the OFC to check the accuracy of the tactical section,<sup>90</sup> but primary responsibility for the briefing’s overall accuracy rested with the TFC.<sup>91</sup> Subject to that, H9 had overall control of the drafting process.<sup>92</sup>

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<sup>85</sup> Bundle E/87.

<sup>86</sup> H9, TS/5187:18–21.

<sup>87</sup> H9, TS/5187:14–17.

<sup>88</sup> H9, TS/5187:22–5189:1.

<sup>89</sup> H9, TS/5189:2–7.

<sup>90</sup> H9, TS/5192:3–4.

<sup>91</sup> H9, TS/5191:22–24. See also Ian Arundale, TS/7091:6–16.

<sup>92</sup> H9, TS/5210:21–5211:1. See also Lawler, TS/2869:11.

**3.42** H9 told the Inquiry that it was common practice in long-running operations such as Operation Shire to adopt previous iterations of the briefing pack, the presumption being that the previous pack had undergone the appropriate checking and vetting processes:

... for some, they don't change at all, so you are running on the subsequent day. It is unlikely that anything would have changed massively. With anything with any great gaps, ... it still would always go through the process of the OFC and the TFC would always cast an eye over the briefing to check for accuracies [*sic*].<sup>93</sup>

**3.43** The difficulty with that approach is that it conceals a number of questionable assumptions. It cannot be taken for granted that previous iterations of the briefing will have been properly checked in the first place. Neither is it safe to assume that the circumstances of successive deployments in long-running operations will not materially change from one day to another. In any event, even if those circumstances do remain unaltered, the repeated adoption of extracts by different officers over the lifetime of a lengthy investigation may mean that the last time those passages underwent proper vetting was not, contrary to expectation, the previous day, or even the day before that, but many weeks beforehand when circumstances may have been very different.

**3.44** To some extent, GMP recognised the problem. The Operation Shire briefing for 2 March 2012 was based on a standard MASTS PowerPoint template which PC Tim Weightman of the TFU had circulated some weeks earlier.<sup>94</sup> In an accompanying email, dated 20 January 2012, he set out some of the problems that might result from the uncritical “copying and pasting” of passages from earlier briefings:

The purpose of a template is twofold.

Firstly, it is to provide a framework for preparing briefings that is easy to use and contains all the relevant information.

Secondly, it is an *aide memoire* to ensure that nothing is left out.

... When you are tasked with preparing a new briefing please do not copy and paste from a previously used operation. The problems with doing this are: a) The aide memoire aspect is lost if the previously used briefing has had slides removed [i.e. prior to the subsequent “copying and pasting” process]. (b) The new operation may require different deployments, risk assessments, strategies, etc., and if these have just been copied and not checked they may be wrong. Over a period of time this “copying and pasting” compounds the problem and it turns into a right kerfuffle ... If, however, it is an ongoing operation that for example requires the deployment changing on a daily basis, then I think copying and pasting is OK, it's down to you.<sup>95</sup>

**3.45** With the sole exception of the last sentence, which I think understates the perils of copying and pasting between successive daily deployments, I agree with PC Weightman's analysis.

**3.46** Along with other problems, examples of the very dangers highlighted by PC Weightman are to be found in the briefing of 2 March. It would be a mistake to dismiss them merely because the deployment of that day was, in the event, called off without any intervention taking place. In the first place, most of the officers present were also to take part in the following day's deployment. Further, some of the errors in the briefing pack for 2 March were carried over into its successor for 3 March, whereas material which might have mitigated such errors was unfortunately omitted from the

<sup>93</sup> H9, TS/5197:13–5198:1.

<sup>94</sup> Bundle Y/1637–1659.

<sup>95</sup> Bundle Y/1635.

later briefing. The “abortive” AFOs’ briefing of 2 March therefore remains significant for the light it casts on subsequent events.

**3.47** The briefing started at 01:07 and finished at 01:33.<sup>96</sup> Present, in addition to the AFOs (who included the OFC, X7), were CI Lawler, Inspector Fitton, DI Cousen, a sergeant from the DSU and two CROPS (Covert Rural Observation Post) officers. CI Lawler began by outlining the intelligence background, threat assessment and “tipping points” for arrest. X7 then briefed the AFOs about tactics – what he termed the “nuts and bolts”<sup>97</sup> of the deployment. The transcript<sup>98</sup> confirms that the briefing followed the structure of the PowerPoint slide presentation prepared under X7’s supervision, as amplified by CI Lawler’s handwritten annotations.<sup>99</sup>

**3.48** It is clear from the transcript of the briefing that the whole point of the proposed night-time deployment was to meet the anticipated threat of a “lie-in-wait” offence of the kind exemplified by the 2005 Preston robbery. That is precisely why the briefing included a full description of the Preston offence, which had not featured in any previous Operation Shire briefing. Moreover, when CI Lawler came to deliver the intelligence section of the briefing, he chose to add details not in the slide presentation, including the fact that the robbers had broken into the bank at Kirkham just after 3 a.m., “which is the reason why we’re here at this time today”.<sup>100</sup>

**3.49** The purpose of the deployment of 2 March appears even more explicitly in the later, tactical portion of the briefing that X7 delivered:

The reason we’re at Leigh Police Station is obviously, it’s to intercept the subjects prior to them getting to Culcheth.<sup>101</sup>

**3.50** A little later, X7 added:

While we’re on the subject, our intention is to conduct an interception prior to any offence taking place, which is before we get to Culcheth.<sup>102</sup>

**3.51** The reason that firearms commanders considered it advisable, if possible, to intercept the OCG before it could reach Culcheth is not difficult to fathom. It was plainly unthinkable that the subjects of the operation should be allowed to break into their target premises, for such an outcome would place them outside the control of the firearms team and carried the obvious risk of a siege developing with, in the worst case, the OCG detaining hostages at gunpoint. That was certainly a thought that had occurred to DI Cousen.<sup>103</sup>

**3.52** Although the PowerPoint slide presentation highlighted – as it was bound to do – the fact that the Preston robbers had been armed with a “shotgun and handgun”, it did not go on to provide any assessment as to the likelihood of the subjects of Operation Shire having access to firearms on 2 March. However, CI Lawler made a note on his hard copy of the presentation pack reminding himself to include such a rider,<sup>104</sup> and the transcript of the briefing confirms that he did indeed relay to the AFOs

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<sup>96</sup> Transcript of briefing, Bundle F/1175.

<sup>97</sup> Bundle F/1179.

<sup>98</sup> Bundle F/1175.

<sup>99</sup> Bundle F/449–50.

<sup>100</sup> Bundle F/1176.

<sup>101</sup> Bundle F/1179.

<sup>102</sup> Bundle F/1180.

<sup>103</sup> Cousen, TS/1401:11–23.

<sup>104</sup> Bundle F/450.

the information that DI Cousen had conveyed to the previous day's risk assessment meeting, and which both Inspector Fitton and X7 recorded in their contemporaneous notes,<sup>105</sup> namely that there was no intelligence to suggest that the subjects had access to firearms:

Before we go into the threat assessment, we all need to be aware, there is no current information or intelligence to say the subjects have either possession or immediate access to firearms, or other less lethal weapons. However, my assumption is that they are about to commit armed robbery, based on their previous criminal behaviour. They will either have firearms, or other less lethal weapons. So, you're all highly trained in judgment to again deal with threat that we may face at the time we go to intercept them.<sup>106</sup>

**3.53** When the following day's deployment came to be prepared, under the direction of different commanders, its planners simply lifted the section of the 2 March PowerPoint presentation that dealt with the Preston robbery and electronically pasted it into the new briefing pack, with the unfortunate consequence that the AFOs' briefing on 3 March did not include any assessment as to the likelihood of the subjects having access to firearms.

**3.54** The existence in the 2 March briefing pack of two significant factual errors that were later incorporated, uncorrected, into the briefing pack prepared for the 3 March deployment only served to compound the problem. The first and more serious was the mistaken claim that those responsible for the Preston robbery had been "these subjects" (i.e. the subjects of Operation Shire, Mr Totton, Mr Rimmer and Mr Grainger).<sup>107</sup> There was, in fact, no evidence, nor had there ever been any grounds to suspect, that Mr Rimmer or Mr Grainger had been guilty of any involvement in that crime, and the sole basis for connecting Mr Totton with it was the fact that he and David Cullen had reportedly been celebrating and spending a lot of money afterwards.

**3.55** It is not clear when the passage about the Preston robbery first found its way into the draft electronic briefing pack. The version that X7 sent to Cheshire at 17:11 on 1 March did not include it; in its place was the "Information/Intelligence" page from an earlier Operation Shire firearms briefing. It read as follows:

The subjects of this operation are believed to be engaged in armed robberies in the North West Region.

(Further updates from TFC/Sponsor)<sup>108</sup>

**3.56** The wording and layout of that passage exactly match the equivalent page from the electronic briefing pack prepared for the very first MASTS deployment in relation to Mr Totton, Mr Rimmer and Mr Grainger, which had taken place on 26 January of the same year.<sup>109</sup> Unless X7 for some reason chose to send Cheshire a version of the PowerPoint pack that misleadingly avoided referring to the Preston robbery, it seems to follow that X7 (or another officer) must have drafted and added the passage relating to that offence after 17:11 on the afternoon of 1 March.

**3.57** It is impossible to be sure when and how the erroneous reference to "these subjects" infiltrated the briefing process. The logs of ACC Heywood and CI Lawler do not help, because they are not truly contemporaneous documents and cannot be relied upon. Inspector Fitton's log entry includes this passage:

<sup>105</sup> Bundle G2/103B (Fitton); Bundle R/560 (X7).

<sup>106</sup> Bundle F/1176.

<sup>107</sup> Bundle F/449.

<sup>108</sup> Bundle M5/43.

<sup>109</sup> Bundle G1/319.

There is a history in 2008 where subject [*sic*] approx. 0325 has broken into a financial premises then laid down and waited for staff to arrive. They [*sic*] have then demanded keys/tied up staff.<sup>110</sup>

**3.58** The use of the third person singular verb form, “has”, in the first sentence of that extract seems to suggest that the reference to “subject”, again singular, is deliberate; the use of the plural in the second sentence probably does no more than reflect the fact that there was more than one offender. The contemporaneous note on which Inspector Fitton based his log entry is, however, completely silent as to whether any of the subjects of Operation Shire had been involved in the Preston robbery.

**3.59** In his evidence to the Inquiry, DI Cousen was adamant that, when he briefed the risk assessment meeting, he had not exaggerated the extent of any involvement in the Preston robbery by subjects of Operation Shire. On that point, I see no reason to doubt his evidence. He had nothing to gain from overstating the position. He was simply placing relevant information before a firearms commander whose job it was to determine whether there were grounds to authorise a MASTS deployment. I accept DI Cousen’s evidence<sup>111</sup> that he did no more than relay the contents of DC Mills’ email<sup>112</sup> to him. It is supported, in my view, by the contemporaneous note made by X7,<sup>113</sup> who confirmed to the Inquiry that it had been DI Cousen who provided the information on which it is based.<sup>114</sup> In so far as it relates to the Preston robbery, X7’s note closely follows the text of DC Mills’ email and its only reference to any of the subjects of Operation Shire is entirely consistent with the summary in that message:

Intel received (David) Cullens [*sic*] and Totton were celebrating.<sup>115</sup>

**3.60** DI Cousen is therefore not to blame for the inaccurate terms in which AFOs were briefed about the Preston robbery.<sup>116</sup> The error, which was a serious one, can only have arisen during the planning process after the risk assessment meeting had concluded. Sloppy record-keeping by firearms commanders (a topic explored later in this chapter) has prevented the Inquiry from identifying its precise genesis or the individual responsible.

**3.61** The second significant error in the briefing of 2 March was the unfounded assertion that one of the subjects of Operation Shire had been seen with a hacksaw near the loading bay for Sainsbury’s supermarket in Culcheth.<sup>117</sup> Although CI Lawler’s handwritten annotations on his hard copy of the slide presentation include the phrase “seen with hacksaw”, he did not make reference to it in his oral presentation. It was X7 who did so, in these terms:

So ... when they’ve conducted reccies in the past, we know that they’ve emerged, one of the subjects emerged from this bush line here with a hacksaw, so whether they’ve been effecting an entry through the fence there, or prepping to see if they can do, or gain access through there, we don’t know.<sup>118</sup>

**3.62** I have already summarised the true position relating to the “hacksaw”. The only information to suggest that the subjects had been in possession of a hacksaw during

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<sup>110</sup> Bundle G2/103B.

<sup>111</sup> Cousen, TS/1215:22–24; see also TS/1217:24–1218:13.

<sup>112</sup> Bundle R/11.

<sup>113</sup> Bundle R/560–563.

<sup>114</sup> X7, TS/5571:8–12.

<sup>115</sup> Bundle R/560.

<sup>116</sup> See also Lawler, TS/2892:10–18.

<sup>117</sup> Bundle F/1183.

<sup>118</sup> *Ibid.*

that visit is: (i) a graded intelligence report (for which the Inquiry has not managed to unearth any primary source) recording that Mr Totton had been seen the previous morning placing an object wrapped in a black bin liner inside the boot of the silver Audi; and (ii) the video footage taken that evening, which showed him placing an object that might have been a hacksaw inside the boot of the same Audi upon his return to Salford from the visit to Culcheth. There is certainly nothing in the amalgamated surveillance log to support the claim that one of the subjects had ever been sighted with a hacksaw near the loading bay of Sainsbury's in Culcheth.

**3.63** The graded intelligence report summarising the previous day's sightings of Mr Totton recorded that he had been "observed to place a large hacksaw into the boot of his car".<sup>119</sup> That was already an overstatement of the position. In his contemporaneous note of the risk assessment meeting of 1 March, Inspector Fitton jotted down the following:

Hacksaw! > Black bin bag?<sup>120</sup>

X7's contemporaneous note included the following:

Black Bin liner into m/v [motor vehicle] (Rimmer).<sup>121</sup>

And later:

– return to Totton's car on Hazlehurst Rd carrying large Hacksaw.<sup>122</sup>

**3.64** By the time Inspector Fitton came to complete his log entry for that meeting, his own ambiguous note had been elaborated into an assertion, which he attributed to the DSU, that during the subjects' reconnaissance trip to Culcheth the previous evening, a hacksaw had been "produced".<sup>123</sup> As OFC, X7 was not required to maintain a dedicated firearms log,<sup>124</sup> but it was he, as we have seen, who told AFOs at the briefing that one of the subjects had not merely "produced" a hacksaw, but had been seen to emerge from the bush line near Sainsbury's with such an article.

**3.65** Despite the presence of some errors and ambiguities, it is worth quoting the narrative section of Inspector Fitton's log, which probably represents the nearest thing to a reasonably contemporaneous official record:

Risk assessment meet at Openshaw.

Intell as per enclosed intel pack [a reference to the documents which DI Cousen had attached to his 11:57 email to CI Lawler].

Update X [i.e. "by"] DI Cousen. Intell suggests that Totton/Grainger + 1 are believed to be planning a robbery in the Culcheth area – not known at which particular premises or even if CVIT [cash or valuables in transit] or not.

They have been performing recces in area using a stolen Audi Estate A6 – using plate L08 L08 [an incorrect reference to RO08 LOD, recorded as "L08 LOD" in Inspector Fitton's original notes]. (X5 JEF). At least 2 recces in area. CPS not yet happy that evidential threshold has not [sic] yet been met.

Audi is currently in Sandringham Rd, Boothstown. Informed there is no chance of disablement of Audi.

<sup>119</sup> Bundle G1/2989.

<sup>120</sup> Bundle G2/103B.

<sup>121</sup> Bundle R/562.

<sup>122</sup> *Ibid.*

<sup>123</sup> Bundle G1/2927.

<sup>124</sup> The obligation to maintain such a log is, for practical reasons, confined to those commanders who are not required to participate in an operation "on the ground", that is to say the SFC, TFC and TA.

There is a history in 2008 [an error for 2005] where subject approx 0325 has broken into a financial premises then laid down and waited for staff to arrive. They have then demanded keys/tied up staff. It is believed that this MO may be used again. Used hacksaw in incident.

Yesterday an item was placed in rear of own vehicle and then DSU have indicated that during recce a hacksaw has been produced – believed from the black bin bag.

Walky/talkies or mobiles with [illegible] have also been used on previous occasions. DSU informed meeting that heavy items in pockets of subjects yesterday during recce – potentially walky-talkies.<sup>125</sup>

- 3.66** Inspector Fitton told the Inquiry that, apart from details he had specifically attributed to the DSU (i.e. DS Johnstone), the intelligence summarised in his log entry came either from DI Cousen or his deputy, DS Hurst, with the former taking the lead.<sup>126</sup> X7's evidence was broadly to the same effect.<sup>127</sup> There are two errors that appear both in Inspector Fitton's log entry and in the rough notes upon which he based it, namely the incorrect date for the Preston robbery (i.e. 2008 instead of 2005) and the incorrect false number plates used on the stolen Audi (i.e. "L08" instead of "RO08"). The same errors are also present in X7's notes,<sup>128</sup> and were later to feature in the PowerPoint slide presentation prepared for the AFOs' briefing, and were to be further perpetuated in the firearms briefing of 3 March.
- 3.67** The original source of the "bush line" reference in the AFOs' briefing remains a mystery. It is, as I have already made clear, unsupported by any reported observation that the Inquiry has seen. It was certainly not conveyed in that form to the risk assessment meeting. I accept that DI Cousen was not the source. Indeed, he was clear that the meeting received no intelligence that anyone had been seen with a hacksaw near financial institutions.<sup>129</sup> He accepted that one of the reasons for seeking firearms assistance that he had listed in his policy book was his concern that Mr Totton had been "seen yesterday evening with a hacksaw near to financial institutions", but made the point that those words represented his assessment of the information he had received about the previous day's activity.<sup>130</sup> It was an assessment that might, as DI Cousen conceded,<sup>131</sup> have been more carefully worded, but he was not alone in reaching it, as Inspector Fitton's log entry confirms.
- 3.68** What happened is that in the minds of investigators, what began as no more than a possibility condensed into a likelihood, which in turn solidified into a certainty. The DSU told DI Cousen and his colleagues that Mr Totton had been seen the previous morning loading an article in a bin liner into the boot of his car, and that on his return from Culcheth that evening he had been seen to place what was thought to be a hacksaw inside his car. That led investigators to conclude that the subjects had been in possession of the hacksaw during their reconnaissance trip to Culcheth, which was carelessly formulated as a sighting of Mr Totton with a hacksaw near financial institutions. The unfortunate and unexplained "bush line" embellishment only served to lend spurious specificity to what had begun as little more than an inspired guess.
- 3.69** To those important mistakes must be added the errors, already noted, concerning the date of the Preston robbery and the false registration number displayed on the stolen Audi. They, too, ended up in the briefing pack for 2 March.

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<sup>125</sup> Bundle G1/2925–2927. The comments in square brackets are mine.

<sup>126</sup> Fitton, TS/2555:11–14.

<sup>127</sup> X7, TS/5571:8–5574:9.

<sup>128</sup> Bundle R/559–563; see also X7, witness statement, 28 June 2012, Bundle E/93.

<sup>129</sup> Cousen, TS/1281:1–4.

<sup>130</sup> Cousen, TS/1280:7–25.

<sup>131</sup> *Ibid.*

- 3.70** In an email message<sup>132</sup> to X7 and Inspector Fitton dated 12 July 2012, DI Cousen pointed out that CI Lawler had included the correct version of the false registration number displayed on the stolen Audi in the 15:39 email,<sup>133</sup> in which he set out his threat assessment and working strategy. DI Cousen suggested that, since CI Lawler's email came after the risk assessment meeting but before the AFOs' electronic briefing pack had been prepared, it must have been based on information provided at the risk assessment meeting, from which it followed that he, DI Cousen, must have provided the correct details of the false registration number displayed on the stolen Audi.
- 3.71** It is a curious fact that, although CI Lawler gave the correct number in his email of 15:39, his log has the incorrect version, as recorded in the notes of X7 and Inspector Fitton.<sup>134</sup> Nevertheless, since there is good reason to believe that the relevant entry in CI Lawler's log was not completed until after the event, the only document of his that the Inquiry can securely treat as genuinely contemporaneous is the email of 15:39. It does not, however, follow that all the information in that message came from the 12:30 risk assessment meeting. The correct version of the false registration number displayed by the stolen Audi appeared in two of the three 5x5x5 graded intelligence reports (including the most recent) that DI Cousen had emailed to CI Lawler at 11:57, shortly before the risk assessment meeting.<sup>135</sup>
- 3.72** It is impossible to be certain how the error came about, but I find it almost inconceivable that X7 and Inspector Fitton, both of whom wrote down separate notes of the same discussion, should independently make identical errors in recording what they were told. The most likely explanation is that one of the investigators present at the meeting – either DI Cousen or DS Hurst – inadvertently gave the false registration mark of the Audi as LO08 LOD, instead of RO08 LOD. DI Cousen conceded that he might also, again inadvertently, have given the year of the Preston robbery as 2008 instead of the correct 2005.<sup>136</sup> Without wishing to understate the potential significance of those mistakes, they were innocent slips of the tongue.
- 3.73** Despite the fact that the PowerPoint slide presentation used to brief the AFOs on the morning of 2 March had been prepared with a view to foiling a nocturnal "lie-in-wait" robbery, those who planned the next Operation Shire firearms deployment on 3 March were to adopt it, virtually unchanged, for a very different operation designed to meet the threat of a more conventional daylight robbery. In the process, the later commanders not only put the briefing to a use for which it had never been intended, but also perpetuated the errors it contained. Since the briefing document thereby contributed indirectly to the death of Mr Grainger, it is necessary to examine – so far as it is possible to do so – the process by which the errors it contained came about.
- 3.74** Unfortunately, as will become clear, such an examination is severely hampered by the failure of certain senior GMP officers to keep proper records. Apart from Inspector Fitton and X7, none of those who attended the risk assessment meeting on 1 March made a truly contemporaneous note of it. In fairness to DI Cousen, he did record in his policy book the reasoning behind his decision to seek assistance from the TFU.<sup>137</sup> The decisions taken at the meeting were not his, but those of the firearms commanders. It was not DI Cousen's job to keep a note of their reasoning and actions, still less for DS

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<sup>132</sup> Bundle Y/254–255.

<sup>133</sup> Bundle W/276–277.

<sup>134</sup> Bundle C/370.

<sup>135</sup> Bundle W/79. The relevant attachments are at W/93 and W/97.

<sup>136</sup> Cousen, TS/1216:5–8.

<sup>137</sup> Bundle K/1239–1240.

Johnstone to do so. As for DS Hurst, this was the very first firearms risk assessment meeting that she had attended. While she might have found it helpful – if only for professional development purposes – to have made some notes, it was not strictly her job to do so on this particular occasion. However, that does not alter the fact that the general quality of her record-keeping was inconsistent and, on occasion, left much to be desired.<sup>138</sup>

## F. The firearms commanders' logs

**3.75** Because the purpose of the risk assessment meeting was to enable CI Lawler, as TFC, to conduct a threat assessment with a view to deciding whether to seek a firearms authority from the SFC, it was for the firearms commanders and adviser present at the meeting to keep accurate, complete and contemporaneous records of it. The advice they gave, and the decisions they took, would inevitably engage the State's obligation to protect the right to life enshrined in Article 2 of the European Convention on Human Rights. It was therefore incumbent on them to plan any firearms operation in such a way as to minimise, to the greatest extent possible, recourse to the use of lethal force.<sup>139</sup> The proper recording of their actions was not merely incidental to their discharge of that duty, but constituted an integral part of it.

**3.76** The national *Manual of Guidance on the Management, Command and Deployment of Armed Officers*<sup>140</sup> requires firearms commanders and others to make use of the Association of Chief Police Officers ("ACPO") National Decision Model ("NDM"), which is intended to provide an ordered basis for police decision-making at all levels. According to Ian Arundale QPM, the Inquiry's expert witness, the NDM is to police decision-making as "mirror, signal, manoeuvre" is to motoring.<sup>141</sup> He described it as a "scalable" model that "could be applied to large scale natural huge disasters, as well as to policing challenges that could apply to a constable on a daily basis".<sup>142</sup>

**3.77** The NDM evolved from an earlier tool known as the Conflict Management Model ("CMM"), which ACPO had developed during the 1990s. As Mr Arundale explained, the CMM had a twofold purpose:

During the 1990s ACPO recognised that, following the review of a range of critical incidents, a formal decision making model was required to effectively train police officers in relation to situations where the application of force was, or may be, appropriate. An additional reason to develop a "model" was to make individuals (and UK law enforcement organisations) more accountable for their actions. As a result, a Conflict Management Model (CMM) was developed and used within all "conflict management", training such as armed policing, public order and self-defence, arrest and restraint. It also provided a template to assist police officers to subsequently articulate their reasons for using force and the matters they had taken into account during their thought and decision processes.<sup>143</sup>

**3.78** The CMM thus applied both as a template for the making of decisions and as a means of articulating and recording them afterwards.<sup>144</sup> In 2011, subject to minor revisions,

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<sup>138</sup> Hurst, TS/5071:15–5073:2; TS/5049:18–25.

<sup>139</sup> *McCann and Others v United Kingdom* [1995] 21 ECHR 97.

<sup>140</sup> ACPO, ACPOS and NPIA (2011) *Manual of Guidance on the Management, Command and Deployment of Armed Officers*, third edition.

<sup>141</sup> Arundale, TS/6914:24–6915:2.

<sup>142</sup> Arundale, TS/6877:8–11.

<sup>143</sup> *Report of Ian Arundale QPM*, 4 November 2016, §104.

<sup>144</sup> Arundale, TS/6877:12–18.

it became known as the NDM. The *Manual of Guidance* makes it clear that the NDM retains its predecessor’s dual function:

The model can assist in the decision-making process and provides a structure for the documentation of decisions and their rationale.<sup>145</sup>

In other words, the NDM is not there just to lay an “audit trail”. It also provides a template for the decision-making process itself.

**3.79** The NDM’s “scalability” means that it is, or should be, the basis of all decisions at every level of a police firearms operation:

The NDM provides a framework for recording both command decisions and the rationale behind them and can also be used to brief officers involved in the policing operation (Manual [of Guidance] 6.2). It is also the model used to train AFOs to make split second decisions in relation to whether to discharge (or not), and subsequently justify the use of, a weapon.<sup>146</sup>

The model’s cyclical character should lead to a “sequential process of continual reassessment”,<sup>147</sup> taking into account the latest information:

The NDM is driven by information and intelligence. It is a continuous cycle, constantly reviewed in light of new information and assessment that will, ultimately, affect the response to the incident.<sup>148</sup>

**3.80** The phrase “information and intelligence” refers to two terms of art defined in the *Manual of Guidance*.<sup>149</sup> In summary, “information” embraces all forms of knowledge obtained, recorded or processed by the police including personal data and intelligence, whereas “intelligence” is information that has been subject to a defined evaluation and risk assessment process in order to assist with police decision-making.<sup>150</sup>

**3.81** The cycle is illustrated in Figure 2, which reproduces a diagram from the *Manual of Guidance*. The prescribed sequence for decision-making is:

- gather information and intelligence;
- assess threat and risk and develop a working strategy;
- consider powers and policy;
- identify options and contingencies; and
- take action and review what happened.

<sup>145</sup> ACPO, ACPOS and NPIA (2011) *Manual of Guidance on the Management, Command and Deployment of Armed Officers*, third edition, §6.7.

<sup>146</sup> *Report of Ian Arundale QPM*, 4 November 2016, §106.

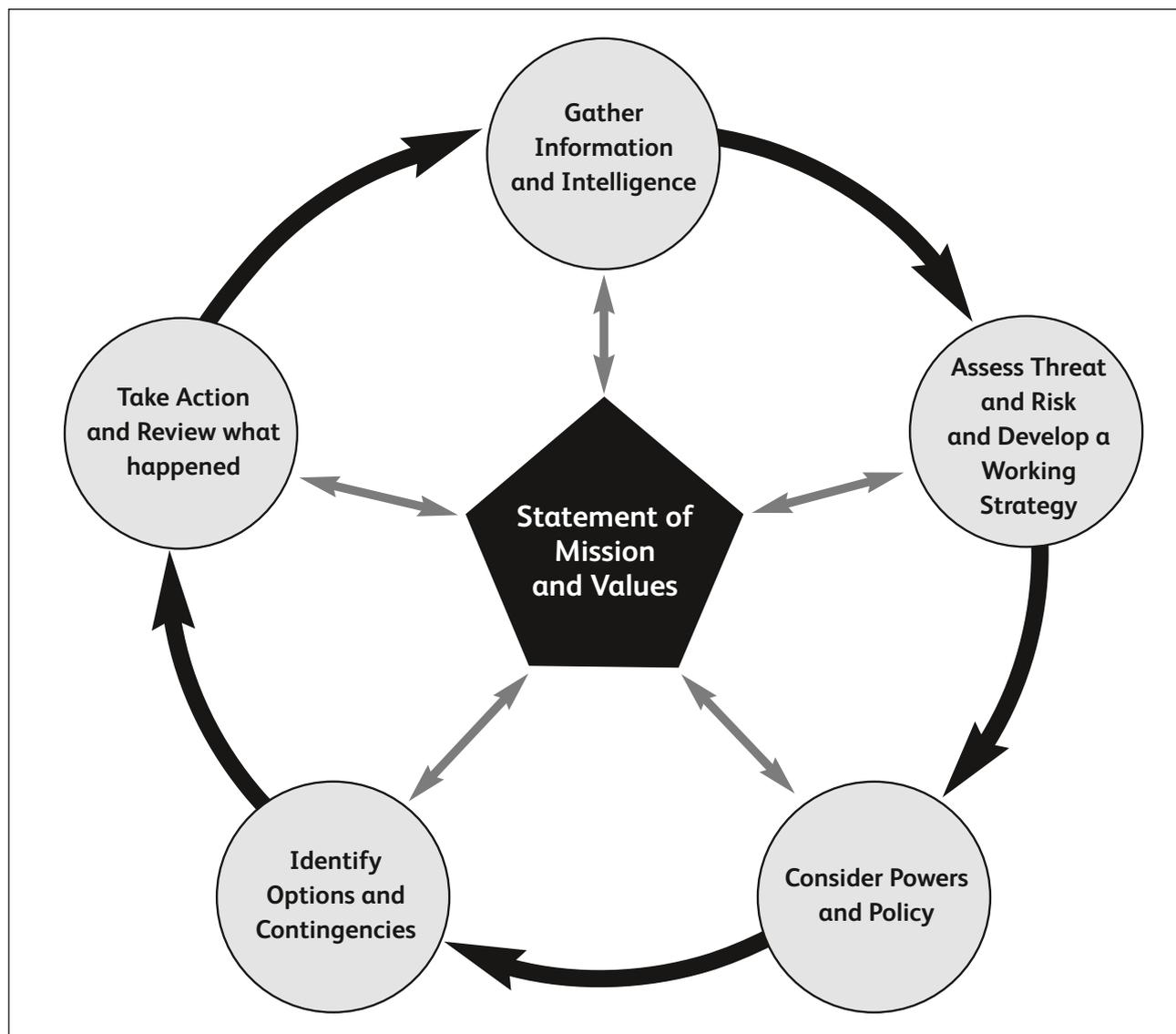
<sup>147</sup> ACPO, ACPOS and NPIA (2011) *Manual of Guidance on the Management, Command and Deployment of Armed Officers*, third edition, §6.7.

<sup>148</sup> *Ibid.*, §6.3.

<sup>149</sup> *Ibid.*, §6.9.

<sup>150</sup> *Ibid.* The definition is taken from ACPO’s *Guidance on the National Intelligence Model* (2005); see Policy and Procedure Bundle/199.

**Figure 2: National Decision Model from the *Manual of Guidance***



**3.82** Mr Arundale explained the importance of the continuous cycle:

Clearly a decision made perhaps at the start of an incident may not have relevance in the light of new information and new intelligence as an incident progresses. This is a reminder that the process of decision making and assessment needs to be continuous throughout an incident to ensure that decisions are relevant, up to date and proportionate in relation to the threat that has been posed.<sup>151</sup>

**3.83** The recognition that changing circumstances (including, in some cases, the mere passage of time) may overtake previously taken decisions is the fundamental principle that underlies the NDM and provides the key to understanding it. In the necessarily unpredictable context of police firearms deployments, this has the important consequence that all decisions must be regarded as provisional until they have been implemented. That, in turn, explains why officers at all levels must constantly keep their own decisions, as well as those of their predecessors that have not been implemented, under active review in accordance with the NDM cycle.

**3.84** It follows that, while the moment of decision may be deferred, there can never, even in a critical situation, be any justification for putting off, let alone evading, the process

<sup>151</sup> Arundale, TS/6878:19–6879:1.

of thinking it through in accordance with the NDM. To postpone consideration until afterwards (“decide first, think later”) defeats both purposes of the NDM, for the audit trail is liable to be so contaminated by hindsight as to be positively misleading. It is just as pernicious to decline to review an earlier decision on the grounds that nothing has happened since it was taken (“nothing has changed”), for that is both to confuse the process of review with its outcome and to forget that the uneventful passage of time may in itself amount to a significant change in circumstances. In short, both the NDM’s letter and its spirit require officers to keep questioning decisions in a constant cycle of review.

- 3.85** This is particularly hard for officers who have to make quick decisions in critical situations. They will often be unable to record the basis of their actions at the time. That, however, does not absolve them from their obligation to follow the NDM, even where there is only a split second in which to do so. As the Metropolitan Police Commissioner acknowledged in the aftermath of the death of Jean-Charles de Menezes, the NDM applies to an AFO in a critical situation just as it applies to any other officer.<sup>152</sup>
- 3.86** At the same time, most of the flawed decisions criticised in this Report were taken by firearms commanders who, while having every opportunity to comply with the NDM, chose not to do so. That was in spite of the fact that GMP had introduced printed policy logs for the use of its firearms commanders and advisers. These were substantial booklets incorporating a handy compendium of the principal features of the NDM, as well as a printed template divided into sections which mirrored the five stages in the NDM cycle.
- 3.87** The pre-printed logs serve two closely connected purposes. In the first place, they constitute a helpful template. A firearms commander or adviser who methodically completes each section of the log as he comes to it can be confident that he is approaching his task in a disciplined fashion in accordance with the NDM. At the same time, the process of correctly completing the log should automatically generate a detailed and reliable record, or audit trail, of his reasoning and decisions.
- 3.88** If such a system has a flaw, it lies in its total dependence on the conscientiousness with which the individual officer approaches his task, something which this Inquiry has learned cannot be taken for granted even in officers of the highest rank. If each section of the log is not completed contemporaneously and in the correct order, in strict compliance with the printed template, the result will be worse than worthless. Contemporaneity is critical. Deferring completion of the log undermines not just the reliability of the audit trail, but the integrity of the decision-making process itself, for it involves abandoning the methodical approach of the *Manual of Guidance* and the NDM, and thereby fosters an “authorise first, think later” mentality.
- 3.89** The temptation to take such short cuts may be a powerful one. In a case in which, for example, it appears obvious that the deployment of armed officers will be justified, the NDM may be seen as a tiresome exercise in jumping through bureaucratic hoops, and the need to provide a clear audit trail as mere “paperwork”, or “admin”, to be completed when time allows. Such a view is dangerously misconceived. An apparently watertight case for authorisation may collapse under critical scrutiny. Even if it does not, the working strategy, contingencies, tactical parameters and other important details that emerge from the process of working through the NDM may prove radically different from those originally envisaged. Equally, there is an

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<sup>152</sup> *Metropolitan Police Service response to the Rule 43 report of HM Assistant Coroner, Sir Michael Wright, touching the death of Jean-Charles de Menezes: Policy and Procedure Bundle/607.*

obvious risk that delay in completing the log will lead to contamination of the record by the inclusion of after-acquired knowledge, rendering it not merely useless for audit purposes, but positively misleading. It is bad enough if a commander's log openly records on its face that it was compiled retrospectively; a log that falsely purports to be contemporaneous tells a lie about itself, and is little better than a forgery.

**3.90** There is no excuse for failing to appreciate the importance of these points. They are matters of common sense. In any event, the *Manual of Guidance* prescribes them (though in some cases only as “should”, rather than “must”, requirements). The SFC “must ensure that the strategy for the armed deployment is recorded, including any changes to it, to provide a clear audit trail”.<sup>153</sup> The injunction to record changes to the strategy, as well as the strategy itself, logically implies that such records must be maintained contemporaneously with the decisions to which they relate if they are to amount to a “clear audit trail”. The *Manual of Guidance* further states (with minor variations in wording) that the SFC, TFC and OFC should, where practicable,<sup>154</sup> each ensure that all decisions are recorded “to provide a clear audit trail”.<sup>155</sup> Similarly, the TA “ensures that advice given is recorded”.<sup>156</sup>

**3.91** The *Manual of Guidance* contains a short section headed “Record Keeping”, which includes the following (my emphasis throughout):

6.84 Individual commanders must be prepared to account for their decisions and to explain their rationale **at the time that those decisions were taken**. All plans should be documented, including options rejected or progressed, together with the reasons why such conclusions were drawn and by whom.

6.85 Incidents involving police officers' use of force or firearms may be the subject of scrutiny in a number of forums. Forces must ensure that the records kept are sufficient to meet these needs. **Records and logs maintained by or on behalf of commanders and tactical advisers will be reviewed during operations as well as during post-deployment audits**. A comprehensive record of key actions and decisions made by commanders, and the advice given by tactical advisers, in situations where AFOs may be or have been deployed should be maintained in accordance with national minimum standards.<sup>157</sup>

Implicit in those provisions is a recognition that command logs in planned operations must be maintained contemporaneously, and not compiled after the event. If the *Manual of Guidance* does not expressly say so, it is only because the need for contemporaneity in record-keeping is too obvious to require spelling out.

**3.92** As already noted, the firearms officers who participated in the risk assessment meeting on 1 March 2012 were CI Lawler (TFC),<sup>158</sup> X7 (OFC)<sup>159</sup> and Inspector Fitton (TA).<sup>160</sup> CI Lawler's command log is in the correct format, namely, the version designed for “prolonged/specialist deployments” that was current at the time. He did not, however, complete it during the meeting. He told the Inquiry that he made notes in his day book (which he was later to destroy in contemplation of his imminent retirement),

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<sup>153</sup> ACPO, ACPOS and NPIA (2011) *Manual of Guidance on the Management, Command and Deployment of Armed Officers*, third edition, §5.20.

<sup>154</sup> In the case of the OFC, the phrase “where possible” is substituted for “where practicable”: *ibid.*, §5.23.

<sup>155</sup> *Ibid.*, §5.20, §5.22, §5.23.

<sup>156</sup> *Ibid.*, §5.24.

<sup>157</sup> *Ibid.*, §§6.84–6.85.

<sup>158</sup> Lawler, witness statement, 1 May 2012, Bundle E/42.

<sup>159</sup> X7, witness statement, 9 March 2012, Bundle E/86–87.

<sup>160</sup> Fitton, witness statement, 17 October 2012, Bundle G2/101.

transferring the notes into his TFC log some time after the AFOs' briefing the following morning.<sup>161</sup>

- 3.93** X7, who says he “did not take any action or make any decisions as a result of the meeting”,<sup>162</sup> made rough notes at the time. GMP did not, however, provide a dedicated log form for the use of OFCs,<sup>163</sup> for whom it would scarcely be practicable to maintain a log while commanding an operation “on the ground”. Recognition of that difficulty, of course, implies a concomitant acknowledgement that such a log would have to be contemporaneous to be of any value; if there were no objection in principle to the retrospective completion of firearms logs, there would be no compelling reason to exempt OFCs from the log-keeping requirements applied to other commanders.
- 3.94** Inspector Fitton made some rough notes in his day book during the meeting and wrote his TA log afterwards “from these notes”.<sup>164</sup> His log, too, appears to be in the correct format current at the time. Inspector Fitton was not specific as to precisely how soon after the meeting he completed his log, nor is it possible to reach any firm conclusion on the point. In fairness to him, there is no reason to believe that he delayed doing so to any significant extent.
- 3.95** Regrettably, the same cannot be said of the two senior commanders of the 2 March MASTS deployment, CI Lawler and ACC Heywood.
- 3.96** As one of the two members of the TFU's Senior Leadership Team at the material time (the other being Superintendent Leor Giladi<sup>165</sup>), CI Lawler carried a high degree of responsibility for defining and maintaining the standards to which the Unit aspired, not least the important obligation to maintain accurate and contemporaneous records in relation to command and control decisions. Unfortunately, the example he set to other commanders in that respect was dismal.
- 3.97** The firearms deployment of 2 March was CI Lawler's first direct involvement in Operation Shire.<sup>166</sup> In his first witness statement, he said:

During the risk assessment and following tactical deployment, I recorded my decisions in the Tactical Firearms Commander's Policy File.<sup>167</sup>

- 3.98** Those words are plainly intended to convey that CI Lawler's TFC log is a document which he had written contemporaneously with the events it records. In a further statement, made more than two years later in response to a request from the Independent Police Complaints Commission (“IPCC”) for details of the information provided to him at the risk assessment meeting of 1 March, CI Lawler added this:

Any notes in my daybook would have been destroyed post retirement. I did make notes in my TFC log ...<sup>168</sup>

- 3.99** That passage is artfully worded in two respects. In the first place, it avoids making any express admission as to whether there had ever, in fact, been any notes in CI Lawler's

<sup>161</sup> Lawler, TS/2872:17–2880:18.

<sup>162</sup> X7, witness statement, 3 October 2014, Bundle E/490.

<sup>163</sup> X7, TS/5414:16–21.

<sup>164</sup> Fitton, witness statement, 17 October 2012, Bundle G2/101. See also Fitton, TS/2544:5–9. The notes are at Bundle G2/103A–C.

<sup>165</sup> Lawler, TS/2842:20–21.

<sup>166</sup> Lawler, TS/2863:20–21.

<sup>167</sup> Lawler, witness statement, 1 May 2012, Bundle E/42–43.

<sup>168</sup> Lawler, witness statement, 8 October 2014, Bundle E/492.

day book relating to the risk assessment meeting. Secondly, it implies that CI Lawler had entered his notes of the meeting directly into his TFC log.

**3.100** A fortnight or so later, CI Lawler made a further written statement to the Operation Idris team preparing GMP's defence in the health and safety prosecution that was then pending against the Force. In it, he said this (my emphasis):

The main points would have been recorded in the TFC log, but I may also have used a daybook to record **other matters** ... Again, I can say that intelligence made available to me where appropriate would have been recorded in **either** the TFC log **or** my daybook as part of my decision-making processes.<sup>169</sup>

**3.101** Those words can only have been intended to mislead, for, as CI Lawler revealed in his oral evidence to the Inquiry, he had actually made the majority of his original notes in his day book, only later transcribing some – but not all – of them into his TFC log:

**Answer: What I am saying is that I put notes in my daybook and then I would transcribe notes in my daybook into the policy file when was most appropriate. A common one that I would do with a significant issue would be the time the firearms authority was granted, because that is a key part of the book. So I would record that.**

Question: At the time that it actually happened?

**Answer: Yes.**<sup>170</sup>

**3.102** Such a method is not necessarily objectionable, provided that: (i) the log itself is written up promptly; and (ii) the original notes are preserved.<sup>171</sup> In other words, the log entry must be substantially contemporaneous, in the sense that it is written either during or immediately after the events to which it relates, and it must also be capable of being checked against the original notes on which it is based. Inevitably, situations will arise in which events are, in the words of Mr Arundale, “moving so quickly that professional judgment is driving decisions faster than they can be recorded”.<sup>172</sup> In such cases, there is nothing to prevent a note being added to the commander's log, giving the time when the entry was made and the reason why it had to be delayed.

**3.103** CI Lawler did neither of those things. In fact, his assertion that any notes in his day book “would have been destroyed post retirement” was not strictly accurate, because he knew perfectly well that he had destroyed his day book in or about April 2013, several months before his retirement in August of the same year. At the time he did so, the IPCC had not yet published its report into the death of Mr Grainger, whose inquest (i.e. the forerunner of the present proceedings) was still pending. The relevant extract from the transcript is startling for the brazen complacency displayed by CI Lawler when Jason Beer QC, Leading Counsel to the Inquiry, challenged him about the destruction of his original notes:

Question: I think at the time of this [risk assessment] meeting, you made some notes in your daybook of the meeting. Is that right?

**Answer: Yes, sir.**

Question: We know that two days after the meeting, as part of the same subject – as part of the same operation, rather – where the same subjects were being considered, with the same SIO, Mr Cousen, Mr Grainger was shot and died?

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<sup>169</sup> Lawler, witness statement, 23 October 2014, Bundle H/61.

<sup>170</sup> Lawler, TS/2880:4–11.

<sup>171</sup> Mr Arundale QPM is of the view that, as long as the original notes are preserved, they may not need to be entered into the log itself: Arundale, TS/6888:1–6889:25.

<sup>172</sup> *Report of Ian Arundale QPM*, 4 November 2016, §68.

**Answer: Yes, sir.**

Question: In the light of that, would you agree that the obvious thing that must happen with your daybook is that it must be retained and not destroyed?

**Answer: No, sir, I don't agree with that.**

Question: So, two days after you are considering Anthony Grainger in a firearms operation, he dies. You are looking at the same subject on this day, considering the intelligence against the subjects, authorising or putting a case up to the SFC for authorisation for firearms officers, you think it is not obvious that your daybook must be retained?

**Answer: I mean, obviously, I retain my daybook until when I retired, which is fast forward to August 2013. And in the time, as you can see, I have made a number of statements, and I've got my policy book, and there is all the emails. In my mind, I had sufficient information there to take to court or whatever the proceedings were, and if I am honest, I am finishing in the police and I am only – I had a vast amount of information, you know – I am thinking: do I need this? Do I need that? And the vast majority I would have wanted to get rid of, if that is the right word, and I didn't see any benefit in keeping my daybook.**

Question: Did you apply your mind to that? Did you consciously think "Should I keep it or should I ...?" Did you burn it or – ?

**Answer: Again, I was cleaning my office out. I had actually finished quite a few months before my retirement date for a number of reasons, and I put in a number of – there was lots of things obviously that happened, and I put the vast majority of it into confidential waste bins, after reviewing and being aware of all the statements I have already made, they were sufficient.**

Question: I was under the impression that it was destroyed after your retirement. In fact, it was whilst you were still in service in a police station, and therefore you were able to put it in confidential waste?

**Answer: Yes, sir.**

Question: I see. When was that, then?

**Answer: Again, it was around about April 2013. It would have been in my last days of what was going to be my service prior to going on some extended leave prior to retirement.<sup>173</sup>**

**3.104** In fact, contrary to CI Lawler's assertion that he had made "a number of statements" before April 2013, only the first<sup>174</sup> of five witness statements seen by this Inquiry, a document barely a single page in length, had come into existence by that date.

**3.105** CI Lawler's decision to destroy his day book while relevant proceedings and investigations were still in progress would have been reprehensible even if he had faithfully transcribed every word of his notes into the TFC log. As it turned out, that was not the position at all. During his oral evidence to the Inquiry, it emerged that he had not transferred some important details into the log:

Question: Are you saying that your daybook notes may have contained the detail of the intelligence that [DI Cousen] provided to you orally –

**Answer: Yes, sir.**

Question: – but they are the ones that have been destroyed?

**Answer: Yes, sir.**

Question: The detail of the intelligence, does that appear anywhere else?

**Answer: The detail of the intelligence?**

<sup>173</sup> Lawler, TS/2872:17–2874:17.

<sup>174</sup> Lawler, witness statement, 1 May 2012, Bundle E/42.

Question: Yes – other than the six attachments [i.e. the documents attached to DI Cousen’s email of 11:57 on 1 March]?

**Answer: No, because they are all in there, other than some of the other intelligence that was provided.**<sup>175</sup>

**3.106** As I have already pointed out, a firearms commander’s log serves two linked purposes. It provides a template to guide a commander’s decisions in accordance with the NDM and it generates a documentary audit trail of those decisions. In fact, it is not really possible to undermine one of those purposes without simultaneously subverting the other, for the log’s value as an audit trail is dependent on its having been used as a template for the decisions it records in the first place. In that sense, a retrospectively written log that attempts to reconstruct decisions after the event is completely worthless, for it has served neither of the two purposes for which it exists.

**3.107** Nothing more vividly illustrates CI Lawler’s superficial grasp of those common-sense principles than his explanation for writing his notes into his day book instead of the TFC log, and then destroying the day book:

Question: If you are receiving information and intelligence, upon which you will base a firearms operation, and there is a page designed for recording information and intelligence on which you would base a firearms operation, why don’t you write it down in there, rather than in a daybook that you subsequently destroy?

**Answer: Because in my daybook there, it would be also – I wouldn’t say it is scribble, but there was a lot of – it was like a “mind map” is the only way I can describe it, where there would be various things pointing off. I would be asking myself questions about resources, the briefing, the amount of time that officers were going to have for rest. So, it wouldn’t be specifically concerned with the information, it would be how my mind was working at that stage, and I would then transfer the actual information/intelligence on to the policy book at a later time.**<sup>176</sup>

**3.108** A “mind map” is, of course, precisely what a firearms commander’s log is supposed to provide. The whole point of it is to show “how [his] mind was working” at the time. As a “mind map”, it serves both purposes for which it exists, enabling the commander to navigate a safe route to the correct decision and allowing others to follow and check that route later. CI Lawler destroyed the only document that might have fulfilled those two requirements, substituting for it a retrospectively confected simulacrum which may, or may not, have accurately reflected his thought processes at the time.

**3.109** The reasoning behind CI Lawler’s decision to destroy his day book is completely topsy-turvy. As long as it fulfils its dual function, a firearms commander’s log does not have to be pretty. The rough notes made at the same risk assessment meeting by X7 and Inspector Fitton contain all sorts of symbols, annotations and even doodles, but they have proved of considerable value to this Inquiry in its investigation of the meeting. By destroying his original notes CI Lawler has, whether deliberately or otherwise, deprived the public (including Mr Grainger’s family) of important material that might have helped to expose the basis on which the firearms authority of 1 March was granted, and has hampered the Inquiry’s task of independently assessing the decisions made by commanders in pursuance of that authority.

**3.110** The Inquiry cannot even say with confidence when CI Lawler wrote up his log. It was a matter pursued with proper vigour by Mr Beer QC:

Question: When was the log written?

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<sup>175</sup> Lawler, TS/2877:17–2878:3.

<sup>176</sup> Lawler, TS/2887:1–18.

**Answer: The log, I think I have made a statement to say that the log was written, some of it was written during the risk assessment meeting. The vast majority of it will have been written during the tactical deployment phase.**

Question: Can you time the tactical deployment phase?

**Answer: It was after the briefing.**

Question: At 0107 the following morning?

**Answer: Yes, yes. I think we finish the briefing at 0130. Commonly then we go away – I think we went into the dedicated surveillance unit, the command hub, shall we say, and then we were there till later on, 0700 hours that day, and I then would have – what my common practice would be to do, would be to review my book, my daybook, and then start transferring what I knew into my policy file.**

Question: Okay. So, are you saying, effectively, the bits of it that were concerning the risk assessment meeting were written in the risk assessment meeting –

**Answer: Yes.**

Question: – the bits of it that concern the deployment phase were written in the deployment phase?

**Answer: No, sir, I am not saying that.**

Question: Right, okay?

**Answer: What I am saying is that I put notes in my daybook, and then I would transcribe notes in my daybook into the policy file when was most appropriate. A common one that I would do with a significant issue would be the time the firearms authority was granted, because that is a key part of the book. So, I would record that.**

Question: At the time that it actually happened?

**Answer: Yes. Because that is significant for me, because that – but other parts, I mean the vast majority, I would have expected that I would have written down during the tactical deployment phase.**

Question: Even the bits about the risk assessment meeting?

**Answer: Yes.**<sup>177</sup>

**3.111** CI Lawler's entry relating to the risk assessment meeting is to be found in the section of his TFC log headed "Information/Intelligence Narrative".<sup>178</sup> After identifying the three subjects of Operation Shire, the entry reads as follows:

Key information supported by the attached intelligence reports:

- A One or more subjects involved in armed robbery in Kirkham in 2008 where FI used staff threatened cash stolen.
- B Two stolen motor vehicles used for recces of premises in Cheshire/Staffs – Jan 2012.
- C Subjects obtain stolen Audi now on false plates LO08 LOD.
- D Intelligence indicates subjects are planning robbery.
- E Subjects carry out recces of Culceth [*sic*] Parade, Warrington, during early evening of  
Monday 27th Feb  
Wed 29th Feb  
Thurs 1st March
- F No indication of which premises will be under attack (potentially).
- G Stolen Audi at C continues to be used by subjects for recce of premises.<sup>179</sup>

<sup>177</sup> Lawler, TS/2879:5–2880:18.

<sup>178</sup> Bundle C/369–370.

<sup>179</sup> *Ibid.*

**3.112** None of those seven items has any intelligence grading recorded in the appropriate column. At the end of the entry appear two asterisks, the meaning of which CI Lawler could not recall when he gave evidence to the Inquiry.<sup>180</sup> Alongside the first asterisk is a list of those present at the risk assessment meeting, namely DI Cousen, Inspector Fitton, X7, DS Hurst and CI Lawler himself. Next to the second asterisk appears the following text:

Key info was [sic]  
A intell chronology  
B/C/D 5x5 intell reports.

**3.113** The reader will recall that the information at “A”, concerning the Preston robbery, came neither from the intelligence chronology nor from any of the intelligence reports. It was in fact DI Cousen who had told the meeting about it, although he did not say anything to suggest that “one or more” of the subjects of Operation Shire had been involved.

**3.114** The list of intelligence reports in the entry purports to itemise the “key information” on the basis of which CI Lawler decided to seek authority for a MASTS deployment. However, item E includes a reference to the stolen Audi’s journey to Culcheth on the evening of 1 March, which could not have been a factor in that decision, for the simple reason that it did not take place until some hours after the risk assessment meeting had finished.<sup>181</sup> It is clear that CI Lawler wrote up the entire TFC log entry relating to the risk assessment meeting at one and the same time, and that he did not do so until after the AFOs’ early morning briefing. That, I think, is confirmed by his own handwritten list of “outstanding actions” on the last page of his hard copy of the PowerPoint pack that he used to present that briefing, which concludes with the single but revealing word: “Log”.<sup>182</sup>

**3.115** Mr Beer QC asked CI Lawler to explain why he had included after-acquired information in his log entry:

Question: Why did you write it up that way?

**Answer: Because that was part of the intelligence chronology in relation to the job.**

Question: This note says that at 1230 you are receiving intelligence about something that had not happened yet, doesn’t it?

**Answer: It does, sir, yes.**

Question: Would you agree it is faintly absurd, this record –

**Answer: Not at all.**

Question: – as an accurate record of what you were given at 1230?

**Answer: No, because this is the policy log that I had and I am – it is quite, you know, it is quite often that you add to the policy log as the job goes along. Sometimes you would add it at the back of the document. Sometimes to me, it was, you know, like I said, I did that part of the tactical deployment, it was something that already had happened, I made a note of it, I briefed the officers about it and I put it in the intelligence because it was part of the intelligence for that operation. I’m quite entitled to do, and it was right to do it.**<sup>183</sup>

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<sup>180</sup> Lawler, TS/2909:9–16.

<sup>181</sup> Lawler, TS/2907:1–22.

<sup>182</sup> Bundle F/480.

<sup>183</sup> Lawler, TS/2907:1–22.

**3.116** Having thus disputed the absurdity of including, in his list of items of information considered at the risk assessment meeting, something that had not yet happened, CI Lawler went on, without evident embarrassment, to argue the opposite, namely that the absurdity was too obvious to mislead:

Question: Why does this item, item E, not appear later on – or the last part of item E – not appear later on, and record that it was received later?

**Answer: Because it is part of the intelligence narrative as the job has progressed along. It was obvious that it was not part of what DI Cousen said. What would have happened is that I have wrote that information down, and I have transcribed it across later on, once the officers have been deployed, as I said in my statement. And clearly, the Thursday, 1 March, was added to that, probably at 0130, 0200 in the morning, when I started writing my narrative of the notes.**<sup>184</sup>

**3.117** If, by his last answer in that exchange, CI Lawler meant that the list of items of intelligence and information was not confined to matters considered at the risk assessment meeting, but was instead a running log of intelligence and information received throughout the lifetime of the deployment, I cannot accept that it provides an adequate explanation. As Mr Beer QC pointed out, the reference to the 1 March visit to Culcheth appears in the middle of what is quite clearly intended to be an account of the 12:30 risk assessment meeting. It appears on the page of the pre-printed form which is specifically designed for that very purpose, and the surrounding context is unambiguous.

**3.118** CI Lawler's addition to his TFC log of information that no one could possibly have known at the time confirms that the log is hopelessly compromised by the inclusion of after-acquired knowledge and is consequently an unreliable and even misleading source of what transpired at the risk assessment meeting. Indeed, CI Lawler admitted as much.<sup>185</sup> Without his original day book notes, there is no way of verifying which parts of the log entry are correct and which are not.<sup>186</sup> For example, CI Lawler did not take the elementary precaution of identifying and timing those entries that were added at a later stage. His explanation for that failure was depressingly inadequate:

Question: Why haven't you recorded that it is a retrospective entry?

**Answer: I don't think I am – I am not too sure whether I am obliged to do that, sir.**

Question: Aren't you? You don't think that anyone reading this would think these notes were taken at 1230 onwards on 1 March?

**Answer: Well, they are my notes, sir, of the operation and how I was basing the decisions.**

Question: You don't think you are obliged to mark in some way that things are retrospective entries?

**Answer: I am not aware of any guidance, sir, that we are obliged to do that, sir.**<sup>187</sup>

**3.119** CI Lawler gave the same paltry response to Mr Beer QC's request for an explanation as to why he had not recorded the content of his briefing to ACC Heywood, the SFC:

Question: Why is there no record in your notes of the content of what you told the ACC?

**Answer: Because there is no requirement to do that.**

Question: What is this page for?

<sup>184</sup> Lawler, TS/2908:22–2909:8.

<sup>185</sup> Lawler, TS/2898:2–4.

<sup>186</sup> Lawler, TS/2899:12–14.

<sup>187</sup> Lawler, TS/2887:24–2888:11.

**Answer: Briefing to the strategic commander.**

Question: Yes, and what are all these blank lines for?

**Answer: It says underneath it, “Agree strategy in priority order”. That is what we are doing. We are having a discussion around the proposed strategy and the threats which were agreed verbally, and then further agreed via the emails that I sent him.**

Question: You don’t think there was any obligation on you to write down what you told the ACC and then what he said in reply to you, effectively?

**Answer: I think it is important it was clear what the strategy was and what the threat was, which I did, subsequently, in the email. But as you see, sir, it is not written down there.**

Question: You don’t think there was any obligation on you to do that?

**Answer: No, sir, I don’t think there is.**<sup>188</sup>

**3.120** Even if the working strategy had been as “clear” as CI Lawler claimed in that exchange, his persistent refusal to confront the inadequacy of his own record-keeping would be disturbing. As it happens, the strategy was anything but clear. It was, as appears from a comparison between the tipping points recorded in CI Lawler’s email<sup>189</sup> and those recorded in ACC Heywood’s SFC log,<sup>190</sup> thoroughly confused.

**3.121** To CI Lawler, the absence from his log of any record of the strategy he had supposedly agreed with ACC Heywood was a matter of as little moment as the fact that he had consigned his only notes of it to confidential waste:

Question: Does this fall into the category of the substance of the decision was understood by the pair of you, the making the records of it were admin that followed?

**Answer: It was, sir. I mean in my – I hate to go back to my daybook, but again, in the back of my daybook, we have various strategies that can be applied to each operation. So, I would look at the various strategies which I felt were pertinent for this operation. When I spoke to [ACC Heywood] over the telephone verbally, I would be proposing that strategy, which we would agree, but then we would formally agree it by the email that was sent to Mr Heywood. That strategy would then appear on the briefing template, so we could brief the officers.**

Question: All of the things you have referred to as being in your daybook, both at the back of it and in the bit that concerned 1 and 2 March, they are the things that you put in confidential waste?

**Answer: You do, sir, yes.**<sup>191</sup>

**3.122** The completion of firearms commanders’ logs cannot be dismissed as mere “admin”. For reasons I have already explained, the log is not an incidental piece of paperwork, but an integral part of the command and control process. In my view, no firearms officer who fails to grasp that important principle, still less one who declines to take obvious common-sense measures unless explicitly obliged to do so by official “guidance”, is likely to possess the judgement or initiative necessary to be appointed to a position of responsibility, let alone to be entrusted with membership of a “senior leadership team”.

**3.123** The commander who authorised the MASTS deployment of 2 March was ACC Heywood. By contrast with CI Lawler and Inspector Fitton, the pre-printed log he used was in a format that was obsolete. The updated version differed from its predecessor

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<sup>188</sup> Lawler, TS/2929:24–2930:17.

<sup>189</sup> Bundle W/276–277.

<sup>190</sup> Bundle G1/3627.

<sup>191</sup> Lawler, TS/2931:23–2932:15.

in the notable respect that the section dealing with intelligence included an additional column for recording “5x5x5” gradings. ACC Heywood told the Inquiry that the new pro-forma was not finally adopted as what he called “best practice” until April 2012.<sup>192</sup> That is not correct. The then-current pro-forma had been introduced by ACPO in September 2010, to be adopted by police forces “with immediate effect”.<sup>193</sup> It was certainly in use by GMP in early 2012. Indeed, Assistant Chief Constable Garry Shewan had used it to complete his SFC log for the Operation Shire MASTS deployment of 26 January 2012.<sup>194</sup> Thereafter, ACC Shewan had continued to discharge the SFC’s responsibilities until 30 January; on that day, he handed over to ACC Heywood, who presumably saw his predecessor’s log.<sup>195</sup>

**3.124** ACC Heywood told the Inquiry that he had obtained the pro-forma he used for his log from the commanders’ office:

Question: Where did you get this logbook from?

**Answer: The GMP command team. They have a store.**

Question: The GMP – is that in the ACPO suite?

**Answer: Yes.**

Question: In the ACPO suite of offices, there is a store of them?

**Answer: Yes.**

...

Question: Yes, so there was effectively a stack of blank logs, were there, or a tray of them?

**Answer: Yes, probably yes.**

Question: You just used the logs that were provided? I mean, it transpires that they seem to be a year and a half out of date.

**Answer: Yes.**<sup>196</sup>

**3.125** I find it surprising that, in March 2012, GMP was issuing pre-printed firearms commanders’ logs in a format that had been obsolete since September 2010. As I have already pointed out, other commanders – who, presumably, also had access to the ACPO office suite – were using the correct form of log during the same period. I think that ACC Heywood probably acquired the blank pro-forma he used elsewhere, perhaps from old stock that he kept at home for use when he was not at his office. The point is not a trivial one, because it may have a bearing on where, and hence when, ACC Heywood wrote up his log.

**3.126** The frontispiece of ACC Heywood’s log declares that he commenced it on 1 March 2012<sup>197</sup> and completed it on 2 March. That is tantamount to a claim that he maintained it contemporaneously with the decisions and events it purports to document, for the application for a firearms authority was made during the afternoon of 1 March and the authority rescinded the following morning. It is, however, a seriously inaccurate claim, as ACC Heywood was ultimately to admit.

<sup>192</sup> Steven Heywood, TS/2699:6–10.

<sup>193</sup> Letter, 22 September 2010, from Simon Chesterman (Chairman, ACPO) to all Chief Constables and Chief Firearms Instructors, Bundle R/226.

<sup>194</sup> Bundle G1/2271–2300.

<sup>195</sup> Garry Shewan, witness statement, 20 October 2014, Bundle H/202; see also Heywood, witness statement, 4 November 2014, Bundle H/47.

<sup>196</sup> Heywood, TS/2785:16–21; TS/2788:3–9.

<sup>197</sup> Bundle G1/3593.

**3.127** It was not until 30 October 2014, when he was interviewed by the IPCC, that ACC Heywood produced a copy of his SFC log.<sup>198</sup> The original, which the IPCC had not managed to obtain during its own investigation, did not come to light until 7 March 2017, when GMP provided it in response to a request that the Inquiry made on 2 March 2017, while ACC Heywood's evidence was part-heard. In his first witness statement, dated 11 October 2012, ACC Heywood simply stated that he had recorded a summary of the intelligence picture in his SFC log.<sup>199</sup> As far as it went, that was true. In a later statement, dated 4 November 2014, ACC Heywood revealed that, like CI Lawler, he had initially made entries in his day book<sup>200</sup> and had "later" transferred them into the SFC log.<sup>201</sup> His day book, however, contains but one brief entry, timed at 13:45 on 1 March, corresponding to the telephone conference with CI Lawler, during which he authorised a MASTS deployment for 2 March.

**3.128** Unfortunately, ACC Heywood did not appear to understand the importance of an SFC log's contemporaneity. In a lengthy statement to the Inquiry in the course of his oral evidence, he was quite open about the fact that he regarded the maintenance of his log as an administrative chore to be completed at leisure after the event:

The SFC log was my policy book that I wrote up later. It wasn't my contemporaneous notes ... I would not have started even compiling the log, frankly, until I had had Mick [CI] Lawler's email,<sup>202</sup> which I think was something like 3.45, sir, of that afternoon ... The times and dates for authorisations that you will see on the strategic firearms commander's log are based on my day book, emails, and in other jobs it would be text messages and conversations. As I said, that is my policy book, and it is not a contemporaneous record. This was a system that worked well, it has been used by other people. I wouldn't be – it wouldn't be fair to say, you know, what other people involved in this Inquiry used, but that was a system that worked for me.<sup>203</sup>

**3.129** Several times during his evidence to the Inquiry, ACC Heywood was to dismiss firearms logs as "paperwork"<sup>204</sup> or "just a piece of admin".<sup>205</sup> Such an attitude betrays a failure to grasp the nature and purpose of such documents, which are integral, and not merely incidental, to firearms command and control.

**3.130** A detailed analysis by Mr Beer QC of the intelligence ACC Heywood had recorded in his commander's log reveals what really happened and, at the same time, graphically exposes its significance.

**3.131** In the section of his log headed "INFORMATION/INTELLIGENCE RECEIVED", ACC Heywood made an entry, timed at 13:45.<sup>206</sup> According to his log, the information in that entry – apart from a generic reference to the previous history of Mr Totton and Mr Grainger – was the sole basis of ACC Heywood's decision, timed at 14:05, to authorise the MASTS deployment. Without it, as he was forced to concede in closed session, he had no intelligence to suggest that Operation Shire's subjects would be going out to commit a robbery.<sup>207</sup>

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<sup>198</sup> Heywood, witness statement, 30 October 2014, Bundle E/531. However, GMP's Operation Idris team sent a copy of the log to the IPCC on 16 August 2012.

<sup>199</sup> Bundle E/25–26.

<sup>200</sup> Bundle G1/3627.

<sup>201</sup> Heywood, witness statement, 4 November 2014, Bundle H/54.

<sup>202</sup> Bundle W/276–277.

<sup>203</sup> Heywood, TS/2764:4–2765:24.

<sup>204</sup> For example, Heywood, TS/2801:19; TS/2806:13, 15, 21; TS/2819:13.

<sup>205</sup> For example, Heywood, TS/2806:5; TS/2820:10.

<sup>206</sup> Strategic Firearms Command log, 1 March 2012, Bundle G1/3601 (an aspect of this entry is redacted).

<sup>207</sup> Heywood, 2 March 2017, Addendum Transcript 27:12–15. Later, in open session, ACC Heywood withdrew this concession.

- 3.132** ACC Heywood claimed that DI Cousen had not only told him what he had written in the 13:45 log entry, but had also disclosed the source for that information. I did not find it at all easy to follow ACC Heywood’s explanation, but the effect of it was that his log entry reflected a combination of what DI Cousen had told him at 13:45 that day and something he thought DI Cousen might have said at a “covert tasking meeting” the previous day. The problem with that account, as Mr Beer QC was able to show, was that GMP did not come into possession of any “covert intelligence” corresponding to the 13:45 redacted log entry until after ACC Heywood had authorised the armed deployment.
- 3.133** DI Cousen’s view that the subjects might be intending to commit a “lie-in-wait” robbery was in fact an assessment based on combining the known circumstances of the 2005 Preston robbery and the previous day’s sighting of Mr Totton in possession of what DI Cousen understood to be a hacksaw. As the 13:45 log entry appears to confirm, it was merely that assessment that DI Cousen passed on to ACC Heywood. The assessment was a reasonable working assumption, but it had no foundation in any covert intelligence.
- 3.134** The 13:45 redacted log entry recording the basis upon which ACC Heywood authorised the MASTS deployment is seriously misleading. Anyone reading it would naturally suppose that ACC Heywood had received specific intelligence to support what he had written. Confronted with irrefutable proof that he could not have received such intelligence, ACC Heywood admitted that he had compiled the log entry after the event. That, however, only served to expose another respect in which it was misleading. A reader of the 13:45 log entry would have no reason to doubt that it had been made contemporaneously with the decision it documented. ACC Heywood did not, as he should have done, add a note to make it clear that he had made the entry later.<sup>208</sup> At no time prior to giving evidence in closed session, whether in his written statements or his open oral testimony, had ACC Heywood offered the slightest indication that his log might not be the truly contemporaneous record that it purported to be. His attempt to explain the lack of contemporaneity was as futile as it was desperate. He told the Inquiry that he had compiled his firearms log from notes in his day book, which therefore represented what he called “the best evidence”. His day book,<sup>209</sup> however, contains no reference to the covert intelligence that is in the 13:45 log entry.<sup>210</sup>
- 3.135** When, if not on 1 March, did ACC Heywood write his log entry timed at 13:45? In an exchange that originally took place in closed proceedings but was later made public, he told the Inquiry that he had “probably” written up the entirety of his firearms log on 2 March:

Question: Just help us then, you wrote the whole of the firearms log up on 2 March?

**Answer: I genuinely cannot remember, but probably. Because it would have been – I was, you know, a number of other critical incidents to manage. I have done my notes. I have done what I needed to do to do the authority in my mind. The actual documentation itself, I was waiting for the email to come and I would have done it post the email, but I can’t – hand on heart today – I can’t tell you exactly when I did it, I suppose the guidance is as soon as practicable.<sup>211</sup>**

- 3.136** He repeated his claim to have completed his log by 2 March later in the same session:

<sup>208</sup> Heywood, 2 March 2017, Addendum Transcript TS/22:1–24.

<sup>209</sup> Heywood, day book, Bundle G1/3627.

<sup>210</sup> Heywood, 2 March 2017, Addendum Transcript 23:1–24.

<sup>211</sup> Heywood, 2 March 2017, Addendum Transcript 21:10–20.

As I say, hand on heart today, it could have been after the email at some point on the day or the following day.<sup>212</sup>

**3.137** Retrospective completion of logs was an approach ACC Heywood described as “common practice”,<sup>213</sup> something upon which he later expanded in answer to questions from Anne Whyte QC, Leading Counsel for GMP:

Question: You have also said it is common practice to make up the log after the event. When you say it is common practice, are you referring to SFCs that you know, TFCs, Tactical Advisers? How do you know it is common practice?

**Answer: Because following this tragic event, we obviously debriefed some of the issues, a hot debrief, etcetera, and we had some discussions around how we could obviously make sure such tragic events don't occur ... I am basing some of this on, you know, my contact with fellow colleagues ...**<sup>214</sup>

**3.138** Having regard to this Inquiry's uncovering of the retrospective creation of policy logs by different GMP firearms commanders on another occasion (see Chapter 4), I am inclined to accept ACC Heywood's claim that the practice was common. As Superintendent Stuart Ellison's example demonstrates, however, it was not universal (see Chapter 2). To the extent that it was widespread, it only serves to confirm the impression I formed that in 2012 there was a culture of slackness and complacency among some senior officers within the TFU (see Chapter 10).

**3.139** It is clear from the single page in ACC Heywood's day book that during the telephone conference on 1 March there was, as would be expected, some discussion about the threat posed by Operation Shire's subjects, the tactical options for meeting that threat and “tipping points”. Although the date and times recorded in the SFC log entry correspond to the same details in ACC Heywood's day book, the log contains substantial matters which do not feature in the day book, including the redacted passage I have already discussed, without which, ACC Heywood had earlier conceded (in closed session), there was no intelligence that the subjects were going out to commit a robbery. In open session, Mr Beer QC sought an explanation:

Question: Could you explain to the chairman, please, why you have added in some information which was so critical to your decision to authorise firearms officers, when it was not in your handwritten notes?

**Answer: Obviously, I have had a difficult few days trying to ... recount how this has ... occurred, and I think there might have been an additional conversation after the 2.05 around that, and I have put them both together. It was human error and it was not intended.**<sup>215</sup>

**3.140** ACC Heywood went on to withdraw his earlier concession, maintaining that – contrary to what he had told Mr Beer QC in closed session – even without the sensitive material recorded in his log entry, there remained sufficient information to justify the grant of a firearms authority.<sup>216</sup>

**3.141** The inclusion in the SFC log of the redacted entry covering ACC Heywood's decision to authorise the MASTS deployment is highly misleading. As Mr Beer QC had demonstrated in closed session, the intelligence on which the entry is based was not disseminated to GMP until 2 March 2012, the day after ACC Heywood's telephone

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<sup>212</sup> Heywood, 2 March 2017, Addendum Transcript 28:7–9.

<sup>213</sup> Heywood, 2 March 2017, Addendum Transcript 24:16–17.

<sup>214</sup> Heywood, 2 March 2017, Addendum Transcript 45:11–23.

<sup>215</sup> Heywood, TS/2782:20–2783:3.

<sup>216</sup> Heywood, TS/2783:4–15.

conference with CI Lawler, from which it follows that: (i) it cannot have been a factor in his decision to grant the authority; and (ii) the relevant SFC log entry must have been made after the event. The inclusion of that material in the log thus frustrates both purposes that an SFC log is intended to serve, for it shows that the log was not used (as it should have been) as a template in accordance with the NDM, which in turn subverts its value as an audit trail of the SFC’s reasoning. As ACC Heywood was forced to concede in an uncomfortable exchange with Mr Beer QC, the inclusion of material that was not even known to GMP at the relevant time renders the SFC log not merely useless, but positively misleading to anyone seeking to follow the reasoning process it purports to record:

Question: You agree that it gives a false impression that this intelligence was available to you to be taken into account – was taken into account by you – in making your decision to authorise the deployment of firearms officers?

**Answer: That wasn’t the intention, sir.**

Question: But it has that effect, doesn’t it?

**Answer: In the cold light of day, yes, sir.<sup>217</sup>**

**3.142** Contrary to his evidence to the Inquiry, ACC Heywood could not have completed the relevant entry on 2 March, if only because DI Cousen could not have provided him with the information it contained by then. DI Cousen was not on duty on 2 March, and ACC Heywood did not speak to him that day.<sup>218</sup> ACC Heywood himself was off duty on 3 and 4 March.<sup>219</sup> In fact, when confronted with the impossibility of his claim to have compiled the log by 2 March, the date of completion that he had entered on its frontispiece, ACC Heywood had to admit that he had probably not seen DI Cousen until the following week.<sup>220</sup>

**3.143** The same reasoning applies to an entry in ACC Heywood’s log under the heading “Threat Assessment” (specifically, under the subheading “What’s their capability?”).<sup>221</sup> For reasons I have explained in my closed Report, as in the case of the 13:45 log entry, DI Cousen could not have told ACC Heywood about this intelligence until after Sunday 4 March.

**3.144** The inescapable conclusion is that some, at least, of ACC Heywood’s SFC log was not written up until after the death of Mr Grainger. ACC Heywood was unable to explain why DI Cousen would be disclosing sensitive intelligence to him at that stage:

Question: If you saw Mr Cousen that following week, the week after Mr Grainger’s death, can you help the chairman ... why he would be telling you about intelligence in relation to your subjects when you had ceased to be the strategic firearms commander at 0900 on the Friday morning, when after that time the strategic firearms commander was Mr Sweeney, and when your operation had been stood down at about 0600 or 0700 that morning? Why, after the event, would he be telling you about after-acquired information?

**Answer: Sorry, I think the point you are trying to make – I am probably going to – I am probably going to check stuff with him, because it is my fault I didn’t fill the log in at the time, so I am going to check stuff with him to say, “Was that right at the time?” is probably the –**

Question: Was what “right at the time”?

<sup>217</sup> Heywood, TS/2781:17–24.

<sup>218</sup> Heywood, TS/2789:11–13. DI Cousen’s handset billing records do not disclose any call to ACC Heywood on 2 March 2012.

<sup>219</sup> Heywood, TS/2789:14–23.

<sup>220</sup> Heywood, TS/2789:24–2790:1. See also TS/2788:20–25.

<sup>221</sup> Bundle G1/3603.

**Answer: The intelligence bit. “Have I got it right in my mind with regard to the sequencing?” So, it is my fault for not writing it down, but it wasn’t – I wasn’t trying to make something up, I was trying to get the book right.**<sup>222</sup>

**3.145** ACC Heywood went on to confess that some of his log had not been completed until after Mr Grainger’s death:

Question: In a couple of answers you have given today, you have, I think, maybe tended towards the view that the log was written up after Mr Grainger’s death. Is that fair?

**Answer: I think probably some of the log was, and some of the log wasn’t. You know, it is, genuinely, I can’t recall which part was written up at which time, but some of it was probably written up before, and that is my best guess at the moment, sir. But there was definitely some written up afterwards.**<sup>223</sup>

**3.146** In the light of that admission, I consider that ACC Heywood’s earlier answer,<sup>224</sup> in which he claimed that he had “probably” completed his log on 2 March, lacked candour. Even his professed inability to remember precisely when he had done so was less than completely truthful. He had undoubtedly prepared for his stint in the witness box. I am sure that, like most of his fellow officers, he had been following the published daily transcript of the Inquiry’s proceedings. I cannot accept that he somehow forgot that he had not written up so important a portion of his SFC log until after Mr Grainger’s death. I have no doubt that he had been hoping that the point would not come to light. It was disingenuous of him to claim in answer to Pete Weatherby QC<sup>225</sup> that his written statement of 30 October 2014,<sup>226</sup> in which he said that he had “subsequently” transferred his day book notes into the SFC log, demonstrated that he had not been hiding the true position. It showed nothing of the kind. It was an exercise in studied ambiguity which was intended to (and did) conceal considerably more than it revealed.

**3.147** On his own belated admission, it is certain that ACC Heywood did not write up important portions of his SFC log contemporaneously. Taking into account his absence from duty over the relevant weekend, together with his use of an obsolete pre-printed pro-forma, I think it probable that he did not even start to compile the log until after Mr Grainger’s death. From the misguided point of view of someone who regards such tasks as mere “admin”, the fact that ACC Heywood had rescinded the firearms authority within hours of granting it, and without any need for the AFOs to leave their holding point, might well have led him to assume that there was no particular urgency in the matter. Indeed, he came close to saying as much in the course of his evidence to the Inquiry.<sup>227</sup>

**3.148** Throughout his evidence, ACC Heywood was at pains to emphasise that he had not intended to deceive anyone by the manner in which, without making it clear that he had done so, he compiled his log after the events it records. I am afraid I do not accept that claim. If, as I have concluded, he wrote at least some of the most significant log entries after 4 March, he was clearly doing so in the knowledge that Mr Grainger had died and by reference to information he can only have acquired after his decision to authorise the MASTS deployment of 2 March. In those circumstances, it is difficult to understand how he could honestly have thought that his post-event log entries genuinely reflected specific intelligence that he had received by the time he

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<sup>222</sup> Heywood, TS/2790:2–22.

<sup>223</sup> Heywood, TS/2790:23–2791:6.

<sup>224</sup> Heywood, 2 March 2017, Addendum Transcript 21:10–20.

<sup>225</sup> Heywood, TS/2814:18–21.

<sup>226</sup> Bundle E/530–531.

<sup>227</sup> Heywood, TS/2785:10–14; TS/2792:18–21.

authorised the deployment. In my view, he was reconstructing his log so as to show his own involvement in the events that had led to Mr Grainger’s death in the most favourable light possible. He was, in reality, overstating the intelligence position in order to make it appear that his grounds for authorising the deployment were stronger than they really were.

**3.149** When ACC Heywood was interviewed by Operation Idris, the team responsible for preparing GMP’s defence in response to the prosecution of the Force for an alleged offence contrary to the Health and Safety at Work etc. Act 1974, he stated that he had had information to the effect that Mr Grainger was “a man prone to violent tendencies”.<sup>228</sup> In his evidence to the Inquiry, ACC Heywood asserted that there was intelligence to that effect, which could not be discussed in open session.<sup>229</sup> When Mr Beer QC later sought to explore the issue in closed session, it emerged that there was no such intelligence:

Question: Could I ask you to identify when covert intelligence was received that suggested that Mr Grainger was a man prone to violent tendencies?

**Answer: What I am basing that on, as I sit here five years on, sir, is if he was mentioned in the team that is with Totton, I have put that as he was likely to be committing robberies with Totton and I have used that as part of my assumption when I am considering the firearms authority.**

Question: You would, I think, hearing yourself say that, realise that it is deeply unsatisfactory, isn’t it?

**Answer: It is unsatisfactory, yes.**<sup>230</sup>

**3.150** What it came down to was that ACC Heywood’s unsubstantiated claim to have been in possession of covert intelligence suggesting that Mr Grainger was “a man prone to violent tendencies” masked an assumption that was itself circular and, as ACC Heywood had to concede to Mr Beer QC, “self-fulfilling”.<sup>231</sup>

**3.151** The same kind of reasoning, if that is the right word, lay behind ACC Heywood’s assertion that there was covert intelligence suggesting that the subjects of Operation Shire would have had “access to weapons”.<sup>232</sup> In closed session, it later emerged that there was no specific intelligence to the effect that Mr Totton, Mr Grainger and Mr Rimmer would be armed on 2 March. ACC Heywood’s assessment was based on nothing more than the notoriety – doubtless deserved – of Mr Totton. The point is not that ACC Heywood’s assessment was necessarily wrong in itself, but that it was misleading of him to imply that it was based on specific covert intelligence that could not be openly discussed, when he knew that no such material existed.

**3.152** There are other aspects of the history of ACC Heywood’s SFC log for which the Inquiry has received no satisfactory explanation. Like those of CI Lawler and Inspector Fitton, it contains no reference to the tactical plan to intercept the subjects before they reached Culcheth. Indeed, the only three tactical options it records as having even been discussed at the risk assessment meeting are forms of decisive intervention; there is no reference, for example, to any consideration of the alternative possibility of disruptive action.<sup>233</sup> Then there is ACC Heywood’s odd use of two different pens

<sup>228</sup> Bundle L/166.

<sup>229</sup> Heywood, TS/2702:17–2703:3.

<sup>230</sup> Heywood, 2 March 2017, Addendum Transcript 39:22–40:8.

<sup>231</sup> Heywood, 2 March 2017, Addendum Transcript 41:7–22.

<sup>232</sup> Heywood, TS/2709:19–2710:10.

<sup>233</sup> Heywood, TS/2731:3–2732:5.

to complete passages on the same page, despite the fact that they were apparently written at one and the same time:

Question: Would you agree that the word “authorised” and “1405” [Bundle G1/3601] is written in a different pen than the entry at 1345?

**Answer: Yes, sir.**

Question: If you were writing them at the same time, why would you use a different pen to write the 1405 entry?

**Answer: Unless it has run out, sir, I don’t know. It is –**

Question: Looking at the last part of the entry at 1345, the pen doesn’t appear to have run out, does it?

**Answer: No, sir.**

...

Question: Have you tried to give the impression, by using different pens, that these entries were made contemporaneously and at different times?

**Answer: No, sir.**

Question: Why are they in a different pen?

**Answer: I genuinely don’t know, sir. I am basing this on – as I said, I am writing this up at some subsequent time. I accept the point that it could have been flowing. I could have stopped to go and do something else and then come back. As I said, the log would have been compiled, probably, at slightly different times.<sup>234</sup>**

**3.153** Finally, the Inquiry has been unable to trace the movements of the original log until it came into the possession of the Inquiry in March 2017. It appears that the TFU delivered a copy to Mark Bergmanski of the IPCC on 16 August 2012.<sup>235</sup> Although ACC Heywood was able to produce a photocopy of his SFC log during his interview with IPCC investigators on 30 October 2014, a subsequent search by GMP for the original failed to locate it.<sup>236</sup> GMP has confirmed to the Inquiry that, in March 2012, there was no system in place for recording either the issue of blank log forms or the return by commanders of completed logs, or even for retrieving logs that should have been, but were not, returned following completion. The result was that when the IPCC sought to recover original logs for the purposes of its investigation into the death of Mr Grainger, “various logs for other and previous authorities were found to be in the possession of individuals which were then only returned to the TFU”.<sup>237</sup> There is no record of ACC Heywood’s SFC log either being issued or returned. The Inquiry thus has no way of establishing the history and movements of the original document. There is no documentary trail, and, for reasons I have already explained, ACC Heywood’s evidence on the point cannot be regarded as trustworthy.

**3.154** It follows that the Inquiry has been unable to establish precisely when ACC Heywood’s original log came into existence. All that can be said is that it probably reached its final form after the death of Mr Grainger and before ACC Heywood provided the IPCC with a copy in August 2012. He did not make his first witness statement until 11 October 2012.<sup>238</sup> While the combination of factors I have just summarised inevitably gives rise to a suspicion that the log may not have been written up until after the passage of a considerably longer period of time than ACC Heywood has been prepared to admit,

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<sup>234</sup> Heywood, TS/2779:9–2780:19.

<sup>235</sup> Email from Sandra Pope to the Inquiry, 20 March 2017 (12:10).

<sup>236</sup> See Bundle D/921, Action A/556.

<sup>237</sup> *Ibid.*

<sup>238</sup> Bundle E/25. See also Heywood, TS/2820:5–14.

the only certain conclusion I have been able to reach is that the document cannot by any stretch of language be described as contemporaneous with the events it purports to record.

**3.155** On more than one occasion, Counsel for GMP reminded the Inquiry of the need to avoid hindsight. But the perils of hindsight are the same for a firearms commander as they are for an Inquiry chairman. Ironically, it turns out to be some of GMP's own senior officers who have most signally failed to shun those perils. The nature of the danger is obvious. It was pointed out by Mr Beer QC in an exchange with ACC Heywood:

Question: If you were writing the intelligence case for the deployment of armed officers after Mr Grainger had died, you would have had the benefit of hindsight there, that Mr Grainger had in fact died, wouldn't you?

**Answer: Yes, sir.**

Question: Would you have a natural wish to put very much at its highest the intelligence case justifying the grant of a firearms authority?

**Answer: My firearms authority, sir?**

Question: Yes.

**Answer: Yes, but as I said, I think without any co-intelligence, if David Totton is in a car, I would have happily authorised a firearms authority.**<sup>239</sup>

**3.156** Even if ACC Heywood really intended to say that the presence of Mr Totton in a car would, by itself, justify the granting of a firearms authority, it provides no justification for reconstructing a commander's log after the event from intelligence that was not available at the time.

**3.157** It was pure hindsight that led ACC Heywood to include, as one of the factors he had considered, an item of sensitive intelligence of which he had no inkling when he granted the firearms authority, and without which the case for such an authority was necessarily weakened. I accept that the inaccurate information provided to ACC Heywood by those who briefed him, namely the alleged sighting of one of the subjects in Culcheth with a hacksaw, coupled with the suggestion that at least one of those subjects had been responsible for the Preston robbery, probably did disclose sufficient grounds to authorise a MASTS deployment. Objectively, however, and exercising judgement with the legitimate application of hindsight that is proper to an Inquiry of the present kind (that is to say, having regard to the actual facts as later established), I find that there was no adequate basis for granting such an authority. No hacksaw had, in fact, been seen in Culcheth. There was only the slenderest suspicion linking the Preston robbery to Mr Totton, and nothing at all to connect it to Mr Rimmer or Mr Grainger. Further, even if there had been sufficient reason to authorise a MASTS deployment when ACC Heywood first took that decision, the case for it was considerably undermined by that evening's visit to Culcheth by the subjects. That was an episode that passed without incident and without any suggestion of danger to the surveillance officers who monitored it and whose safety is the primary reason for firearms support.

**3.158** It might not have mattered had the effects of these errors and misjudgements been confined to this deployment, which proved abortive. Regrettably, they were not. Their pernicious influence extended to the following day's deployment and played a significant part in the events that culminated in the fatal shooting of Mr Grainger.

<sup>239</sup> Heywood, TS/2793:1–16.



# Chapter 4: The MASTS<sup>1</sup> Deployment of 3 March 2012

## A. Assistant Chief Constables Heywood and Sweeney

- 4.1** Assistant Chief Constable (“ACC”) Steven Heywood’s decision to rescind Firearms Authority 75/12,<sup>2</sup> made at 06:30 on Friday 2 March without knowledge of the reconnaissance trip to Culcheth that had taken place the previous evening, meant that a new firearms authority would be required to cover any subsequent Mobile Armed Support to Surveillance (“MASTS”) operation. It also, incidentally, afforded a welcome opportunity for fresh consideration of strategy and tactics by commanders with no previous involvement in Operation Shire.
- 4.2** In his oral evidence to the Inquiry, Assistant Chief Constable Terry Sweeney stated that he took over from ACC Heywood as the duty strategic firearms commander (“SFC”) for Greater Manchester Police (“GMP”) at 09:00 on Friday 2 March;<sup>3</sup> that is not accurate. He did not assume the role of duty SFC until the early evening of that day. For reasons that appear later in this chapter, the difference matters.
- 4.3** In a written statement dated 18 December 2014,<sup>4</sup> prepared for Operation Idris,<sup>5</sup> ACC Sweeney more than once refuted the suggestion that he had taken over from ACC Heywood as SFC on the morning of 2 March:

The previous firearms authority which was rescinded earlier on the 2<sup>nd</sup> March by ACC Heywood was complete. That particular authority was not continuing and there was no requirement for a specific handover. The criminal enquiry was being continued by the SIO. ACC Heywood continued in his role as the duty SFC during the rest of the 2<sup>nd</sup> March<sup>6</sup> ... I took over as the SFC late on the 2<sup>nd</sup> March<sup>7</sup> ... ACC Heywood was still on duty and retained the duty cover for the rest of the day whilst the meetings were taking place [a reference to the “Away Day” scheduled for chief officers on 2 March<sup>8</sup>] ... When ACC Heywood retired from duty in the early evening of the 2<sup>nd</sup> March I became the duty ACC/SFC cover for the Force. There was no firearms authority in place for Operation Shire.<sup>9</sup>

- 4.4** ACC Heywood confirmed the position in his own statement on behalf of Operation Idris:

On the morning of 2<sup>nd</sup> March, I rescinded the authority [i.e. Authority 75/12]. I stayed as the duty SFC throughout that day. I was at the force headquarters in meetings all day ... During the early evening of Friday 2<sup>nd</sup> March, I handed over SFC duty cover for the force to [ACC Sweeney].<sup>10</sup>

<sup>1</sup> MASTS = Mobile Armed Support to Surveillance.

<sup>2</sup> Steven Heywood, witness statement, 11 October 2012, Bundle E/25.

<sup>3</sup> Terry Sweeney, TS/3303:5–9. See also Sweeney, witness statement, 23 March 2012, Bundle E/46.

<sup>4</sup> Sweeney, witness statement, 18 December 2014, Bundle H/1.

<sup>5</sup> Operation Idris prepared GMP’s defence in response to the prosecution of Sir Peter Fahy, in his capacity as Chief Constable, for an alleged offence contrary to the Health and Safety at Work etc. Act 1974, arising out of the events leading to Anthony Grainger’s death; it is also the team that prepared for the Inquest/Inquiry on behalf of GMP.

<sup>6</sup> Bundle H/8.

<sup>7</sup> *Ibid.*

<sup>8</sup> Bundle H/13.

<sup>9</sup> *Ibid.*

<sup>10</sup> Heywood, witness statement, 4 November 2014, Bundle H/51.

**4.5** At about 09:00 on 2 March, ACC Heywood had a conversation with ACC Sweeney during which they spoke about Operation Shire:

I gave him a brief update to say that, as he was aware of Operation Shire, that Operation Shire, a firearms deployment had occurred last night, based on closed session material which he was aware of, I understand. We anticipated them doing a job last night. That didn't occur, so I have rescinded the authority. I said I don't think there is an expectation they are going in this weekend, and he said he would then, as he was going to be duty officer, he would take up the strategic firearm command role.<sup>11</sup>

**4.6** According to ACC Heywood, the conversation was not part of a formal handover of SFC responsibilities; because he had rescinded Firearms Authority 75/12, that deployment had come to an end and any further deployment would thus require fresh authorisation, with the new SFC being briefed anew.<sup>12</sup> Accordingly, and as there was in any event no new intelligence for ACC Heywood to pass on, the discussion was necessarily a short one. ACC Heywood saw no need to make any written record of it.<sup>13</sup> Neither, as it turns out, did ACC Sweeney,<sup>14</sup> presumably because no "handover" was involved; as he told the Operation Idris investigators, he did not take over the role of duty SFC cover from ACC Heywood until the early evening of 2 March.<sup>15</sup>

**4.7** In his first witness statement, dated 23 March 2012,<sup>16</sup> ACC Sweeney had given a rather different account of his discussion with ACC Heywood, describing it as "a briefing regarding a number of on-going firearms operations"<sup>17</sup> and "a generic briefing of what had taken place in the course of the week".<sup>18</sup> That statement, in which he incorrectly said that he had taken over as duty SFC at 09:00 on 2 March, conveys the impression that he carried out a detailed and systematic "review" the same morning. It is not possible to convey the flavour of the passage adequately without quoting it at some length:

At 0900 hours on Friday 2<sup>nd</sup> March 2012 I took over responsibility as the duty officer. I received a briefing<sup>19</sup> regarding a number of on-going firearms operations within the Force. This included Operation Shire, which had been a long-running operation that had been subject to a number of firearms authorities by a number of command colleagues. As part of my role as the Strategic Firearms Commander I review existing operations against the National Decision-Making Model to determine the threat and risk posed by the subjects of the operation, by considering the information and intelligence held by the Senior Investigating Officer (SIO) and the Tactical Firearms Commander (TFC) assessment. This review included considering the previous working strategy, threat assessment and evidential tipping points for the operation to move to an arrest phase, which at that time was subject to Firearms Authority 75/12 [Chairman's note: Authority 75/12 had already been rescinded by ACC Heywood by this time]. I then considered the legal powers for the authority, the tactical plan and options proposed and the contingencies and tactical parameters outlined.

My review of the operation, which included the current information/intelligence update provided to me by the SIO briefing and the TFC assessment, was that three known subjects, David Totton, Anthony Grainger and Robert Rimmer, were in the preparatory phase to commit robbery, which was believed to be commercial robbery either against Cash in Transit vehicles or commercial premises. The information and intelligence provided to me was confirmed in my discussions with [Chief Inspector Michael Lawler], Tactical

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<sup>11</sup> Heywood, TS/2753:8–17.

<sup>12</sup> Heywood, TS/2753:18–2754:3.

<sup>13</sup> Heywood, witness statement, 4 November 2014, Bundle H/51.

<sup>14</sup> Sweeney, TS/3314:5–7.

<sup>15</sup> Sweeney, witness statement, 18 December 2014, Bundle H/13.

<sup>16</sup> Sweeney, witness statement, 23 March 2012, Bundle E/45.

<sup>17</sup> Sweeney, witness statement, 23 March 2012, Bundle E/46.

<sup>18</sup> Sweeney, TS/3311:16–17.

<sup>19</sup> This is a reference to the conversation with ACC Heywood: Sweeney, TS/3304:25–3305:2.

Firearms Commander; this identified that the assessed threat posed by these individuals was an extreme propensity to violence, including the use of firearms, with a disregard for the safety of the public, staff within the Cash in Transit industry and commercial premises and police officers.

My assessment was that the high threat posed by this group of organised criminals was such that the operation could only be delivered safely to maximise the safety of the public, staff and subjects themselves by a pre-planned operation supported by the deployment of the police officers protected by the issue of firearms.

I carefully considered the tactical options available to me and set a clear operational strategy with well-defined parameters concerning the appropriate use of the Force pursuit policy, any contact on foot should the subjects break out from the vehicle, and the use of special munitions to be deployed specifically at the Tactical Firearms Commander's direction. I directed the Tactical Commander to develop and consider contingencies that enable any intervention to take place with minimum potential harm/risk to all parties. These contingencies included foot, vehicle interception, direct contact and containment.<sup>20</sup>

**4.8** There follows a paragraph justifying the “use” of special munitions on grounds of proportionality, after which the statement turns to the events of that evening:

At 8.50 p.m. I agreed in a telephone conversation with the Tactical Firearms Commander, [Superintendent Mark Granby], the tactical plan around an option of Mobile Armed Support to the surveillance operation. The arrest strategy was to intervene if the identified evidential tipping points were reached ... In terms of the criteria for the deployment of armed police officers, my overall assessment was that based on the intelligence, information and threat assessment, I was satisfied that I had reason to suppose that officers may have to protect themselves, or others, from the subjects, who I considered had the potential to have immediate access to a firearm, or other potentially lethal weapon, or was otherwise so dangerous that the deployment of armed officers was an appropriate operational contingency. I therefore granted Firearms Authority 77/12 in reference to Operation Shire for deployment the following morning, Saturday 3<sup>rd</sup> March 2012.<sup>21</sup>

**4.9** Although ACC Sweeney's account is vague with respect to the precise order and timing of events, its natural meaning, and the sequence it was plainly intended to convey, is this:

- (i) At 09:00 on Friday 2 March 2012, as incoming duty SFC, ACC Sweeney received a briefing from his predecessor about Operation Shire.
- (ii) The briefing related to a firearms operation that was “on-going” and was likely to require ACC Sweeney's imminent renewal.
- (iii) During or soon after the briefing, ACC Sweeney began a comprehensive review of the firearms operation in accordance with the National Decision Model (“NDM”).
- (iv) As part of that review, he consulted Operation Shire's Senior Investigating Officer (“SIO”), Detective Inspector Robert Cousen, and the outgoing tactical firearms commander (“TFC”), Chief Inspector (“CI”) Michael Lawler, both of whom furnished him with additional information and intelligence.
- (v) Having concluded, on the strength of such information and intelligence, that the subjects of Operation Shire were preparing to commit an armed robbery, ACC Sweeney determined that a pre-planned MASTS operation with special munitions was necessary to foil that threat.

<sup>20</sup> Sweeney, witness statement, 23 March 2012, Bundle E/46–47.

<sup>21</sup> *Ibid.*

- (vi) He therefore set an operational strategy and instructed the new TFC, Superintendent Mark Granby, to develop the necessary contingency plans.
- (vii) At 20:50, during a subsequent telephone conversation with Supt Granby, ACC Sweeney agreed an arrest strategy and tactical plan and formally authorised the deployment of firearms officers for the following day, Saturday 3 March 2012.

**4.10** That sequence suggests that ACC Sweeney scrupulously assessed all the relevant issues, in the correct order, in accordance with the requirements of the *Manual of Guidance*.<sup>22</sup> For reasons outlined later in this chapter, I have found myself driven to the conclusion that very little of ACC Sweeney’s narrative is accurate. It is true that his carefully drafted statement, while creating the impression of a logical order of events, does not actually specify any particular sequence. In that respect, as in certain others, it is advisedly ambiguous. The ambiguities are, in my judgement, intended to disguise what really happened.

**4.11** The starting point is that there was, by the morning of Friday 2 March, no expectation that the subjects of Operation Shire would attempt any kind of robbery over the coming weekend. ACC Heywood, having rescinded the previous firearms authority, expressly said so to ACC Sweeney.<sup>23</sup> There was, therefore, no “on-going firearms operation”<sup>24</sup> in existence in connection with Operation Shire. Jason Beer QC, Leading Counsel to the Inquiry, asked ACC Sweeney why, in those circumstances, he had nevertheless chosen to undertake the task of conducting additional and, on the face of it, pointless research:

Question: Can I ask you why you were doing this, given that this might have gone for a month without another deployment?

**Answer: Because it had been so busy that week, because I also asked him for information about the ongoing situation in Salford generally, because at the time we had a number of significant enquiries taking place and operations running in the Salford area following a number of murders.**

...

Question: This was you acting in an anticipatory fashion, is that right? Proactively trying to get some information in?

**Answer: Yes.**<sup>25</sup>

**4.12** I do not find the reasoning behind that explanation easy to follow. If anything, the fact that there was so much else going on at the time ought to have militated against undertaking additional work in relation to a firearms operation that was not expected to take place on ACC Sweeney’s watch and, for all he knew, might never happen at all.

**4.13** I have already pointed out that it was ACC Heywood’s job, not ACC Sweeney’s, to research firearms operations on the morning and afternoon of Friday 2 March. What is more, even if ACC Sweeney had been duty SFC at the material time, he had no need to obtain further information or intelligence, let alone research it personally. He could call upon subordinates to perform such tasks, or he could ask the Robbery Unit to do it. In any event, he had more than enough on his hands to keep him busy. That Friday he had to attend a chief officers’ “Away Day”, involving personal and team

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<sup>22</sup> Sweeney, TS/3315:23–3316:3.

<sup>23</sup> Heywood, TS/2753:8–17.

<sup>24</sup> Sweeney, witness statement, 23 March 2012, Bundle E/46.

<sup>25</sup> Sweeney, TS/3331:2–19.

development work.<sup>26</sup> Although the Away Day was held at the Force headquarters, it took place on a different floor from the Tactical Firearms Unit (“TFU”) offices.<sup>27</sup> According to the evidence of ACC Heywood,<sup>28</sup> it involved a series of meetings, which included ACC Sweeney and lasted all day. In addition, two public protests, one of them a demonstration by the National Front, were anticipated the following day.<sup>29</sup> On top of all that, ACC Sweeney presumably had to cope with such other command duties as he could manage to fit in with those commitments. For him to have voluntarily spent what must have been a significant part of the day shouldering the additional burden of personally researching information and intelligence for a firearms operation that nobody thought was likely to happen and in respect of which he was not, at the time, the relevant SFC would have been pointless. ACC Sweeney nevertheless insists that he did so. For reasons explained in this chapter, I am sorry to say that I do not believe him.

**4.14** I have already said that I regard ACC Sweeney’s statement of 23 March 2012<sup>30</sup> as misleading in the calculated ambiguity with which it purports to narrate the events of Friday 2 March. On 5 November 2014, ACC Sweeney was interviewed as a potential witness by members of the Operation Idris team preparing the defence in the then-pending prosecution of Sir Peter Fahy, in his capacity as Chief Constable of GMP, for an alleged health and safety offence arising out of the events leading to Anthony Grainger’s death. During that interview, he added a significant piece of information which had not featured in his first witness statement:

I asked for the intelligence briefing pack when I picked up SFC cover from the previous SFC, Mr Heywood, to familiarise myself with the detail of the subjects ... I needed to refresh myself with the detail, because there were a number of subjects involved, some of whom were exceptionally violent and exceptionally dangerous individuals ... I wanted to be clear on who were the current subjects involved in Operation Shire during the course of the Friday, before the operation went live again, because at the time it was stood down ... I received the chronology, I received the briefing from the TFC and the SFC. That gave me the current intelligence picture ... My specific enquiry was not about the offence that they were going to commit. It was about who was involved. I was concerned about specific subjects because that then determines our response, so the clarity I was looking for I received from the intelligence chronology, or the intelligence package, that I was provided with by the TFU team.<sup>31</sup>

**4.15** In a subsequent witness statement,<sup>32</sup> ACC Sweeney explained that the reason he needed to know the identities of the subjects was to enable him to consider their “backgrounds and capabilities”.<sup>33</sup> The intelligence chronology, he said, “gave the current picture of the subjects and the intelligence referring to them”.<sup>34</sup>

**4.16** The intelligence chronology<sup>35</sup> (see Chapter 2) was a document maintained by the Robbery Unit and comprised a numbered list of items of intelligence. ACC Sweeney’s only previous reference to it before his interview had been in a statement made on 10 October 2014:

<sup>26</sup> Sweeney, TS/3330:20–3331:1.

<sup>27</sup> *Ibid.*

<sup>28</sup> Heywood, witness statement, 4 November 2014, Bundle H/51.

<sup>29</sup> Sweeney, TS/3331:10–16.

<sup>30</sup> Sweeney, witness statement, 23 March 2012, Bundle E/45.

<sup>31</sup> Bundle L/197. See also Bundle L/223.

<sup>32</sup> Sweeney, witness statement, 18 December 2014, Bundle H/1.

<sup>33</sup> Sweeney, witness statement, 18 December 2014, Bundle H/4.

<sup>34</sup> *Ibid.*

<sup>35</sup> Bundle S/1–16.

I was in possession of the Operation Shire intelligence chronology, which I requested from the TFU, following my briefing with ACC Heywood on 2 March 2012.<sup>36</sup>

**4.17** As ACC Sweeney confirmed to the Inquiry, he regarded the expressions “intelligence briefing pack”, “intelligence package” and “intelligence chronology” as interchangeable; the expression he thought he would have used at the time was “pack”.<sup>37</sup> He had not mentioned it in any of the four witness statements he had made before the statement of 10 October 2014.

**4.18** During ACC Sweeney’s evidence to the Inquiry, Counsel probed some of the details of the account he had provided in his first witness statement. It emerged that, contrary to the clear implication behind ACC Sweeney’s assertion that he had reviewed the operation “by considering the information and intelligence held by the Senior Investigating Officer (SIO) and the Tactical Firearms Commander (TFC) assessment”,<sup>38</sup> he had not actually consulted either officer:

Question: How, at 0900 in the morning on the Friday, did you review the operation by considering the information and intelligence held by DI Cousen?

**Answer: Because the information I was provided by Mr Heywood gave me the overview of the intelligence of the operation at that time that he had been provided by Mr Cousen –**

Question: Just stop for a moment, if I can –

**Answer: Sure.**

Question: – just to slow you down a little bit.

**Answer: Yes.**

Question: You say here [i.e. in the witness statement dated 23 March 2012] that you reviewed it by considering the information and intelligence held by the SIO?

**Answer: Yes.**

Question: You didn’t actually consider the information and intelligence held by the SIO, did you?

**Answer: Did I speak to the SIO specifically, sir? No, I didn’t. However –**

Question: You didn’t look at any of his documents at that time?

**Answer: No, I received the briefing from Mr Heywood and I requested the chronology which I received to give me the background information that is in the chronology.**

Question: You also say that you reviewed the operation by considering the information and intelligence held by the SIO and the TFC assessment?

**Answer: Yes.**

Question: At that time, 0900,<sup>39</sup> you didn’t speak to Chief Inspector Lawler [the outgoing TFC]?

**Answer: No, I asked for a copy of the chronology.**

Question: I don’t think you at that time, 0900, looked at any of his documents, did you?

**Answer: No, I requested the documents.**

Question: In fact, what you did was speak to Mr Heywood?

**Answer: Yes.**<sup>40</sup>

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<sup>36</sup> Bundle E/495–497.

<sup>37</sup> Sweeney, TS/3323:19–3324:3.

<sup>38</sup> Sweeney, witness statement, 23 March 2012, Bundle E/46.

<sup>39</sup> ACC Sweeney was later to concede that he had not spoken to CI Michael Lawler at all: TS/3321:4–7.

<sup>40</sup> Sweeney, TS/3305:5–3306:14.

**4.19** Further questioning by Mr Beer QC elicited an admission by ACC Sweeney that the “briefing” that ACC Heywood had given him during their conversation was to the effect that “nothing had taken place”.<sup>41</sup>

**4.20** Reduced to its essentials, therefore, the underlying factual basis of ACC Sweeney’s assertion that he had considered “the information and intelligence held by the Senior Investigating Officer (SIO) and the Tactical Firearms Commander (TFC) assessment”<sup>42</sup> amounts to little more than that, on the morning of Friday 2 March, ACC Heywood told ACC Sweeney that: (i) the subjects of Operation Shire had conducted some reconnaissance in the Culcheth area during the week; (ii) nothing had happened overnight; (iii) nothing was expected to happen over the weekend; and (iv) he, ACC Heywood, had therefore rescinded the firearms authority. ACC Sweeney, however, told the Inquiry that the information he considered went beyond what ACC Heywood had told him at 09:00:

Question: How did you consider the information and intelligence held by Mr Lawler if you didn’t speak to him or –

**Answer: Because it was contained within the briefing package that I got in terms of ... the PowerPoint package and the intelligence package.**

Question: That was not at 0900, either?

**Answer: No.**<sup>43</sup>

The “intelligence package” is clearly the intelligence chronology, to which ACC Sweeney had first alluded in his statement of 10 October 2014.<sup>44</sup> Even in that statement, however, he had not made any reference to a “PowerPoint package”, by which he meant the slide presentation that had been used to brief authorised firearms officers (AFOs) during the early hours of that day (Friday 2 March). The “PowerPoint” was something he raised for the first time during his oral evidence to the Inquiry.<sup>45</sup>

**4.21** Whether because he knew that it did not yet exist or for some other reason, ACC Sweeney did not ask to see the SFC log of his predecessor, ACC Heywood. Instead, he said that he tasked a member of his staff to obtain the intelligence “pack”<sup>46</sup> from the TFU. What came back, he told Pete Weatherby QC, were hard copies of the intelligence chronology and the PowerPoint presentation:

Question: ... The “pack” turned out to be the intelligence chronology –

**Answer: Yes.**

Question: – and the PowerPoint from the previous night, and that is it?

**Answer: Yes, sir, I think that is right.**

Question: I think you then said it was hand delivered?

**Answer: Yes.**

Question: Why would that be?

**Answer: Because either Sergeant Cooke [sic] or my secretary would have rung the Firearms Unit and asked for that information to be brought over.**

Question: Yes. Just deal with the geography here. Am I right that your office was in HQ?

<sup>41</sup> Sweeney, TS/3310:23–3311:9.

<sup>42</sup> Sweeney, witness statement, 23 March 2012, Bundle E/46.

<sup>43</sup> Sweeney, TS/3321:8–12.

<sup>44</sup> Sweeney, witness statement, 10 October 2014, Bundle E/496.

<sup>45</sup> Sweeney, TS/3298:25–3299:9.

<sup>46</sup> Sweeney, TS/3323:19–3324:3.

**Answer: Yes, sir.**

Question: And the TFU office –

**Answer: Is Openshaw.**

Question: Openshaw, so two different buildings, some distance apart?

**Answer: About a mile, maybe a mile and a half.**

Question: About a mile, OK. Why were these documents not simply emailed across?

**Answer: They weren't, sir, it is as simple as that, really.**

Question: It is just, we would have an audit trail, wouldn't we, if they had been emailed across?

**Answer: That is a fair point, yes.**

Question: Like we have emails later in the day between you and Mr Granby, yes?

**Answer: Yes.**

Question: You cannot help us with that?

**Answer: No, sir, I am sorry.<sup>47</sup>**

**4.22** ACC Sweeney went on to assert that after the death of Mr Grainger he had destroyed the hard copies by disposing of them in the “classified waste”.<sup>48</sup> The explanation he offered was that it was unnecessary to retain them because there were other copies in existence.<sup>49</sup> If they truly existed, he could and should have attached them to his log. As it is, the log does not even refer to them.

**4.23** The research that ACC Sweeney claimed to have undertaken into the subjects of Operation Shire on 2 March extended beyond obtaining the intelligence chronology and that day's PowerPoint presentation. He told the Inquiry that he had asked a member of his staff to obtain additional information concerning the antecedent histories of Robert Rimmer and Mr Grainger.<sup>50</sup> His staff officer, he said, had given him a verbal briefing about it. That, too, was something he had not mentioned in any of his previous accounts,<sup>51</sup> nor had he made a record of it at the time.<sup>52</sup> Initially, he told Mr Beer QC that the person concerned would have accessed the Central Operational Policing Unit (“COPU”) system and open internet sources in order to obtain the information he wanted. Later, however, he said he had made a mistake about the nature of the searches that had been conducted:

When I was talking to Mr Beer this morning, when I said the staff officer gave me some information, I said it comes from COPU, and that was inaccurate. It actually came from the OPUS system, which was our general policing system ... That is where some of the information came from ... The staff officer ... had looked at it during the day and given me the information.<sup>53</sup>

**4.24** ACC Sweeney added that it was possible that his staff officer had accessed the GMPics database in addition to OPUS.<sup>54</sup>

**4.25** Upon receiving that evidence from ACC Sweeney, the Inquiry asked GMP to conduct an electronic audit to determine whether, during the period between 1 March 2012 and

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<sup>47</sup> Sweeney, TS/3429:1–3430:6.

<sup>48</sup> Sweeney, TS/3366:16–20; TS/3431:23–3432:1.

<sup>49</sup> Sweeney, TS/3433:2–10.

<sup>50</sup> Sweeney, TS/3327:25–3328:2; TS/3329:8–15.

<sup>51</sup> Sweeney, TS/3329:20–22.

<sup>52</sup> Sweeney, TS/3345:14–19.

<sup>53</sup> Sweeney, TS/3426:23–3427:12.

<sup>54</sup> Sweeney, TS/3430:13–23.

3 March 2012, any of its officers had, indeed, accessed the OPUS, GMPics, Police National Computer (“PNC”) or PNC (Hendon) databases for information concerning David Totton, Mr Grainger or Mr Rimmer. The audit<sup>55</sup> revealed that no such research had been undertaken by any GMP officer in relation to any of the three subjects of Operation Shire on 2 March 2012.

**4.26** I do not believe that ACC Sweeney undertook or commissioned any research connected with Operation Shire during the day on 2 March. His statement of 23 March, in which he seeks to give the impression that he did, is seriously misleading in the following specific respects:<sup>56</sup>

- (i) The “briefing” ACC Sweeney received from his predecessor at 09:00 amounted in reality to little more than confirmation that nothing had happened overnight and nothing was expected to happen over the weekend.
- (ii) The briefing (such as it was) did not, in any event, relate to an “on-going” firearms operation, ACC Heywood (who remained duty SFC for the rest of the day) having already rescinded the previous authority earlier that same morning.
- (iii) ACC Sweeney therefore had no reason to conduct any kind of “review” before the evening of that day, and did not do so.
- (iv) Accordingly, he had no need to (and did not) speak to or otherwise consult Operation Shire’s SIO or the outgoing TFC.
- (v) Having thus, contrary to his account, received no information or intelligence to suggest that the subjects of Operation Shire were preparing to commit an offence that weekend, he had no grounds to suppose that they were about to do any such thing, and consequently did not need to (and did not) consider whether a further MASTS deployment would be required.
- (vi) It follows that he did not set an operational strategy or instruct Supt Granby to develop contingency plans.
- (vii) It was only during his telephone conversation with Supt Granby at 20:45:45 on 2 March<sup>57</sup> that ACC Sweeney, without setting a working strategy or agreeing a tactical plan, authorised the deployment of firearms officers for the following day, Saturday 3 March.

**4.27** Further, I do not accept ACC Sweeney’s evidence that he obtained a hard copy of the intelligence chronology or a hard copy of the PowerPoint briefing presentation from the previous armed deployment. Neither do I believe him when he claims that he asked a member of his staff to interrogate computerised police databases on his behalf or that he received (without making any record) a verbal briefing from his staff officer about the antecedent histories and criminal backgrounds of Mr Rimmer and Mr Grainger. ACC Sweeney had no more need to seek such information that day than he had to conduct any other kind of research involving Operation Shire. Had he done so, he would have made the request by email, rather than dispatching a staff officer on a two- or three-mile round trip to obtain hard copies. Even if, for some reason, he had chosen to insist upon hard copies, it is inconceivable that he would have consigned them to classified waste after learning that Mr Grainger had been fatally

<sup>55</sup> Bundle R/477–491.

<sup>56</sup> The numbering of the sub-paragraphs in the list corresponds to the numbering in paragraph 4.9.

<sup>57</sup> Mark Granby, handset billing records (precise time to seconds), Bundle R/546.

shot by an officer acting under his authority. Nor, if these matters were true, would he have omitted to mention any of them in the witness statement of 23 March 2012 in which he was otherwise so conspicuously astute to particularise the diligence with which he claimed to have undertaken his duties as SFC. Finally, the assertion in his written statement of 18 December 2014 that the “new information” that caused him to authorise a fresh firearms deployment came to him “during the evening of Friday 2nd March and continued throughout the 3rd March” contradicts his evidence to the Inquiry.<sup>58</sup>

**4.28** ACC Sweeney’s motive for making his misleading witness statement of 23 March 2012 was the obvious one: following the unexpected death of Mr Grainger, he was anxious to deflect any criticism that might be directed against him personally by seeking to convey the impression that he had done everything “by the book”. His primary motive for trying to mislead this Inquiry in his oral evidence is related, but slightly more involved. It was, I believe, to bolster his assertion that the entries in his official SFC log are at least approximately contemporaneous with the events they describe. Unfortunately, for reasons set out in the following section of this chapter, my investigation into what actually happened on the evening of 2 March has led me to the conclusion that some, at least, of those entries were not completed until the following day or even later.

## **B. The firearms authorisation**

**4.29** It was, in fact, Operation Shire’s SIO, DI Cousen, who took the first step to seek a further firearms authority, and by the time he did so it was already after 7 p.m. on 2 March. Until then, nobody in the TFU had any inkling that there would be another Operation Shire firearms deployment over the weekend. That evening, however, DI Cousen became aware of some intelligence that caused him to seek further assistance from the firearms unit. He was at home when he received a verbal dissemination by telephone from “C3”, of GMP’s Confidential Unit.

**4.30** In my separate closed Report, I have accepted that C3 relayed to DI Cousen an assessment that the intelligence probably related to a forthcoming robbery. From DI Cousen’s point of view, the most significant detail was the information that any robbery was likely to happen the next day (Saturday 3 March) or the following Monday (5 March), for this meant that the information demanded a prompt response.

**4.31** At 19:07,<sup>59</sup> therefore, DI Cousen telephoned GMP’s on-call TFC, Supt Granby, in order to brief him with a view to obtaining a new firearms authority<sup>60</sup> to cover the following day. In the course of their conversation, DI Cousen told Supt Granby that the assessed intent of the subjects was to commit a robbery the following day (Saturday) or, if not then, on Monday. For reasons covered in my closed Report, I am of the view that the assessed intent of the subjects was more ambiguous than DI Cousen and, through him, the firearms commanders were led to believe. What is more, at the very moment that DI Cousen and Supt Granby were discussing the situation by telephone

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<sup>58</sup> Sweeney, witness statement, 18 December 2014, Bundle H/14. See also his Operation Idris interview, Bundle L/215.

<sup>59</sup> Robert Cousen, witness statement, 11 April 2017, Bundle R/564, §13; Granby, witness statement, 11 April 2017, Bundle R/568, §1; Cousen, handset billing records, Bundle R/551.

<sup>60</sup> Cousen, witness statement, 30 May 2012, Bundle E/7 (as corrected at E/10).

(although neither officer realised it), the stolen Audi was already on its way back to Salford from yet another uneventful visit to the centre of Culcheth.<sup>61</sup>

**4.32** Supt Granby, who retired from the police service in September 2014, was not himself a firearms practitioner.<sup>62</sup> Although he had some knowledge of an earlier operation relating to Mr Totton and Paul Corkovic,<sup>63</sup> he had not become aware of Operation Shire until the morning of 2 March, when an unidentified officer told him that a MASTS firearms authority relating to a Salford-based organised crime group (“OCG”) had just been rescinded.<sup>64</sup>

**4.33** Where an investigating officer wishes to brief a TFC for the purpose of seeking a firearms authority, the usual course of events in a pre-planned operation, as Supt Granby knew,<sup>65</sup> is for a face-to-face risk assessment meeting to take place. Such a meeting facilitates the TFC’s fulfilment of his mandatory obligation to “assess and develop the available information and intelligence, and complete the threat assessment”.<sup>66</sup> For example, it enables the investigator to provide the TFC with documents which the latter can read in the investigator’s presence, asking questions and directing further enquiries where appropriate. Normally, also, a tactical adviser (“TA”) attends the risk assessment meeting;<sup>67</sup> indeed, the *Manual of Guidance* expressly provides that the TFC “should consult a tactical adviser as soon as practicable”.<sup>68</sup> Given that Supt Granby, although an experienced TFC, had never personally qualified as an AFO, and had not been involved in any of the previous Operation Shire MASTS deployments, the need for him to seek expert advice was all the more acute.

**4.34** Supt Granby nevertheless elected to conduct his discussion with DI Cousen by telephone and without the participation of a TA.<sup>69</sup> He gave a number of reasons for doing so:

My assessment was, I am probably going to be on duty for a reasonable time tomorrow, probably better that both [Mr Cousen] and I put things in action so that staff can be warned and we have got ... the necessary authorisations in place, so that the following morning, we are both ... fresh and ready to go.<sup>70</sup>

**4.35** That explanation, in my view, comes perilously close to advocating an “authorise first, think later” approach. However, there were other factors:

I think the other issue that I was aware of was that this was not the first time that a firearms authorisation had been sought for this operation. And certainly, I was aware that ... a colleague had applied his mind, with the benefit of tactical advice, to a very similar set of circumstances relating to the same three named people, probably 36 hours prior to ... the conversation I was having with Mr Cousen.<sup>71</sup>

<sup>61</sup> Vehicle tracking data download, Bundle K/1051.

<sup>62</sup> Granby, TS/3483:10–12.

<sup>63</sup> Granby, witness statement, 13 October 2014, Bundle E/498.

<sup>64</sup> *Ibid.*

<sup>65</sup> Granby, TS/3509:15–3510:9.

<sup>66</sup> ACPO, ACPOS and NPIA (2011) *Manual of Guidance on the Management, Command and Deployment of Armed Officers*, third edition, §5.22.

<sup>67</sup> Granby, TS/3509:15–3510:9.

<sup>68</sup> ACPO, ACPOS and NPIA (2011) *Manual of Guidance on the Management, Command and Deployment of Armed Officers*, third edition, §5.22.

<sup>69</sup> Stephen Allen, TS/3087:23–3088:2.

<sup>70</sup> Granby, TS/3513:13–18.

<sup>71</sup> Granby, TS/3514:7–15.

- 4.36** Again, that reasoning seems to imply that Supt Granby viewed his role as being primarily to expedite the process of authorisation, at the expense of postponing critical scrutiny or even dispensing with it altogether.
- 4.37** How thorough was Supt Granby's telephone discussion with DI Cousen? Supt Granby told the Inquiry that he thought it had lasted about 25 minutes.<sup>72</sup> In fact, DI Cousen's handset billing records show that it took 17 minutes and 41 seconds.<sup>73</sup>
- 4.38** What record did Supt Granby make of the conversation, and when did he make it? His official log<sup>74</sup> gives the location of the risk assessment meeting as "Tel con/email", the date as "2/3/12" and the time as "1900". According to Supt Granby,<sup>75</sup> the last refers to the start of the conversation, but it is only approximately correct, as the call actually began at 19:07.<sup>76</sup> He explained that, as TFC cover, he usually kept a blank log in his briefcase. His earlier statement<sup>77</sup> that he had started his TFC log on arrival at the TFU at 05:20 on 3 March was, he told the Inquiry, an error. He thought he had put in some basic background information on the evening of 2 March, but had only entered the detail the following day.<sup>78</sup> I do not accept that claim.
- 4.39** An inspection of Supt Granby's log<sup>79</sup> and handwritten notes<sup>80</sup> covering the period in question does not enable me to come to any firm conclusion as to when or in what order those documents were compiled. On any view, most if not all of the log must have been written after Supt Granby had received CI Lawler's email of 19:41, for that message is mentioned early in the text of the log. In fact, the very first sentence refers to the relevant information and intelligence being recorded in the TFC "booklet" for "Authority 75/12". That official designation happens to be contained in the subject heading of CI Lawler's email. I think that is probably where Supt Granby got it from, and I strongly suspect that his entire log entry was not even begun until after 2 March.
- 4.40** I am afraid I did not find Supt Granby to be an entirely reliable witness. In certain respects, he struck me as evasive and lacking in candour. His careful choice of words was, it is fair to say, sometimes motivated by a desire to be scrupulously accurate or to avoid the inadvertent disclosure of sensitive material. There were, however, other occasions when he selected verbal formulations which, while not falsifiable on a literal level, were nevertheless misleading. I have already noted a similar tendency in his superior officer, ACC Sweeney, with reference to the latter's witness statement of 23 March 2012.
- 4.41** To take a single example, it was not entirely candid of Supt Granby to include in his very first witness statement the claim that in April 2011 he had "participated in the Specialist Firearms Commander Programme delivered in Northern Ireland by the Police Service of Northern Ireland [PSNI]"<sup>81</sup> without revealing that he had failed it. He made the assertion in the context of setting out his qualifications and experience as a firearms commander. It was intended to impress. It implied, without saying so in as many words, that Supt Granby was an accredited specialist firearms commander.

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<sup>72</sup> Granby, TS/3515:7–8.

<sup>73</sup> Cousen, handset billing records, Bundle R/551.

<sup>74</sup> Granby, TFC policy file and decision log, 2–3 March 2012, Bundle F/381.

<sup>75</sup> Granby, TS/3519:15–21.

<sup>76</sup> Cousen, handset billing records, Bundle R/551.

<sup>77</sup> Granby, witness statement, 13 October 2014, Bundle E/500.

<sup>78</sup> Granby, TS/3520:22–3521:5.

<sup>79</sup> Granby, TFC policy file and decision log, 2–3 March 2012, Bundle F/381.

<sup>80</sup> Granby, handwritten notes, Bundle K/205.

<sup>81</sup> Granby, witness statement, 15 March 2012, Bundle E/53. See also Chapter 8 on training.

When Mr Beer QC asked him about it, Supt Granby explained that attendance at the PSNI course was by invitation only, adding:

I was invited to go on that course, the invitation being on the basis that I was recognised in Greater Manchester Police as being a highly competent tactical commander.<sup>82</sup>

- 4.42** It would, as Mr Beer QC courteously suggested,<sup>83</sup> have been more straightforward for Supt Granby to have revealed the true position in his first witness statement, but it was only after he was expressly asked about the matter in the context of the Independent Police Complaints Commission (“IPCC”) investigation into Mr Grainger’s death<sup>84</sup> that he did so.
- 4.43** Even assuming Supt Granby’s evidence concerning his initial briefing by DI Cousen to be completely true, it discloses a disturbing picture. He was supposed to conduct a risk assessment based on the available information and intelligence. His log merely records that the information and intelligence record was in the TFC “booklet” for Authority 75/12, the immediately preceding authorisation, which ACC Heywood had rescinded that morning and for which the TFC had been CI Lawler. Supt Granby could not possibly have seen that log, or been told of its contents, nor could he have had any confidence that he would be able to view it the following morning, for the simple reason that CI Lawler had not yet completed it (see Chapter 3). Even if he had seen CI Lawler’s log, Supt Granby would have no certainty that it was a complete and accurate record of the available information and intelligence.
- 4.44** Supt Granby told the Inquiry that the reference in his own log to that of CI Lawler was a reminder to himself to consult it when he came on duty the next day.<sup>85</sup> In any event, he said he thought he had spoken to CI Lawler about the matter on the evening of 2 March,<sup>86</sup> after his discussion with DI Cousen had come to an end. Since Supt Granby was at home at the time,<sup>87</sup> any conversation with CI Lawler would necessarily have taken place by telephone; indeed, he said as much in one of his witness statements.<sup>88</sup> Supt Granby’s itemised handset billing records do not, however, include any call to CI Lawler on the evening of 2 March. The first call from Supt Granby’s handset after DI Cousen’s call to him, less than three minutes after that conversation had ended, was to a number attributed to ACC Heywood.<sup>89</sup> The connection lasted just 55 seconds and was immediately followed by a text message to the same number.<sup>90</sup> I think the most probable explanation for Supt Granby’s efforts to contact ACC Heywood is that he was hoping to save himself some trouble by obtaining the threat assessment and working strategy relating to the firearms authority (75/12) that ACC Heywood had rescinded that morning. His efforts resulted in some form of contact between Supt Granby and CI Lawler (probably through a message<sup>91</sup> conveyed by ACC Heywood or somebody else on ACC Heywood’s behalf) because, not much more than ten minutes after Supt Granby’s text message to ACC Heywood, CI Lawler forwarded to

<sup>82</sup> Granby, TS/3485:12–15.

<sup>83</sup> Granby, TS/3486:24–3487:24.

<sup>84</sup> Granby, TS/3486:5–23; witness statement, 11 August 2012, Bundle E/61.

<sup>85</sup> Granby, TS/3521:11–17.

<sup>86</sup> Granby, TS/3521:21–3522:10.

<sup>87</sup> Granby, TS/3512:20–21.

<sup>88</sup> Granby, witness statement, 13 October 2014, Bundle E/498.

<sup>89</sup> Granby, handset billing records, Bundle R/546.

<sup>90</sup> *Ibid.*

<sup>91</sup> See entry for 19:30 in Supt Granby’s handwritten notes at Bundle K/206: “Message – Mike Lawler re last job”.

Supt Granby an email<sup>92</sup> containing his threat assessment and working strategy from the previous deployment.

**4.45** The rest of Supt Granby's log entry covering his conversation with DI Cousen contains a bland outline of the background to Operation Shire:

Revised intelligence is located in SIO's policy book. This is sensitive intelligence.

Op Shire has been running for several months.

Additional info in email from TFC Mike Lawler @1941.

[Redacted passage indicating that the assessed intent of Mr Totton, Mr Grainger and Mr Rimmer was to commit a robbery on Saturday or Monday.]

Cross-reference with other sources – indicates capability and intent of named subjects.

Stolen car on false plates is parked in Boothstown area.

Subjects have been actively recce-ing Culcheth area – although not clear what target is.

Intel flow > SIO > TFC.

[Short redacted passage.]

Technical on 3 vehicles:

Grainger's VW Golf.

Rimmer's Audi.

Stolen Audi.

Insufficient evidence (CPS believe) to arrest currently. However, if 3 subjects are located in stolen vehicle, this moves towards evidential requirement.<sup>93</sup>

**4.46** Supt Granby told the Inquiry that the phrase "other sources" referred to the three subjects' nominal profiles, parts of which DI Cousen read to him over the telephone.<sup>94</sup>

**4.47** Supt Granby's log entry covering his conversation with DI Cousen discloses no evidence of any independent assessment of the potential threat, much less of the working strategy that might be required to meet it. Although DI Cousen was making a fresh application for a firearms authority, Supt Granby treated it as a continuation of the one that ACC Heywood had rescinded that morning. Without bothering to consult a TA, he assumed that the previous authority had been properly considered by CI Lawler and that the circumstances of the proposed firearms deployment remained unchanged from those of its predecessor. On that flimsy basis, he simply adopted CI Lawler's threat assessment and working strategy from the previous deployment without subjecting them to critical scrutiny. In effect, he abdicated his personal responsibility in the interests of expediency.

**4.48** In those circumstances, it is small wonder that Supt Granby failed to identify a full range of tactical options and failed to assess the risks and benefits associated with his chosen strategy. In fact, he seems to have reduced the range of options. In those respects, Supt Granby failed to meet the standards to be expected of a reasonably competent TFC, as set out in national guidance.<sup>95</sup>

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<sup>92</sup> Bundle Y/6.

<sup>93</sup> Bundle F/385–386.

<sup>94</sup> Granby, TS/3524:18–3525:9.

<sup>95</sup> Ian Arundale, TS/7125:5–14.

**4.49** Supt Granby's motives were pragmatic rather than dishonourable. He foresaw the potential need to have a MASTS team briefed and ready for deployment early the next day. As he said himself:

I think the practicalities added to the situation. I think my main decision-making was more about getting things up and running the following morning.<sup>96</sup>

**4.50** He hoped to obtain tactical advice in the morning:

It was my decision for the TAC advice to be received the following day, when the intelligence picture would be clearer.<sup>97</sup>

**4.51** Irrespective of whether the intelligence picture would be any clearer the next day, the proper time to take tactical advice is before authorisation, not afterwards. As Supt Granby was forced to concede, the important decisions – those which most needed to be informed by the views of a TA – would already have been taken by the following morning.<sup>98</sup> In effect, he was postponing consideration of the merits of DI Cousen's request for a firearms authority until after the SFC had granted it, apparently by reference to his own duty as TFC to "monitor the need for the continued deployment of AFOs" and "review and update the tactical plan".<sup>99</sup> He explained his approach in the following exchange with Mr Beer QC:

Question: By that time, the following morning, the important decisions, the ones that require TAC adviser's input, would have been taken: the decision to deploy, the development of the tactical plan, the working strategy, the contingencies?

**Answer: The authorisation had been granted, tactical parameters had been put in place, very much in line with the previous operation. But I think, sir, as we talked about before in relation to the manual of guidance, it talks about that – the ongoing assessment. So, my view was very much: this was ... a really useful opportunity to reassess where we were and the proposed tactical option. So that opportunity to, sort of, revisit the decisions that had been made the previous evening.**<sup>100</sup>

**4.52** That approach was not "a judgement call not to follow exactly the *Manual of Guidance*",<sup>101</sup> as Supt Granby rather coyly characterised it, but a fundamental departure from established procedure, which obscured – if it did not entirely obliterate – the proper division of responsibilities between commanders. That is because it is for the SFC, not the TFC, to authorise the deployment of AFOs and set the working strategy; those, according to the *Manual of Guidance*, are his core ("must") responsibilities;<sup>102</sup> the core ("must") elements of the TFC's job<sup>103</sup> are to complete the threat assessment, monitor the need for the continued deployment of AFOs, and review and update the tactical plan. If final consideration of the merits of a decision to authorise the deployment of AFOs is deferred until after the SFC has already given it, who is to carry out the later consideration? Is it to be the same SFC who originally granted authorisation, or, if he is off duty or otherwise unavailable, a different SFC? Is the TFC to undertake it in the purported discharge of his duty to monitor the need for the continued deployment of AFOs? When must it be done? Can it be deferred until after the AFOs have been

<sup>96</sup> Granby, TS/3529:16–18.

<sup>97</sup> Granby, witness statement, 21 December 2014, Bundle H/31.

<sup>98</sup> Granby, TS/3527:11–24.

<sup>99</sup> ACPO, ACPOS and NPIA (2011) *Manual of Guidance on the Management, Command and Deployment of Armed Officers*, third edition, §5.22.

<sup>100</sup> Granby, TS/3527:11–24.

<sup>101</sup> Granby, witness statement, 21 December 2014, Bundle H/36.

<sup>102</sup> ACPO, ACPOS and NPIA (2011) *Manual of Guidance on the Management, Command and Deployment of Armed Officers*, third edition, §5.20.

<sup>103</sup> *Ibid.*, §5.22.

briefed? If they are “stood down” before being deployed, can it be dispensed with altogether and the authority simply rescinded? The answers to such questions are not to be found in the *Manual of Guidance*, for the simple reason that commanders who adopt the “authorise first, think later” approach have so comprehensively cut themselves adrift from the *Manual* that they are left with no alternative but to improvise.

**4.53** It is true that the *Manual of Guidance* contemplates limited circumstances in which a tactical commander may approve the deployment of AFOs, but that is only with a view to subsequent review and ratification (or rescission) by a strategic commander and “where a Strategic Firearms Commander is not yet in place”.<sup>104</sup> That was not the situation on Friday 2 March or Saturday 3 March 2012; as early as 20:45:45, not much more than an hour after receiving CI Lawler’s email message, Supt Granby was speaking by telephone<sup>105</sup> to ACC Sweeney, GMP’s Force SFC for the weekend.<sup>106</sup>

**4.54** Even if a face-to-face meeting was not practicable at that hour on a Friday evening, there was no good reason why Supt Granby should not have consulted a TA by telephone. Tactical advice is available to GMP commanders at all hours of the day and night.<sup>107</sup> Although a MASTS operation, if authorised, would need to be ready for briefing at 06:00 the following morning, the situation was not especially urgent.<sup>108</sup> As Supt Granby admitted,<sup>109</sup> there was nothing to stop him from picking up the telephone and speaking to a TA there and then.

**4.55** Supt Granby and ACC Sweeney regarded the new authority as, in substance, a continuation of its predecessor. Supt Granby, while acknowledging that DI Cousen’s request for firearms support amounted to “a new operation”,<sup>110</sup> nevertheless treated it as a renewal of the authority that ACC Heywood had rescinded that morning:

Question: Can you explain the reasons that you were getting an email that [Mr Lawler] had sent to his SFC the previous day?

**Answer: I think the rationale was that, albeit this was not an ongoing firearms operation, in terms of timescales it very much felt like it could have been, so I was applying in some ways the principles that I would apply taking on a revised or an ongoing operation from a colleague.**<sup>111</sup>

**4.56** ACC Sweeney claimed to have taken a similar view. In a witness statement dated 23 March 2012, he said that on the morning of 2 March he had “received a briefing regarding a number of on-going firearms operations within the Force”, including Operation Shire.<sup>112</sup> During ACC Sweeney’s evidence to the Inquiry, Mr Beer QC challenged him on that point:

Question: It wasn’t an ongoing firearms operation, was it? It had –

**Answer: Yes, it had paused because the authority had been rescinded, however the operation was continuing.**

Question: In what sense was it continuing if at 0900 in the morning the operation had been closed down, everyone had gone home, the authority had been rescinded and there was no current plan to mount a new operation? Why was it “continuing” but had been “paused”?

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<sup>104</sup> *Ibid.*, §5.21.

<sup>105</sup> Granby, handset billing records, Bundle R/546.

<sup>106</sup> Sweeney, TS/3303:5–14.

<sup>107</sup> Granby, TS/3529:19–22.

<sup>108</sup> Granby, TS/3511:1–9.

<sup>109</sup> Granby, TS/3529:19–22.

<sup>110</sup> Granby, TS/3503:1. See also TS/3508:5–16.

<sup>111</sup> Granby, TS/3532:20–3533:2.

<sup>112</sup> Sweeney, witness statement, 23 March 2012, Bundle E/46.

**Answer: Because there was potential for the information/intelligence coming in over the weekend.**

...

Question: I am trying to understand for the chairman's benefit whether this was a paused operation, as you have described it; or in fact an operation that had ended, there was not a firearms operation in being at all, and that all Mr Heywood was doing was chatting to you, as he I think described it –

**Answer: Sorry, sir, I think my point would be there was no ongoing firearms deployment, but the investigation was continuing, and the briefing I received and had received was to enable me to be in a position to deal with any emerging information and intelligence that took place over the weekend when I was on cover.<sup>113</sup>**

**4.57** I do not think ACC Sweeney was being entirely ingenuous in that exchange. He had put forward an entirely contrary view in a witness statement of 18 December 2014 prepared for GMP in answer to the prosecution the Force was then facing for an alleged health and safety offence:

The previous firearms authority which was rescinded earlier on the 2<sup>nd</sup> March by ACC Heywood was complete. That particular authority was not continuing and there was no requirement for a specific handover. The criminal enquiry was being continued by the SIO. ACC Heywood continued in his role as the duty SFC during the rest of the 2<sup>nd</sup> March and informed me of the updates of the previous authority and the reasons why the authority was rescinded. There had been no movement of the suspects that previous day.<sup>114</sup>

**4.58** It is difficult to resist the impression that here, as on other occasions, ACC Sweeney's view depended on the purpose for which he was being invited to give it.

**4.59** ACC Sweeney's approach to a request for a firearms authority in what he said he regarded as an on-going operation was to ask what had changed fundamentally from the previous operation.<sup>115</sup> The drawbacks of such an approach are, perhaps, less obvious and less superficial than the attractions. On the face of it, where a firearms authority is sought within 24 hours of a previous authority having been rescinded in relation to the same investigation, it might seem sensible to adopt the earlier threat assessment and working strategy as a template (subject to the latest intelligence), and rather pedantic to insist upon repeating the procedures required by the *Manual of Guidance*. That view, however, conceals a number of unwarranted assumptions. One is that the previous authority had been properly granted in the first place, and the underlying threat assessment and working strategy correctly formulated and accurately recorded. Another is that successive MASTS operations in support of the same investigation are liable to involve threat assessments, working strategies and tactical plans that are, if not interchangeable, at any rate very similar. Yet another is that any supervening changes in the available intelligence can always be accommodated by amending the previous tactical plan.

**4.60** Even in a relatively short-lived and straightforward investigation, those assumptions are apt to mislead. In a longer and more complex case, they may be very dangerous. Operation Shire provides a case in point. By 3 March 2012, it had been running for many weeks. There had been a total of nine previous MASTS briefings<sup>116</sup> pursuant

<sup>113</sup> Sweeney, TS/3307:4–3308:15.

<sup>114</sup> Sweeney, witness statement, 18 December 2014, Bundle H/8.

<sup>115</sup> Sweeney, TS/3269:21–23.

<sup>116</sup> Briefings on 15 December 2011; 26, 27, 30 and 31 January 2012; 1, 2 and 3 February 2012; and 2 and 3 March 2012.

to four firearms authorities<sup>117</sup> (see Appendix E). From an investigation of one OCG, it had mutated into an investigation of another group, comprising different subjects who were acting independently of the original group. At various stages, it targeted a suspected plot to rob security firms of cash and other valuables in Stoke-on-Trent, and a suspected conspiracy by different men to carry out robberies of an unspecified nature against unknown targets in the St Helens and Culcheth areas.

**4.61** Important changes could even take place overnight, as they did – unrecognised by senior firearms commanders (see paragraph 4.31) – between the MASTS deployments of 2 March and 3 March. DI Cousen, Operation Shire’s SIO, told the Inquiry that 2 March had been “a different deployment”<sup>118</sup> from 3 March and had been “responding to a different set of circumstances”.<sup>119</sup> On the earlier date, the investigating team had been anticipating a “lie-in-wait” robbery similar to a crime that had taken place some years earlier in Preston, in which the robbers, having broken into a bank overnight, had detained arriving staff at gunpoint and forced them to surrender the strong room keys.<sup>120</sup> By the morning of 3 March, that hypothesis had receded in the minds of investigators, who thought it more likely that any robbery in Culcheth (if it took place that evening) would assume a more conventional form. The distinction was significant because it affected the tactical plan. A “lie-in-wait” robbery might conceivably lead to a “siege”, with the robbers holding innocent hostages. In order to avoid such a dangerous outcome, the tactical plan on 2 March had been to prevent the subjects from reaching Culcheth by arresting them before they got there. That was not the plan on 3 March.

**4.62** Whether the investigating team was correct in its assessment of the available intelligence is, for this purpose, beside the point. The fact is that, for the deployment of 3 March, neither the SFC (ACC Sweeney) nor the TFC (Supt Granby) realised that the SIO believed the circumstances to have altered significantly since the previous evening. Had those firearms commanders taken a fresh approach to the proposed deployment of 3 March in accordance with the *Manual of Guidance*, instead of treating it as a “continuation” of the previous deployment, they might have appreciated the situation correctly and prepared the operation and briefed the firearms team accordingly. As it was, “Q9” ultimately ended up with the inaccurate impression that the subjects were assessed to be bent on a “lie-in-wait” armed robbery at Sainsbury’s supermarket in Culcheth.

**4.63** That was not DI Cousen’s fault. In briefing Supt Granby, he had not gone into detail about the Preston robbery, nor did he later tell ACC Sweeney about it.<sup>121</sup> He could hardly be expected to anticipate that both commanders, instead of judging matters afresh on the strength of his briefing, would simply appropriate the threat assessment that CI Lawler had prepared in response to a completely different briefing two days earlier. It was for the TFC, not the SIO, to ensure the accuracy of any information and intelligence briefed to AFOs.<sup>122</sup> If Supt Granby did not wish to check the briefing personally, he should at least have submitted it to DI Cousen for that purpose.<sup>123</sup> In the event, he did not do so, with the unsatisfactory result that on 3 March the AFOs got a

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<sup>117</sup> Firearms Authority 363/11, 365/11, 27/12, 75/12 and 77/12; 77/12 was the authority for the events of 3 March 2012.

<sup>118</sup> Cousen, TS/1470:19–20. See also TS/1287:14–16 and TS/1305:10–12.

<sup>119</sup> Cousen, TS/1470:19–20.

<sup>120</sup> Cousen, TS/1470:21–1471:21.

<sup>121</sup> Cousen, TS/1307:18–22.

<sup>122</sup> Arundale, TS/7091:6–16.

<sup>123</sup> Arundale, TS/7094:14–25.

cut-and-pasted rehash of an earlier briefing that nobody from the TFU had bothered to check or update.<sup>124</sup>

**4.64** The shoddiness of that process carried serious practical implications for the tactical plan on 3 March. Not only did that morning's briefing significantly overstate some aspects of the intelligence case regarding Mr Grainger's past criminality, but, even more seriously, it also omitted two vitally important pieces of information, which AFOs badly needed to know and which, had commanders been aware of them, might well have fundamentally altered their tactical plan. First, it made no mention of Mr Totton having survived an attempted assassination in the Brass Handles public house in Salford in 2006, during the course of which his two assailants were shot dead – an example of inter-gang violence involving the use of firearms to cause fatal injuries. Second, it contained no reference to the circumstances of Mr Grainger's conviction of 4 December 1997 for dangerous driving (as well as taking a conveyance without consent and driving while disqualified),<sup>125</sup> which had involved Mr Grainger using the car he was driving as a weapon to evade arrest by repeatedly driving it into collision with a police vehicle (see Chapter 2).

**4.65** Given that (i) the police officers were occupying unmarked cars and wearing plain clothes, their only visible police insignia being so small as to be practically useless (see Chapter 5), and (ii) the tactical plan on the evening of 3 March required the driver of the leading police vehicle to station it directly in front of the stolen Audi, which Mr Grainger was almost certain to be driving, those missing pieces of information were, as Ian Arundale QPM (the Inquiry's expert witness) hardly needed to explain, of the utmost relevance to firearms commanders and officers alike:

Question: Do you regard those as all potential sources of intelligence that could have been briefed to the firearms officers on the morning of the 3rd?

**Answer: Yes, sir. Not just to the firearms officers on the 3rd, I would say. I would also say to the SFC and the TFC prior, for two main sets of reasons. The driving of the vehicle was relevant in terms of a decision to consider specialist munitions. Particularly the Brass Handles issue would indicate a level of violence between OCGs which would have relevance to the nature of police tactics on the 3rd. It should be a consideration that shots had been fired between an OCG, and an inappropriate police response may be misconstrued as an attack by another OCG.**

Question: Dealing with those in turn, I think you have seen the video recording of the incident on 4 December 1997?

**Answer: Yes, sir.**

Question: Would you agree that a reasonable view of what is shown is that Mr Grainger's driving was violent?

**Answer: Yes, sir.**

Question: Would you have expected more information about that offence, or that incident, to have been discovered and briefed out to the SFC, the TFC and then the firearms officers on the 3rd?

**Answer: Yes, sir. This is an example where I said that information which is not particularly relevant to the investigation ie current evidence, previous incidents is more relevant sometimes to AFOs and commanders.**

Question: Yes. Would the Brass Handles incident fall into the same category?

**Answer: Very much so, yes.**

<sup>124</sup> Arundale, TS/7096:1–14.

<sup>125</sup> Bundle F/1062.

Question: To what extent would, or should, firearms commanders work on the basis that if they are dealing with an alleged OCG, there will be standing risk that they might misinterpret the approach of plain clothes police officers as another rival OCG?

**Answer: Yes, that is a well-known issue, and that is contained within guidance, and part of the manifestation of that is that officers should be readily identifiable as police officers at the scene of an arrest.**<sup>126</sup>

**4.66** Like Supt Granby,<sup>127</sup> ACC Sweeney seems to have taken the view that in a “continuing operation” (an expression which, as we have already seen,<sup>128</sup> he clearly regarded as embracing the proposed deployment of 3 March), it was not strictly necessary for a new TFC to seek tactical advice before briefing a new SFC, provided his predecessor had done so and the incoming TFC obtained tactical advice “as soon as he could get it”.<sup>129</sup> He did not know – because Supt Granby did not tell him<sup>130</sup> – that Supt Granby had not consulted a TA before speaking to him, but he assumed that the previous TFC (CI Lawler) must have done so, and he expected Supt Granby to obtain tactical advice early the following morning.<sup>131</sup> When Mr Beer QC pointed out that the process of planning and preparing the AFOs’ briefing would already have been completed by that stage, ACC Sweeney insisted that there would still be time to make amendments to the plan and briefing presentation, if any were necessary.<sup>132</sup>

**4.67** ACC Sweeney was under a misapprehension as to the terms in which the *Manual of Guidance* expressed the TFC’s duty to consult a TA:

Question: The *Manual of Guidance* includes taking advice by a TFC from [a TA] as a “should” requirement ... You agree with that?

**Answer: Yes – should “where appropriate”, sir, I think it says, or “when appropriate”. It is either “where” or “when” appropriate, I am sorry.**<sup>133</sup>

In fact, the *Manual of Guidance* provides that the TFC should consult a TA “as soon as practicable”.<sup>134</sup>

**4.68** CI Lawler forwarded his threat assessment and working strategy to Supt Granby at 19:40 on 2 March.<sup>135</sup> According to Supt Granby’s handwritten notes, it was just over an hour later, at 20:45, that he telephoned ACC Sweeney to seek his authority for the deployment of firearms officers the next day. That time is confirmed by the handset billing records,<sup>136</sup> which disclose a call from Supt Granby’s number to that of ACC Sweeney at 20:45:45 that evening.

**4.69** Despite the fact that his original handwritten note was plainly correct in timing the start of the call to ACC Sweeney at 20:45, Supt Granby oddly chose to change it when making his witness statement in relation to these events (on 15 March 2012), stating that he had made contact with ACC Sweeney “at approximately 2040 hours”.<sup>137</sup> In the

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<sup>126</sup> Arundale, TS/7097:17–7099:12. See also TS/7166:3–7168:4.

<sup>127</sup> Granby, TS/3526:1–11.

<sup>128</sup> Sweeney, TS/3307:4–3308:15.

<sup>129</sup> Sweeney, TS/3302:5–3303:4.

<sup>130</sup> Granby, TS/3530:17–24.

<sup>131</sup> Sweeney, TS/3336:22–3337:9.

<sup>132</sup> Sweeney, TS/3338:8–3339:2.

<sup>133</sup> Sweeney, TS/3339:3–9.

<sup>134</sup> ACPO, ACPOS and NPIA (2011) *Manual of Guidance on the Management, Command and Deployment of Armed Officers*, third edition, §5.22.

<sup>135</sup> Bundle Y/6.

<sup>136</sup> Granby, handset billing records, Bundle R/546.

<sup>137</sup> Granby, witness statement, 15 March 2012, Bundle E/55.

same statement, he went on to say that he had received ACC Sweeney's confirmation that the deployment of armed officers was authorised "at 2055 hours".<sup>138</sup> The statement thus conveys the impression that ACC Sweeney's authority had been preceded by a discussion lasting up to 15 minutes. In fact, the entire telephone call between the two commanders had lasted just six minutes and 42 seconds,<sup>139</sup> concluding at 20:52:27. Mr Arundale QPM was later to describe that as "very short for this type of policing deployment".<sup>140</sup> In my view, it provided nowhere near enough time for proper consideration of the issues, even by highly experienced commanders.

- 4.70** At 20:53, Supt Granby forwarded CI Lawler's threat assessment and working strategy to ACC Sweeney.<sup>141</sup> At 20:55 (the time at which Supt Granby said in his statement that he had received "confirmation that the deployment of armed officers was authorised"), ACC Sweeney replied to Supt Granby in these terms:

Granbers

Approved had this earlier from Steve [ACC Heywood] earlier this evening I concur and adopt the strategy and threat assessment.

Review in the morning let's be lucky.

Regards

Terry<sup>142</sup>

- 4.71** ACC Sweeney's own timing of the telephone conversation underwent a similar process of evolution. In his first witness statement on 23 March 2012, he simply said:

At 8.50 p.m. I agreed in a telephone conversation with the Tactical Firearms Commander, [Mark Granby], the tactical plan around an option of Mobile Armed support to the surveillance operation.<sup>143</sup>

- 4.72** Seven months later, on 22 October 2012, he made an additional statement in which he expanded his earlier account, but modified the time at which the telephone conversation had begun:

At approximately 2040 hours [on 2 March 2012] I had a telephone conversation with Superintendent Granby, Tactical Firearms Commander, where I received a comprehensive briefing. Superintendent Granby had received an intelligence update from Detective Inspector Rob Cousen and I was fully updated with this.

The request was for a firearms authority in relation to ongoing investigations into DAVID TOTTON, ANTHONY GRAINGER and possibly ROBERT RIMMER and other associates. In my previous role as lead of Serious Crime I was fully aware of the intelligence picture and the threat posed by DAVID TOTTON and ANTHONY GRAINGER. We discussed the specific intelligence picture in relation to the operational activity and I recorded this summary in my Strategic Firearms Commanders Log.

I authorised a firearms authority satisfied the criteria was [sic] met.<sup>144</sup>

- 4.73** The entry in the SFC log to which that statement refers is timed at 20:45, which happens to agree with the time recorded in Supt Granby's handset billing records, a piece of information which would presumably have been readily retrievable by ACC Sweeney from his own handset. The log contains a separate entry timing the SFC's decision

<sup>138</sup> *Ibid.*

<sup>139</sup> Granby, handset billing records, Bundle R/546.

<sup>140</sup> Arundale, TS/7076:11-7077:1.

<sup>141</sup> Bundle Y/6.

<sup>142</sup> Bundle Y/8.

<sup>143</sup> Sweeney, witness statement, 23 March 2012, Bundle E/47.

<sup>144</sup> Sweeney, witness statement, 22 October 2012, Bundle H/1A.

to authorise at 20:50.<sup>145</sup> In his oral evidence (given before the relevant billing records had come to light), ACC Sweeney told the Inquiry that he thought the authorisation process had taken “about 10 or 15 minutes”, pointing out that his confirmation email to Supt Granby was timed at 20:55.<sup>146</sup> As he conceded to Mr Beer QC, however, he had actually taken the decision at 20:50, during a telephone conversation with Supt Granby,<sup>147</sup> which, at six minutes and 42 seconds, cannot have allowed anywhere near enough time for the “comprehensive briefing”<sup>148</sup> that ACC Sweeney claimed to have received from Supt Granby.

**4.74** Stripped of unnecessary detail, the true sequence of events is as follows.<sup>149</sup>

- (i) DI Cousen telephoned Supt Granby at 19:07. Their conversation lasted until 19:25.
- (ii) Supt Granby wrongly assumed that the circumstances of the proposed deployment had not changed since the previous day and took a short cut. Without obtaining tactical advice, and without discussing the situation with his predecessor, CI Lawler, he immediately<sup>150</sup> got in touch with ACC Heywood, the previous day’s SFC, in the hope of obtaining the threat assessment and working strategy that had been prepared for the previous deployment.
- (iii) At 19:40, CI Lawler, who had still not completed the relevant entry in his own TFC log, forwarded to Supt Granby an email containing his threat assessment and working strategy.
- (iv) At 20:45:45, Supt Granby telephoned the new duty SFC, ACC Sweeney and, without telling him that he had not obtained tactical advice, sought a fresh authority to deploy firearms officers.
- (v) At 20:53, following a discussion lasting less than seven minutes, and without himself taking any tactical advice, ACC Sweeney verbally authorised the deployment, with Supt Granby at the same time<sup>151</sup> forwarding to ACC Sweeney the threat assessment and working strategy that CI Lawler had sent him just over an hour earlier.
- (vi) Two minutes later, at 20:55, ACC Sweeney emailed Supt Granby, confirming the authority he had already granted by telephone, adopting without amendment the previous deployment’s threat assessment and working strategy, and directing a review the following morning.

**4.75** When he was asked about his exchange of messages with Supt Granby on the evening of 2 March, ACC Sweeney insisted that his email of 20:55 did not, as its plain wording suggests, signify that he was adopting CI Lawler’s threat assessment and working strategy from the previous deployment. He claimed that he was actually referring to an amended version that he and Supt Granby had agreed during their telephone conversation (which had, of course, taken place before any emails were exchanged). It was not an explanation that I found easy to follow:

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<sup>145</sup> Bundle F/336.

<sup>146</sup> Sweeney, TS/3335:1–9.

<sup>147</sup> *Ibid.*; see also his witness statement dated 23 March 2012, Bundle E/47.

<sup>148</sup> Sweeney, witness statement, 22 October 2012, Bundle H/1A.

<sup>149</sup> I have rounded times to the nearest minute.

<sup>150</sup> Granby, handset billing records, Bundle R/546.

<sup>151</sup> Email from Granby to Sweeney timed at 20:53, Bundle Y/8.

Question: You say: “Approved. I had this from Steve earlier this morning. I concur and adopt the strategy and threat assessment.”

**Answer: Yes.**

Question: Doesn’t that mean you were concurring with and adopting the strategy and threat assessment that was set out on the attached email?

**Answer: No. It means that I concur and adopt the strategy that we discussed with the amendments to the attached email.**

Question: You had already –

**Answer: Had the conversation with Mr Granby.**

Question: – had the conversation?

**Answer: Yes.**

Question: Wouldn’t the natural reading of this mean that you are now concurring and adopting Mr Lawler’s –

**Answer: Yes, yes, I understand, sir. Yes, you probably would agree to that, but that is not what actually happened.**

Question: Can you explain why, if that is the natural reading of those words, but they do not reflect the reality of the situation, you used them?

**Answer: No, other than we had a conversation, we had exchanged emails very quickly around that time, and basically that is what happened. So, a lot of the issues within Mr Lawler’s threat assessment and working strategy are consistent with what occurred into Mr Granby’s, but there were some differences. That was the point I was trying to make.<sup>152</sup>**

- 4.76** It is true that there are some differences between the threat assessment and working strategy set out in CI Lawler’s email and the threat assessment eventually recorded in the TFC log by his counterpart for the 3 March deployment, Supt Granby. However, there are also differences between the 3 March threat assessment and working strategy as recorded in the logs of ACC Sweeney and Supt Granby. Regrettably, I find myself unable to accept ACC Sweeney’s explanation of his message to Supt Granby. I believe it means exactly what it says. ACC Sweeney simply adopted CI Lawler’s threat assessment and working strategy as it stood, without consideration, on the basis that the details could be discussed and finalised in the morning.
- 4.77** ACC Sweeney and Supt Granby doubtless took the view that, as the criteria for deploying firearms officers had been met in relation to the subjects of Operation Shire as recently as the previous day, they would inevitably be met again. It was for that reason that they took what they wrongly regarded as an acceptable short cut. Granting the authority straight away would enable the necessary resources to be put in place overnight, and they could always deal with the “details” – the threat assessment, the working strategy, the tactical parameters and the tactical plan – first thing in the morning. For the sake of expediency, they adopted an “authorise first, think later” policy in blatant disregard of the *Manual of Guidance*.
- 4.78** Whether a decision to authorise the deployment of firearms officers was warranted is beside the point. I have no doubt that it was. Mr Arundale QPM clearly thinks so.<sup>153</sup> The failure to adhere to the correct process is nevertheless significant, because there is far more to such a decision than the mere fact of authorisation. A firearms authority may be justified, yet seriously flawed. The adoption of a working strategy, the setting of tactical parameters and the formulation of a tactical plan are not mere procedural

<sup>152</sup> Sweeney, TS/3363:8–3364:18.

<sup>153</sup> *Report of Ian Arundale QPM*, 4 November 2016, §291.

preludes to a decision to authorise. They are not incidentals – “admin” or “paperwork” to be completed at leisure after the event. They are an integral part of the authority itself, for they are what defines its content. It is therefore essential to consider them carefully at the very outset and, as far as possible, get them right.

**4.79** ACC Sweeney sought to justify his approach by saying that the question for him was whether anything had fundamentally changed from previous operations.<sup>154</sup> That is not a methodology advocated by the *Manual of Guidance* and, as applied by ACC Sweeney and Supt Granby, it did not work. Circumstances had indeed changed since the previous night’s operation, but that was something they failed to detect. The reason they failed to detect it is that they misinterpreted the absence of overnight activity as an indication that the intelligence position had not materially altered. If they had followed the *Manual of Guidance* strictly, they would have realised that the Robbery Unit investigators had significantly revised their assessment of what the subjects of Operation Shire were up to in the light of the fact that the previously anticipated threat of a night-time “lie-in-wait” robbery had not, after all, materialised.

**4.80** It is perfectly true that there was some amendment to the threat assessment presented at the AFOs’ briefing on 3 March. For example, whereas the threat assessment in the slide presentation for 2 March had stated that the risk to the general public “at point of police interception will be higher at the point of any police containment interception should the subjects get inside any premises”,<sup>155</sup> the equivalent section of the presentation for 3 March was significantly amended by the deletion of the important words “should the subjects get inside any premises”.<sup>156</sup> Conceding that he had probably been the person responsible for making that amendment,<sup>157</sup> Supt Granby admitted that at the time he had not been aware of the shift in focus between the two operations.<sup>158</sup> I think what occasioned the amendment was Supt Granby’s realisation on the morning of 3 March that “the issue of cash in transit custodians as potential targets was absent”.<sup>159</sup>

**4.81** What happened on the evening of 2 March 2012 was this. For reasons of convenience, the strategic and tactical commanders wrongly assumed that the next day’s deployment would effectively be a re-run of the operation covered by the authority that ACC Heywood had rescinded earlier that day, and on that basis took the view that they could safely postpone critical scrutiny of the working strategy, tactical parameters and tactical plan until the next morning. The main problem with such an approach, quite apart from the fact that it contravenes a number of requirements of the *Manual of Guidance*, is that by the time they were in a position to “review” the decision to authorise a MASTS deployment in the light of tactical advice, the die had already been cast; the AFOs had all been ordered to parade for duty and would be expecting to be briefed on the day’s operation first thing in the morning. In any event, the underlying assumption was incorrect; whereas the previous authority had been intended to meet the threat of a night-time “lie-in-wait” robbery involving the kidnapping of staff at gunpoint, DI Cousen was seeking the new deployment in order to meet the threat of a “conventional” armed robbery during the hours of daylight (including, but not confined to, a “cash-in-transit” robbery).

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<sup>154</sup> Sweeney, TS/3269:21–23.

<sup>155</sup> Bundle F/453.

<sup>156</sup> Bundle F/1271.

<sup>157</sup> Gist 5, §5.

<sup>158</sup> TS/3665:6–3666:5.

<sup>159</sup> Granby, TS/3554:4–9.

- 4.82** The fact that both ACC Sweeney and Supt Granby, having initially timed the telephone conversation of 2 March at 20:45, subsequently revised that time to “approximately 2040”, implies an awareness on the part of each of them that their discussion had been too cursory to enable ACC Sweeney to give adequate consideration to the request for a fresh firearms authority. To replace a precise and accurate time with a less precise and less accurate one is, on the face of it, a decidedly strange thing to do. Both officers gave evidence before the relevant handset billing records had become available to the Inquiry. ACC Sweeney claimed that the time (20:45) he recorded in his log represented the time at which he had begun to write the entry, rather than the time at which the events it described had taken place.<sup>160</sup> In his oral evidence to the Inquiry, he was anxious to convey the impression that the authorisation process had begun rather earlier than his log entry suggested and had occupied up to 15 minutes.<sup>161</sup> Supt Granby denied having amended the time in order to “pinch” an extra five minutes, thereby making it appear that the discussion had taken longer than it really had.<sup>162</sup> He was unable to offer any alternative explanation, however, and I cannot think of one. I believe that ACC Sweeney and Supt Granby substituted “approximately 2040” for “at 2045” in the hope of masking the extreme brevity of their telephone discussion. It is a small point, but a revealing one. While the expression “approximately 2040” is not literally false, its deliberate adoption by both officers in place of “at 2045” can only have been intended to obscure the true position.
- 4.83** ACC Sweeney’s SFC log<sup>163</sup> confirms that he was substantially adopting his predecessor’s threat assessment and working strategy from the previous deployment. It also, unfortunately, raises serious concerns as to when he completed it. Leaving aside the frontispiece, the first completed section is the “Information/Intelligence Overview”:

This operation is subject to sensitive intelligence. I have received a briefing from ACC Heywood regarding the recent operational deployments that relate to the actions of three principal subjects;

Subject 1: David Totton, 32 years.

Warning signs: FI [firearms], WE [weapons], VI [violence].

Subject 2: Robert Rimmer, 26 years.

Warning signs: VI, WE.

Subject 3: Anthony Grainger, 35 years.

Warning signs: VI, WE.

The information/intelligence to date indicates the intention of the subjects is to commit armed robberies around NW England.

The subjects are believed to have been responsible for an armed robbery in Preston in 2008 where they broke into a bank premises and held staff at gunpoint using a shotgun + handgun.

Subjects have access to stolen vehicles to facilitate offences.<sup>164</sup>

- 4.84** Anyone reading that section might naturally suppose that the source of its contents had been ACC Heywood’s “briefing”, at 09:00 on 2 March, of which the entry is therefore a summary. That is not so. ACC Sweeney did not make any written record of his conversation with ACC Heywood, whether in his SFC log or elsewhere.<sup>165</sup> His evidence as to where he obtained the information was confused and contradictory.

<sup>160</sup> Sweeney, TS/3331:23–3332:16.

<sup>161</sup> Sweeney, TS/3332:17–20; TS/3334:12–3335:9.

<sup>162</sup> Granby, TS/3535:16–3537:8.

<sup>163</sup> Bundle F/320.

<sup>164</sup> Bundle F/324.

<sup>165</sup> Sweeney, TS/3314:2–7.

Having initially agreed that the entry in his log was not a record of his conversation with ACC Heywood,<sup>166</sup> he went on to say that he had copied the subjects' warning signals from the previous deployment's "briefing pack",<sup>167</sup> which he had not obtained until later that morning.<sup>168</sup> Even the opening sentence, referring to "sensitive intelligence", was something he had written afterwards, having got it from Supt Granby during their telephone conversation at 20:45:45; it referred to intelligence verbally disseminated to DI Cousen at 18:00 on 2 March to the effect that, as ACC Sweeney put it, the subjects planned to undertake a robbery offence on either Saturday 3 March or Monday 5 March. The final section of the entry, relating to the 2008 Preston robbery, had come from the PowerPoint presentation.<sup>169</sup> He told the Inquiry that the intervening passage to the effect that the subjects were intending to commit armed robberies around North West England had originated partly from ACC Heywood's "briefing" in the morning and partly from what Supt Granby later told him during their telephone conversation at 20:45:45.<sup>170</sup> On that last point, the evidence of Supt Granby (which, in this particular matter, I accept) expressly contradicts him.<sup>171</sup>

**4.85** Subject to trivial changes of wording, virtually all the information set out in ACC Sweeney's log entry also appears in the PowerPoint presentations for 2 March and 3 March, which are identical in those respects. The information about the subjects and their warning signals is to be found in the subjects' individual threat assessments.<sup>172</sup> The rest of the information and intelligence recorded in ACC Sweeney's log is to be found in the slide headed "Information/Intelligence", with the following wording:

The subjects of this operation are believed to be engaged in armed robberies in the North West Region.

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

The subjects have access to a stolen red Audi A6 estate displaying a VRM [vehicle registration mark] LO08 LOD. This vehicle is currently parked in Boothstown.<sup>173</sup>

**4.86** The only relevant detail in ACC Sweeney's log that does not fully correspond to the PowerPoint is his note that the subjects had access to stolen vehicles (plural); the PowerPoint simply refers to the stolen red Audi A6. In that respect, ACC Sweeney's log entry was out of date; the OCG had originally been in possession of an additional stolen car (a blue BMW; see Chapter 2), but the police had recovered it on 9 February 2012.<sup>174</sup>

**4.87** There can be no doubt, as ACC Sweeney himself agrees, that when he wrote out his log entry he had the PowerPoint in front of him.<sup>175</sup> He accepts that it was from that document that he obtained the subjects' warning signals and the facts of the 2008 Preston robbery. That only leaves his note that "the intention of the subjects is to commit armed robberies around NW England". ACC Sweeney's evidence was that

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<sup>166</sup> *Ibid.*

<sup>167</sup> Sweeney, TS/3324:20–3325:5.

<sup>168</sup> Sweeney, TS/3316:11–12.

<sup>169</sup> Sweeney, TS/3325:7–9; see also TS/3296:1–7.

<sup>170</sup> Sweeney, TS/3341:10–3342:25.

<sup>171</sup> Granby, TS/3540:16–24.

<sup>172</sup> Bundle F/450–452.

<sup>173</sup> Bundle F/449.

<sup>174</sup> Bundle W/67.

<sup>175</sup> Sweeney, TS/3324:24–3325:9.

he got the part about “NW England” from Supt Granby and the rest from his 09:00 conversation with ACC Heywood. It seems to me far more likely that he took the entire sentence from the PowerPoint. The relevant wording was on the same slide as the other phrases he agrees he copied and is similar to the wording of his log entry.

- 4.88** If that is right, it means that, with the exception of the introductory sentence referring to ACC Heywood’s “briefing”, ACC Sweeney took all the material in his SFC log entry concerning information and intelligence from a PowerPoint presentation – either that of 2 March or the identical slides from 3 March. What seems decidedly odd is that he did not simply make notes of his conversations with ACC Heywood and Supt Granby, choosing instead to construct his log entry by reference to information gleaned from documents he claims to have obtained before he spoke to Supt Granby on the evening of 2 March, and therefore before he could have known that there was to be a request by the Operation Shire SIO for a further firearms deployment.
- 4.89** At more than one stage, ACC Sweeney has said or implied that he made the entries in his log contemporaneously with the events they describe. In his Operation Idris interview, he said that the undated and untimed notes on page 4 of his log had been made “at that time”<sup>176</sup> (which I take to mean contemporaneously with the events they purport to record). Giving evidence to the Inquiry,<sup>177</sup> he said that it was at 09:00 that he began writing the entry on page 4<sup>178</sup> recording the fact of his morning conversation with ACC Heywood; the later entries on the same page were, he claimed, added later that day in circumstances I have already summarised. He said that he made the entry on page 6<sup>179</sup> of his log the same evening, after his conversation with Supt Granby.<sup>180</sup> The same applies to page 18,<sup>181</sup> the recorded time of which (20:45), according to ACC Sweeney, refers to the entry itself, not the events therein recounted.<sup>182</sup> He made no written notes other than those contained in his SFC log. Although he kept a day book, he did not record anything in it which properly belonged in his SFC log.<sup>183</sup> As he told his Operation Idris interviewer, “the whole point of the log is that it gives you one source for all the records, so there would not be material in the day book that’s in that log”.<sup>184</sup>
- 4.90** Page 4 of ACC Sweeney’s SFC log, which he says he compiled as he went through the day on Friday 2 March, from 09:00, reads like a single continuous entry summarising what ACC Heywood had told him at roughly that hour. ACC Sweeney admitted in his evidence to the Inquiry that it was not a summary of his conversation with ACC Heywood.<sup>185</sup> I have already explained why I reject ACC Sweeney’s explanation that he assembled that entry from different sources at different times on 2 March. I am sure the entire page was completed at one and the same time. Since, for reasons I have already set out, ACC Sweeney did not obtain access to the intelligence chronology or the previous deployment’s slide presentation during Friday 2 March, he cannot have written the entry at 09:00 and I do not believe he even began it at that time.

<sup>176</sup> Bundle L/215.

<sup>177</sup> Sweeney, TS/3424:17–20.

<sup>178</sup> Bundle F/324.

<sup>179</sup> Bundle F/326.

<sup>180</sup> Sweeney, TS/3425:11–3427:13.

<sup>181</sup> Bundle F/338.

<sup>182</sup> Sweeney, TS/3331:23–3332:16.

<sup>183</sup> Bundle L/224.

<sup>184</sup> *Ibid.*

<sup>185</sup> Sweeney, TS/3314:2–7.

- 4.91** There is no evidence that the intelligence chronology or PowerPoint presentation were emailed to ACC Sweeney. His claim (which I have rejected) that he tasked a staff officer to bring him hard copies on Friday 2 March necessarily involves an admission that the copy he undoubtedly used to compile his log had not arrived by email. But, if he did not access these documents during the day on the Friday and he was at home that evening, he cannot have obtained access to either document until, at the earliest, Saturday 3 March.
- 4.92** Internal evidence suggests that the entire SFC log was written at one and the same time. There are, it is true, some slight differences between the wording of the log and the documents from which its contents were taken, but the similarities are more significant. The log reproduces the misspelling of Culcheth as “Culceth”, an error which appears at one point<sup>186</sup> in the slide presentation in the AFOs’ briefing early on 2 March (and consistently throughout the threat assessment and working strategy by CI Lawler, which Supt Granby emailed to ACC Sweeney on 2 March).<sup>187</sup> Significantly, precisely the same misspelling also features on the very last completed page of ACC Sweeney’s log, in an entry timed at 19:37 on 3 March, an entry which post-dates, and indeed refers to, the death of Mr Grainger.<sup>188</sup> It is theoretically possible, of course, that ACC Sweeney might have made the same mistake independently of CI Lawler, but it seems unlikely. The more probable explanation is that, having taken the misspelling from the slide presentation or emailed threat assessment and working strategy, he carried it over into subsequent entries.
- 4.93** The existence of differences between ACC Sweeney’s wording of the working strategy in the log, dated as commenced 2 March and completed 3 March, and the version subsequently briefed to AFOs on the morning of 3 March, provides a further indication that ACC Sweeney’s SFC log was not truly contemporaneous. As ACC Sweeney agreed, the correct process is that the TFC recommends a working strategy to the SFC, who reviews and, if necessary, amends it.<sup>189</sup> The SFC’s final draft is, therefore, the definitive version that should form the basis of the AFOs’ briefing. That, however, is not the sequence revealed by the apparent documentary trail for the deployment of 3 March.
- 4.94** To take an example, the list of objectives in Supt Granby’s proposed working strategy includes: “Minimise risk to subjects by ensuring tasked officers are trauma-trained and have a less lethal option”.<sup>190</sup> The wording recorded in ACC Sweeney’s SFC log, and ostensibly agreed by him, is markedly less specific, reading simply: “Minimise risk to the subjects”.<sup>191</sup> That, however, was not the final version briefed to AFOs, which unaccountably reverted to the original wording recorded in the TFC log. Unless Supt Granby had for some reason taken it upon himself to ignore his superior officer’s amendment, which I do not believe, the implication is that he did not see ACC Sweeney’s version of the working strategy until after the AFOs’ briefing, something Supt Granby confirmed in his oral evidence to the Inquiry;<sup>192</sup> indeed, he had still not seen ACC Sweeney’s SFC log by the time he came to make his first witness statement on 15 March 2012.<sup>193</sup>

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<sup>186</sup> Bundle F/453.

<sup>187</sup> Y8 emailed at 20:53 on 2 March 2012.

<sup>188</sup> Bundle F/341.

<sup>189</sup> Sweeney, TS/3282:7–24. See also TFC log, Bundle F/401.

<sup>190</sup> TFC log, Bundle F/401.

<sup>191</sup> SFC log, Bundle F/331.

<sup>192</sup> Granby, TS/3557:23–3558:4.

<sup>193</sup> Granby, TS/3549:19–21.

**4.95** From the bare fact that Supt Granby did not see the SFC log on 3 March, it does not, of course, automatically follow that the log did not then exist. There is, however, another, less ambiguous discrepancy between the versions of the working strategy recorded in the two commanders' logs. One significant respect in which the working strategy for 3 March differed from its predecessor lies in its addition of a separate threat assessment for "cash in transit custodians". That new element must have been added before the AFOs were deployed on 3 March, for it appears in the slide presentation for their briefing under the heading: "Threat Assessment from Tactical Firearms Commander".<sup>194</sup> The TFC was, of course, Supt Granby. He told the Inquiry that he had revised the working strategy that morning:

I had reflected on the working strategy that had been sent through to me from Mike Lawler and then on to Mr Sweeney, and I was mindful, bearing in mind the information that we had around potential targets, that the issue of cash in transit custodians as potential targets was absent, and I ... wanted to ensure that we captured that in the working strategy and that was something that obviously I would, you know, review with Mr Sweeney for agreement at a later time.<sup>195</sup>

**4.96** The omission of any reference to cash-in-transit staff was, Supt Granby said, something that had only struck him on the morning of 3 March,<sup>196</sup> from which it follows that he cannot have discussed it with ACC Sweeney during their telephone conversation the previous evening.

**4.97** In a written statement, DI Cousen had suggested that the addition of a reference to cash-in-transit custodians in the risk assessment and working strategy was, at least in part, a response to the receipt of new intelligence:

[O]n the 3rd March the operation was responding to new specific intelligence and a change can be seen on the firearms briefing threat assessment and working strategy where Cash in Transit custodians have been added but hadn't featured previously.<sup>197</sup>

**4.98** Giving evidence to the Inquiry, DI Cousen denied that there was specific intelligence identifying cash-in-transit personnel as the likely target for any robbery,<sup>198</sup> explaining that the change to the threat assessment resulted from a reappraisal reflecting a combination of factors:

Question: Why were the changes made?

**Answer: Because it [i.e. cash in transit] was one of the considerations.**

Question: But a sufficiently strong or significant consideration to require the addition of cash in transit as a specific risk and to be included in the working strategy?

**Answer: Yes. As a result of the intelligence from the night previous, and the following day's deployment, we knew there would be a cash delivery – we had already had the information that it was going to be a cash delivery, I think, some time around about noon. So it had to be a consideration.**<sup>199</sup>

**4.99** That explanation is consistent with my view that the events of the night of 1–2 March had caused the investigation team to downgrade – if not discard altogether – the hypothesis that Operation Shire's subjects might be planning a "lie-in-wait" robbery.

<sup>194</sup> Bundle F/1271; cf. Bundle F/453, the equivalent page for 2 March, which contains no reference to cash-in-transit custodians.

<sup>195</sup> Granby, TS/3554:4–14.

<sup>196</sup> Granby, TS/3555:13–15.

<sup>197</sup> Cousen, witness statement, 16 December 2014, Bundle H/93.

<sup>198</sup> Cousen, TS/1421:24–1422:3.

<sup>199</sup> Cousen, TS/1422:4–15.

Not only had the anticipated threat (which the early morning 2 March armed deployment was specifically designed to meet) failed to materialise, but the Audi's unexpectedly early evening visits to Culcheth on 1 March and again on 2 March meant that it was no longer tenable as a working assumption.

**4.100** At the same time, I do not believe that Supt Granby or ACC Sweeney were alive to such considerations on 2 March, otherwise they would not have felt able, in ACC Sweeney's words, to "concur [with] and adopt"<sup>200</sup> the previous deployment's threat assessment and working strategy, which contained no reference to cash-in-transit staff, on the apparent basis that nothing had "changed fundamentally".<sup>201</sup> It was only on the morning of 3 March, when the AFOs' briefing was in preparation, that Supt Granby realised the inadequacy of his threat assessment. Whether it was something he spotted himself, or whether DI Cousen pointed it out to him during his intelligence update that morning,<sup>202</sup> is not clear. What is clear is that it was not so much the product of overnight reflection as the sudden recognition by firearms commanders of something that had not occurred to them the previous day.

**4.101** At one stage, ACC Sweeney admitted to Counsel to the Inquiry that the addition to the working strategy of a specific reference to cash-in-transit staff had resulted from a discussion he had with Supt Granby on the morning of 3 March.<sup>203</sup> In my view, the only credible explanation for the references to "CIT" (i.e. cash-in-transit) staff contained in the "Identification/Capability/Intent", "Threat and Risk" and "Working Strategy" sections of the SFC log<sup>204</sup> is that ACC Sweeney made those entries some time after that discussion. Contrary to what he told the Inquiry, I am sure that ACC Sweeney did not write that portion of his log until, at the very earliest, some time on 3 March, almost certainly after the AFOs' morning briefing. It follows that I reject his evidence<sup>205</sup> that he began writing those entries in his log soon after his earlier telephone conversation with Supt Granby in the evening of 2 March.

**4.102** It is impossible to be certain when ACC Sweeney actually did complete the relevant entries in his SFC log; I can only say that he did not do so on 2 March. The evidence does not enable me to reach any firm conclusion as to whether the log was in existence by the time Mr Grainger died. Whenever it was written, it does not constitute a truly contemporaneous record of his thought processes at the time he authorised the deployment of armed officers. It seems likely that he completed the log after the AFOs' briefing, probably lifting the relevant details from the slide presentation or from Supt Granby's log.

**4.103** In condemning ACC Sweeney's failure to complete his SFC log contemporaneously, I do not underestimate the difficulties that firearms commanders sometimes face. As Mr Arundale QPM points out, "those who have not commanded or been involved in armed deployments may not appreciate just how fast moving and hectic some armed deployments can be".<sup>206</sup> That, however, was not the position on the evening of 2 March. I can see no good reason why ACC Sweeney should not have completed the relevant entries in his SFC log during or immediately after the process of authorisation. It is one thing to postpone or curtail the recording of a decision through genuine necessity, quite

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<sup>200</sup> Email, 2 March 2012, Bundle Y/8.

<sup>201</sup> Sweeney, TS/3269:22.

<sup>202</sup> Sweeney, TS/3358:5–13.

<sup>203</sup> Sweeney, TS/3358:19–3359:8.

<sup>204</sup> Bundle F/324–336.

<sup>205</sup> For example, Sweeney, TS/3340:21–24; TS/3350:7–13.

<sup>206</sup> *Report of Ian Arundale QPM*, 4 November 2016, §340.

another to put it off for the sake of mere expediency. To take the latter course defeats one of the principal purposes of a command log, namely to provide commanders with a template for NDM-compliant decision-making, and is liable to foster a pernicious “authorise first, think later” culture (see section F of Chapter 3).

**4.104** Even where there is no choice but to record a decision after the event, the log should always incorporate a note of the time at which the entry was made. To omit such information defeats another vital purpose of the log, that of providing a strictly chronological audit trail of the commander’s thought processes, for a log entry that may have been reconstructed in the light of after-acquired knowledge is quite worthless as a record of the decision it purports to document.<sup>207</sup> That is not to demand an unduly prescriptive approach to the use of pre-printed logs; where and in what precise form commanders choose to record their decisions is less important than the accuracy and contemporaneity of the record itself. They need not slavishly record every theoretically relevant consideration, irrespective of whether it has any practical bearing on the particular task in hand.<sup>208</sup> At the same time, the intelligent use of well-designed log templates can perform an invaluable function in guiding commanders through the NDM.<sup>209</sup> Unfortunately, the deficiencies in the Operation Shire SFC and TFC logs for 3 March 2012 were not so much the product of mere administrative errors as of “fundamental issues in relation to the decision-making and command of the incident”.<sup>210</sup>

**4.105** I cannot leave the topic of command logs without making brief reference to the recording of operational firearms commander (“OFC”) decisions. If any such records were made in Operation Shire, none has survived.<sup>211</sup> For understandable reasons, some forces (including GMP) do not issue dedicated OFC log forms or templates;<sup>212</sup> it would be unreasonable to expect the OFC, one of whose roles is to direct the operational phase of an armed deployment, to make written notes while doing so. At the same time, the *Manual of Guidance* recommends that an OFC “should ensure decisions taken are recorded, where possible, to provide a clear audit trail”.<sup>213</sup> Provided doing so does not compromise security or the effective performance of the OFC’s duties, the practical advantages are obvious. One example is the automatic audio-recording of radio communications during the operational phase of a deployment, which would necessarily yield accurate and contemporaneous data. Any potential problems with regard to the security of such communications cannot be insuperable, as the fact that some police forces do record them plainly demonstrates.<sup>214</sup> Another example, where time permits, is the documentation of actions and decisions outside the final operational phase.<sup>215</sup> I can see no good reason for the complete absence of even approximately contemporaneous records of OFC decisions or actions in Operation Shire, an omission which amounts to a wholesale disregard of the relevant provision in the *Manual of Guidance*.<sup>216</sup> While the fact that the provision is not a mandatory

<sup>207</sup> Arundale, TS/6888:17–6890:3.

<sup>208</sup> Arundale, TS/7207:5–7208:17.

<sup>209</sup> Arundale, TS/6888:1–16.

<sup>210</sup> Arundale, TS/6891:11–22.

<sup>211</sup> Arundale, TS/6895:10–12.

<sup>212</sup> Some forces do: see Arundale, TS/6896:11–20.

<sup>213</sup> ACPO, ACPOS and NPIA (2011) *Manual of Guidance on the Management, Command and Deployment of Armed Officers*, third edition, §5.23.

<sup>214</sup> Arundale, TS/6897:7–16.

<sup>215</sup> Arundale, TS/6895:13–6896:9.

<sup>216</sup> ACPO, ACPOS and NPIA (2011) *Manual of Guidance on the Management, Command and Deployment of Armed Officers*, third edition, §5.23.

(i.e. “must”) requirement may reduce legitimate expectations as to the extent to which OFCs document their decisions,<sup>217</sup> it can hardly justify them in ignoring it altogether.

## C. The events of 3 March 2012

**4.106** The TA, Police Sergeant (“PS”) Stephen Allen, came on duty early on the morning of 3 March. He spoke to Supt Granby at or soon after 05:00.<sup>218</sup> That was the first input from a TA in respect of the proposed deployment, and it came long after the new authority had already been granted and only an hour before the AFOs were due to be briefed. Instead of providing advice to the TFC “as soon as practicable”,<sup>219</sup> in accordance with the *Manual of Guidance*, PS Allen was being asked to review and, in effect, ratify a decision that had already been taken.<sup>220</sup> Although he told the Inquiry he “assumed”<sup>221</sup> that he must have reviewed and discussed all available tactical options with Supt Granby, he admitted that he had made no written record of any such options in the TA log<sup>222</sup> which he jointly shared with his successor. He should have done so.<sup>223</sup> He had most of the day in which to do it. The same applies to the consideration of contingencies and special munitions.<sup>224</sup> PS Allen was honest enough to admit that, while he would like to think that he had examined contingencies, he had no recollection of having done so.<sup>225</sup> Given that the slide presentation for the AFOs’ briefing had already been drafted by the time PS Allen spoke to Supt Granby, I think it highly unlikely that any meaningful discussion about tactical options, contingencies or special munitions took place between the two officers.<sup>226</sup>

**4.107** Although ACC Sweeney’s SFC log refers to reviews during Saturday 3 March, it does not appear that PS Allen was involved in any review of tactics. There is no record of such a review in the TA log and PS Allen could not remember whether he had ever reviewed the tactics.<sup>227</sup> He conceded that reviews should have taken place after the last cash-in-transit delivery had passed without incident and the local financial institutions had closed business for the day.<sup>228</sup>

**4.108** At 15:15 on Saturday 3 March, PS Allen handed over the role of duty TA to “Y19”. Y19 inherited a TA log that was still, for all practical purposes, blank.<sup>229</sup> The only entries in PS Allen’s handwriting are the very first, which simply refers the reader to the “briefing”,<sup>230</sup> and a reference to the AFOs’ briefing and subsequent liaison with Cheshire Constabulary;<sup>231</sup> the rest is in Y19’s hand. While the TA log contains a reference to the availability of four Cheshire Constabulary Armed Response Vehicles (ARVs), they do not feature in the log as a “contingency”.<sup>232</sup> As with the commanders’

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<sup>217</sup> Arundale, TS/6897:3–6.

<sup>218</sup> Allen, TS/3090:8–14; Granby, TS/3618:17–23; TS/3620.

<sup>219</sup> ACPO, ACPOS and NPIA (2011) *Manual of Guidance on the Management, Command and Deployment of Armed Officers*, third edition, §5.22.

<sup>220</sup> Allen, TS/3090:20–3091:14.

<sup>221</sup> Allen, TS/3098:18–3099:7.

<sup>222</sup> Allen, TS/3098:1–4.

<sup>223</sup> Allen, TS/3099:14–20.

<sup>224</sup> Allen, TS/3104:11–24; TS/3107:14–24. See also Allen TS/3122:17–3123:4.

<sup>225</sup> Allen, TS/3105:17–23. See also Allen TS/3129:25–3130:5.

<sup>226</sup> See also *Report of Ian Arundale QPM*, 4 November 2016, §407; Granby, TS/14:3618–25:3620.

<sup>227</sup> Allen, TS/3112:3–12.

<sup>228</sup> Allen, TS/3112:15–3113:18.

<sup>229</sup> Allen, TS/3097:15–3098:12; Y19, TS/3190:1–7.

<sup>230</sup> Bundle C/619.

<sup>231</sup> Bundle C/625.

<sup>232</sup> Arundale, TS/6893:19–6894:6.

logs from the same deployment, that omission reflects a substantive operational failing rather than a mere recording error.<sup>233</sup>

**4.109** Although the log records that Y19 had obtained information and intelligence “as per TFC and SIO briefing and policy logs”, Y19 conceded that the entry was misleading, in that he had seen neither Supt Granby’s log nor DI Cousen’s day book.<sup>234</sup> As he admitted, he had very little written material to go on.<sup>235</sup> For that reason, he took it upon himself to complete the portions of the log that should have been completed by his predecessor but had been left blank.<sup>236</sup> In the absence of adequate written information from his predecessor or other sources, he was limited to recording the advice he thought he would have provided had he been consulted earlier, trusting that it bore some relation to advice that might or might not have been given by PS Allen:

Question: ... were these your pros and cons, or were you sort of faithfully recording that which Sergeant Allen had told you were his pros and cons?

**Answer: It would be wrong to say I was faithfully recording what Sergeant Allen had told me. I had a book that I worked from at the time, so with regards to what certain outcomes are, and so what the fors and againsts are, so but having the information relayed to me from Sergeant Allen, I was confident those reflected what some of our concerns and our positives out of it were, sir.**

Question: I am still – I appreciate you are trying to help us here, five years after the event. Was this you writing up some reasoning in relation to a decision that had already taken place but you applying your mind to: “Well, these are the options and these are the pros and cons of them”?

**Answer: Yes.**

Question: Irrespective of whether in fact they had been considered in this way previously?

**Answer: That’s correct, sir.**<sup>237</sup>

**4.110** Such a retrospective exercise, however well intentioned, thwarts the central purpose of a firearms adviser’s log. The result is useless as an “audit trail”, in that it does not reproduce the thought processes behind any of the command decisions it purports to record, and is positively misleading in simultaneously creating the false impression that it does precisely that. It is hardly surprising in those circumstances that it differs materially from Supt Granby’s entries in the TFC log<sup>238</sup> which, like his predecessor PS Allen, Y19 did not see at the time.<sup>239</sup>

**4.111** Y19’s log covers five contingencies, as opposed to the four recorded in Supt Granby’s log.<sup>240</sup> The lists ought, of course, to have corresponded one with the other. In completing his TA log, Y19 lifted the list of arrest “tipping points” from a hard copy of a slide presentation which he either found in the office or which one of his colleagues gave him (he was unable to remember how he came by it). It was in fact the presentation from the previous day’s (2 March) briefing, containing a different list from that set out in the correct document for 3 March.<sup>241</sup>

<sup>233</sup> *Ibid.*

<sup>234</sup> Y19, TS/3188:8–3189:12.

<sup>235</sup> Allen, TS/3191:1–12.

<sup>236</sup> Allen, TS/3192:6–16.

<sup>237</sup> Allen, TS/3197:9–3198:4.

<sup>238</sup> Allen, TS/3198:6–3200:12.

<sup>239</sup> Allen, TS/3188:17–19; 3200:11–19; 3219:15–16.

<sup>240</sup> Allen, TS/3218:3–3219:13.

<sup>241</sup> Allen, TS/3221:24–3223:21.

**4.112** The logs of ACC Sweeney and Supt Granby contain entries suggesting that they conducted reviews at intervals during Saturday 3 March. Those in Supt Granby's log provide some indication, however brief, of how the commanders' appreciation of the situation developed over the course of the day. The corresponding entries in ACC Sweeney's log do not.

**4.113** The first discussion took place at about 08:45. It is supported by Supt Granby's telephone handset billing records, which disclose a call to ACC Sweeney at 08:47, lasting just over three minutes.<sup>242</sup> There was another conversation two hours later, at 10:45, when some thought was given to likely robbery targets. It does not feature in Supt Granby's handset billing records, but the evidence of ACC Sweeney was that he thought he had called Supt Granby on this occasion.<sup>243</sup> The relevant entry in Supt Granby's log reads as follows:

Review with ACC Sweeney. No new intelligence. Discuss with SIO likely targets and risk period, cash in transit predominantly 1100 to 1300. Banks, building societies, Post Office all closed by 1230. Agree to review again at 1300.<sup>244</sup>

**4.114** That entry confirms that commanders had by this stage abandoned the hypothesis that the subjects of Operation Shire were planning a night-time "lie-in-wait" robbery, and were working instead on the assumption that they probably intended to attack a cash-in-transit delivery or commercial premises. Since those were risks that were likely to diminish after 13:00, it clearly made sense to review the situation further at that hour.

**4.115** The corresponding entry in ACC Sweeney's log contains no reference to the subjects' likely targets:

1056. Review strategy. Intell ongoing. No change to operational deployment staff at Leigh resting.<sup>245</sup>

**4.116** In the event, the anticipated review at 13:00 was brought forward slightly to about 12:45. Once again, Supt Granby's log gives some impression of the developing situation:

Review with ACC Sweeney. Subjects are running out of potential targets. No movement re Grainger's vehicle. No change re Rimmer. Agree to review again at 1500 hours.<sup>246</sup>

**4.117** ACC Sweeney's log merely records the following:

1243. Review strategy no change in intel, staff remain resting. Little movement from subjects of any relevance to operation.<sup>247</sup>

**4.118** The next review took place at about 14:40. This time, it is ACC Sweeney's log that goes into greater detail. First, the entry recorded in the TFC log by Supt Granby:

Reviewed current intelligence with ACC Sweeney – and ability to resource. His/our view is that we can deliver the tactic proportionate to the threat as assessed at this time.<sup>248</sup>

**4.119** By this time, the latest cash delivery had taken place two hours earlier and the financial institutions in Culcheth had all closed for the day. Supt Granby's log entry

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<sup>242</sup> Bundle R/546.

<sup>243</sup> Sweeney, TS/3395:8–11.

<sup>244</sup> Bundle F/423.

<sup>245</sup> Bundle F/339.

<sup>246</sup> Bundle F/423–424.

<sup>247</sup> F/339.

<sup>248</sup> Bundle F/424.

contains no reference to the likely targets of any robbery, or to the possibility that there was to be no robbery on 3 March, and that any visit to Culcheth might be a further reconnaissance<sup>249</sup> or even for some other criminal purpose altogether.

- 4.120** Supt Granby told the Inquiry that his assessment following this review was that the target premises were now more likely to be “late night or the evening opening business establishments”.<sup>250</sup> Although there is no reference to any such conclusion in the TFC log, it does feature in ACC Sweeney’s entry in the SFC log covering the same review:

Review strategy with TFC intelligence remains consistent with previous information. TFC considers likely premises to be late night opening possibly supermarket/Betting Office. Review tipping points with TFC/SIO consistent with original proposals subjects together in stolen vehicle, criminal [enterprise?], subject of further intelligence. Review resourcing levels/status, happy for staff to continue to be deployed. Staff been at standby at Leigh Police Station.<sup>251</sup>

- 4.121** That entry appears to reflect a telephone conversation timed at 14:37 in Supt Granby’s handset billing records, which reveal that it lasted just 35 seconds.<sup>252</sup>

- 4.122** The only further reference to a review is an entry in ACC Sweeney’s log timed at 17:49:

Review strategy with Intelligence. Supports continued deployment. [Redacted] Agree with TFC closedown by 2000 if no significant operational developments.<sup>253</sup>

- 4.123** Supt Granby’s log contains no clear reference to this conversation, although there is an entry timed at 17:50:

VW > city centre [a reference to Mr Grainger’s own VW Golf]. OFC updated. ACC Sweeney updated.<sup>254</sup>

- 4.124** The time recorded in the TFC log may be a few minutes out. Supt Granby’s handset billing records confirm that he made a call to the OFC (“X7”) at 17:45; a later call to X7, timed at 17:59, is more likely to relate to the next entry in his log, timed 18:00, in which he recorded the fact that he had updated the OFC about the recent movements of Mr Grainger’s Volkswagen Golf car. There is, however, no record of any further telephone call from Supt Granby to ACC Sweeney until after Mr Grainger had been shot.

## D. The Audi moves

- 4.125** At 18:29, the surveillance team saw the stolen red Audi set off from Salford towards the A580 “East Lancs” road. Mr Grainger, who was wearing gloves, was driving. Mr Totton was in the front passenger seat. In the back was a third male. His name was Joseph Travers. He had not previously featured in the investigation and his identity was unknown to the surveillance officers at the time.<sup>255</sup>

- 4.126** By 18:40, the Audi had arrived in Culcheth. It travelled along Church Lane towards Warrington Road (see Figure 3), stopping briefly about 50 metres from that junction. It then turned around and retraced its route along Church Lane. One minute later,

<sup>249</sup> Granby, TS/3669:3–3671:11.

<sup>250</sup> Granby, TS/3669:7–8.

<sup>251</sup> Bundle F/339–340.

<sup>252</sup> Bundle R/546.

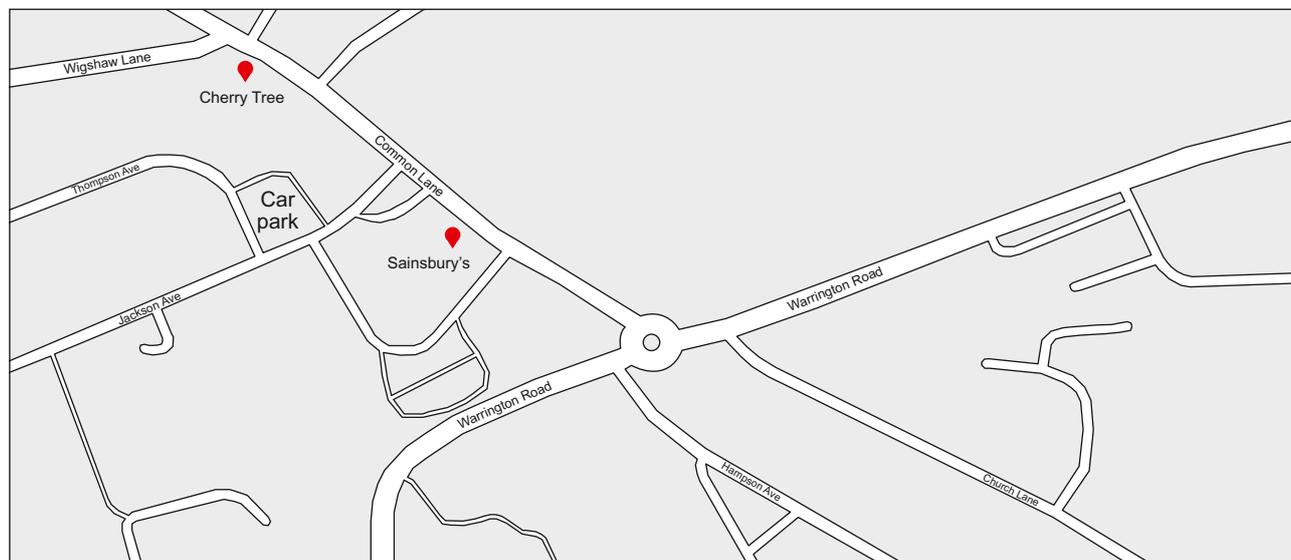
<sup>253</sup> Bundle F/340.

<sup>254</sup> Bundle F/425.

<sup>255</sup> Surveillance log, 3 March 2012, Bundle K/123.

a surveillance officer saw the Audi in Common Lane, this time travelling away from the junction with Warrington Road in the direction of Jackson Avenue.<sup>256</sup>

**Figure 3: Map of Culcheth showing Church Lane, Warrington Road, Common Lane and Jackson Avenue**



**4.127** At 18:45, the Audi turned left from Jackson Avenue into the public car park and reversed into the parking bay at the far end of the row to Mr Grainger's right as he drove into the car park. The Audi thus occupied the corner space, the vehicle and its occupants directly facing the vehicle exit onto Thompson Avenue. Although the street lamps provided some ambient illumination, the area of the car park occupied by the stolen Audi was in darkness. The vehicle was not displaying lights.<sup>257</sup>

**4.128** The only officer watching the Audi at that time was Detective Constable ("DC") John Wallace, who had stationed himself on a balcony overlooking the car park.<sup>258</sup> He kept the Audi under observation from its arrival at 18:45 until 18:52. During that period nobody got out of or into the vehicle.<sup>259</sup> Conscious that his vantage point was not "a covert position" and might compromise the surveillance operation, DC Wallace decided to move somewhere less conspicuous.<sup>260</sup> Throughout the process of moving, he was unable to see the stolen Audi. He did not regain sight of it until 19:03. Even then, he could not tell whether anyone was inside it.

**4.129** Shortly after 19:00, Supt Granby telephoned the OFC, X7, wanting to know whether the stolen Audi was still occupied. At 19:05, Police Constable ("PC") Ray Evans confirmed the presence of occupants in the front seats of the stolen Audi. At or about 19:07, having received that information, Supt Granby placed the MASTS team on State Amber (see Chapter 5).

**4.130** Between 18:52 and 19:05, Operation Shire's firearms commanders had no idea where the Audi's occupants were, let alone what they were up to. For all anyone knew, the men might have left the car and embarked upon a robbery.

<sup>256</sup> *Ibid.*

<sup>257</sup> *Ibid.*

<sup>258</sup> John Wallace, TS/839:24–842:21.

<sup>259</sup> Wallace, TS/844:20–21.

<sup>260</sup> Wallace, TS/848:22–849:23.

- 4.131** There is no evidence to suggest that Supt Granby took advantage of the opportunity afforded by the period of nearly a quarter of an hour during which the stolen Audi and its occupants were not under surveillance to consider whether any alternative tactical options (including disruption) were available or to discuss the viability of such options with X7.<sup>261</sup> If the working strategy had incorporated a “contingency” for loss of surveillance, it would have been a straightforward matter to implement it.<sup>262</sup> The problem was not so much a “collapsing time frame”,<sup>263</sup> to adopt Mr Arundale QPM’s apt expression, as the earlier failure of commanders to think through the advantages and disadvantages of alternative options when first planning the deployment.<sup>264</sup> Had they done so at the proper time, the process of revisiting such options would have been entirely feasible, need not have taken long, and might have led, even at that late stage, to a different outcome. As Mr Arundale QPM put it, “if you only start off with one option, you only have one option for resolution”.<sup>265</sup>
- 4.132** It was not necessary for commanders to conduct an exhaustive “fast-time” review of all the theoretically available generic options listed in the *Manual of Guidance*,<sup>266</sup> but they could and should have considered whether there was a more effective way of minimising risk to the public, consistent with legitimate operational objectives, than by conducting a MASTS strike in the car park in Culcheth.<sup>267</sup> Among the practical options to which they should have given thought were: (i) using the four marked Cheshire Constabulary ARVs to disrupt the subjects’ criminal activity in Culcheth (which would also have enabled commanders to “create time”<sup>268</sup> for further thinking and planning); (ii) conducting arrests, whether by means of a MASTS “strike” or otherwise, at a different time and location (for example, on the subjects’ return to Boothstown<sup>269</sup>); and (iii) conducting a MASTS “strike” without the use of specialist munitions. The working presumption ought to be that a MASTS vehicle “strike” should only be authorised and conducted when absolutely necessary and lower-risk options are clearly inappropriate in the prevailing circumstances.<sup>270</sup>

## E. In conclusion

- 4.133** Operation Shire’s firearms commanders should not have allowed themselves to become fixated with the idea that there was to be an armed robbery on 3 March. It was an obvious likelihood until 13:00, by which time the subjects had indeed “run out of targets”, or had at any rate run out of the only really plausible targets – those on which the planning of that day’s armed deployment had supposedly been based. The commanders should have considered other explanations for the actions of the subjects in travelling to Culcheth, in particular the possibility that this was to be another reconnaissance or even, perhaps, a different kind of criminal enterprise.
- 4.134** After the subjects had arrived at Culcheth, commanders should have reviewed the situation continuously and been prepared to revise their appraisal of it. They were

<sup>261</sup> *Report of Ian Arundale QPM*, 4 November 2016, §417; Arundale, TS/7107:21–7109:3.

<sup>262</sup> Arundale, TS/7073:10–16.

<sup>263</sup> *Report of Ian Arundale QPM*, 4 November 2016, §431; Arundale, TS/7071:7.

<sup>264</sup> Arundale, TS/7217:12–7218:9.

<sup>265</sup> Arundale, TS/7082:8–9.

<sup>266</sup> ACPO, ACPOS and NPIA (2011) *Manual of Guidance on the Management, Command and Deployment of Armed Officers*, third edition, §6.34.

<sup>267</sup> Arundale, TS/7105:25–7107:20.

<sup>268</sup> Arundale, TS/7070:21–7072:3.

<sup>269</sup> Arundale, TS/7069:1–11.

<sup>270</sup> *Report of Ian Arundale QPM*, 4 November 2016, §456.

not, of course, to know that the subjects had no weapons with them (although they were aware that there was no specific intelligence to suggest they did). Even if the loss of surveillance shortly before 19:00 did not cause the firearms commanders to implement the precautionary option of disruption for the safety of the public, it ought by then to have occurred to them that this was looking less and less like an imminent robbery. Top-end professional criminals who are about to commit an offence, such as robbery, that will by its very nature attract public attention, do not expose themselves to potential witnesses for any longer than is absolutely unavoidable. By 19:00, the subjects had already been loitering in this busy village centre car park for too long to make it likely that they were intending to carry out an armed robbery there and then. That consideration, coupled with the absence of any remaining plausible target and the unlikelihood that surveillance-aware professional criminals would use the very same stolen vehicle they had employed on previous reconnaissance trips, should have dictated a change of approach.

**4.135** The fundamental problem underlying the collective failure by commanders and advisers to give adequate and early consideration to alternative tactical options was their shared misconception that MASTS was itself a firearms “tactic”, rather than an operational means of supporting surveillance with an armed officer capability.<sup>271</sup> It was a misconception that, by fostering an incorrect assumption that the outcome of any MASTS deployment leading to decisive action would necessarily take the form of a MASTS “strike”, turned the entire MASTS methodology on its head. In the eyes of GMP’s TFU, MASTS became not so much a means of deploying firearms officers in support of a surveillance operation as a means of deploying surveillance officers in support of a firearms operation, the foreordained outcome of which would be an armed arrest. As deployed on 3 March, the MASTS team was not even “mobile” in any meaningful sense of the word, for it remained static and inactive at its holding points until commanders finally decided to arrest the occupants of the stolen Audi in Culcheth.

**4.136** Inspector Andrew Fitton summarised his view of MASTS (shared by his fellow TA Y19<sup>272</sup>) in these terms:

[M]y understanding of the MASTS tactic [*sic*] is it is primarily a vehicle strike, however the number of officers involved in that tactic gives you a platform, if you will, should circumstances change, ... to move to alternate tactics within it. So it is not necessarily that a vehicle strike will take place per se, it is that it is a likely outcome but other tactics can move from that depending on the change in circumstances at the time.<sup>273</sup>

**4.137** It later became clear that Inspector Fitton’s personal understanding of MASTS reflected the training he had received, and represented the prevailing practice within GMP’s TFU at the time:

Question: Would you agree that MASTS is not in fact a tactical option?

**Answer: No, sir, I think, as from my training et cetera, I have always had the assumption that MASTS really is, as I said when I was clarifying my evidence earlier on, a vehicle strike, however it has got the facility, because of the number of staff within it, to move to other tactical options to deploy from the vehicles, if you will.**

Question: Thank you. This picks up on your clarification that your training in GMP, and the way GMP operated, is this right, is that MASTS was presumed to be a vehicle strike?

**Answer: Yes, sir.**

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<sup>271</sup> *Report of Ian Arundale QPM*, 4 November 2016, §129.

<sup>272</sup> Y19, S/3201:9–3202:14.

<sup>273</sup> Andrew Fitton, TS/2526:17–25.

Question: If I suggested to you that MASTS was not meant to be, or have as its focus, a vehicle strike, but was instead just an operational method of supporting surveillance, not to stop subjects, not to intercept subjects and not to intervene, you would just say that is not how –

**Answer: That is not how I understand it.**

Question: – you understood it?

**Answer: No. I can understand the methodology you are describing, but it is not how I perceive MASTS, if you will.**

Question: Yes. That, I think, presumably originated from your training in GMP –

**Answer: Yes.**

Question: – and the way you operated in the years up to March 2012?

**Answer: Yes, sir.<sup>274</sup>**

- 4.138** The fact that conventional surveillance often took place during Operation Shire without firearms support confirms that the TFU's pragmatic assumption was that, since MASTS was – primarily, at any rate – a means of conducting armed vehicle “strikes”, there was generally little purpose in resorting to it unless planners anticipated the need for some form of armed interception or intervention.<sup>275</sup>
- 4.139** That is not to say that the use of surveillance officers in support of an armed arrest by MASTS-trained AFOs is necessarily a bad idea in all circumstances. Whether and when such a method of detaining potentially dangerous suspects might be operationally useful are questions for firearms specialists, not this Inquiry. What is clear is that it is not something that should ever be confused with the conventional MASTS platform as correctly understood. To the extent that it may have operational value, it ought to have its own dedicated procedures, which should be taught and conducted in accordance with national guidance. It is not for a local force to seek to plug a perceived hole in its repertoire of arrest techniques by unilaterally introducing a novel operational method under the guise of applying an existing one which had, in the case of MASTS, been designed for a different purpose.
- 4.140** At this distance in time, it is practically impossible to disentangle the authentic thought processes of the firearms commanders at the time of these events from their later, retrospective rationalisations of their actions and decisions. For reasons set out earlier in this chapter, their logs are all, to a greater or lesser extent, inadequate, suspect or both. I do not trust the contemporaneity of anything in ACC Sweeney's log, nor do I feel able to rely upon the accuracy of his witness statements, interviews or evidence to the Inquiry.
- 4.141** It is, however, possible to draw some broad but firm conclusions on the face of the commanders' logs. Quite apart from his failure to document his actions and decisions contemporaneously, ACC Sweeney should not have authorised the MASTS deployment without first identifying specific reasons for it, including the use of special munitions. He failed to consider alternative tactical options, whether armed or not, adopting the approach I have castigated as “authorise first, think later”. However, having postponed detailed consideration in the interests of expediency, he did not bother to return to it later. ACC Sweeney also failed to place adequate constraints on Supt Granby's tactical plan so as to ensure that Supt Granby prepared other tactical options as alternatives to a vehicle “strike”. As it was, Supt Granby failed to identify

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<sup>274</sup> Fitton, TS/2577:23–2579:3.

<sup>275</sup> Heywood, TS/2749:3–25.

a full range of tactical options and did not adequately assess the risks and benefits associated with his chosen strategy. He should have consulted a TA much sooner than he did. In the event, however, the tactical advice he received from PS Allen and Y19 was inadequate. In those respects, the performance of ACC Sweeney and Supt Granby on 3 March 2012 did not conform to national guidance and fell below the standards to be expected of reasonably competent firearms commanders. Similarly, the performance of PS Allen and Y19 fell below the standards to be expected of reasonably competent TAs.<sup>276</sup>

**4.142** The decision to deploy armed officers during Operation Shire was reasonable and consistent with national guidance. The use of MASTS as the operational methodology on 3 March 2012 was justified, but only in the original and true sense of MASTS, i.e. as a means of providing mobile armed support to surveillance, as opposed to a “tactic”. The failure of commanders to respect that important distinction caused them to treat a MASTS vehicle “strike” as the predetermined means of apprehending the subjects in the event of a decision to make arrests, with the result that they failed to consider alternative, potentially safer tactical options. That failure was the collective fault of the SFC (ACC Sweeney), the TFC (Supt Granby) and the two TAs (PS Allen and Y19). The same applies to the failure to set sufficient tactical parameters<sup>277</sup> and contingencies.

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<sup>276</sup> Arundale, TS/7124:2–7125:20.

<sup>277</sup> Arundale, TS/7057:14–7058:21.

# Chapter 5: The Sequence of Events in the Car Park

## A. Background

**5.1** There is no video or sound recording of any of the events that took place in the car park on 3 March or of any of the communications between officers during the arrest phase of the operation. None was made by officers of the Tactical Firearms Unit (“TFU”), apparently for fear of betraying sensitive details of firearms tactics in the event of any such recording being disclosed to others. Further, for reasons discussed in Chapter 9 of this Report, the apparent confidence and precision with which some of the authorised firearms officers (“AFOs”) specified the times at which certain incidents occurred is misleading. The only way of retrieving the sequence of events is therefore by careful analysis of the evidence of individual witnesses.

**5.2** I have kept in mind the extraordinary speed at which events unfolded and the inevitable confusion and uncertainty that surround a violent incident of this kind. Minute analysis, second by second, is impossible to achieve and unwise to attempt.<sup>1</sup> Nevertheless, the remarkable degree of consistency between the accounts given by different witnesses has enabled me to reconstruct the sequence in which events occurred with some confidence in its accuracy. I should make it clear that the consistency to which I have referred is not, in my judgement, a consequence of witnesses having put their heads together so as to achieve it, but results from the generally high quality of their evidence. With the sole exception of David Totton, the witnesses who gave evidence as to the sequence in which events unfolded in the car park were, I believe, doing their best to be truthful and accurate. Even Mr Totton’s evidence on this particular topic turned out to be broadly consistent with that of the AFOs.

**5.3** The principal factual questions that arise in this chapter are:

- (i) At what stage did “Q9” shoot Anthony Grainger?
- (ii) Did he shoot Mr Grainger before or after “X9” deployed the CS dispersal canister (“CSDC”)?
- (iii) Where were the other witnesses at the time of Q9’s shot?
- (iv) Where were the occupants of the stolen Audi when the CSDC was deployed?
- (v) Where were the occupants of the stolen Audi when its nearside tyres were deflated with Round Irritant Projectile (“RIP”) rounds?

The detailed actions of Mr Grainger, and Q9’s reasons for shooting him, are matters considered separately in this Report (see Chapter 6).

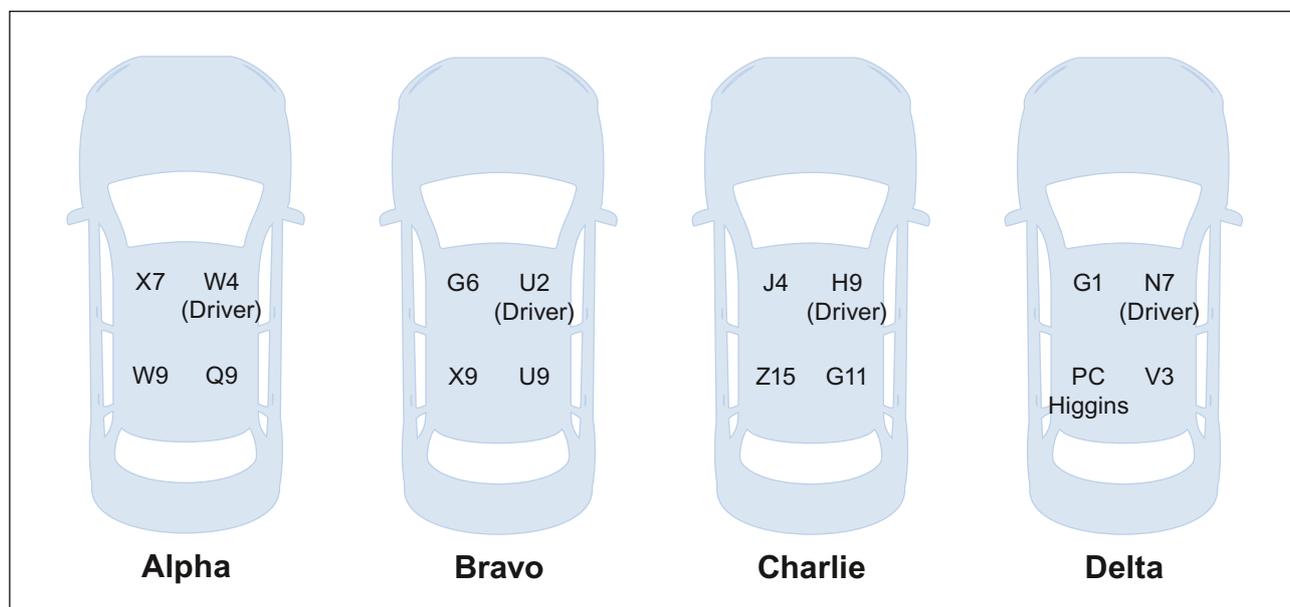
**5.4** The 16 AFOs who took part in the arrest phase on 3 March were deployed in four unmarked vehicles, of which only the first three entered the car park during the arrest phase of the operation. The leading car (“Alpha”) was an Audi A6, and contained the officers known as “W4” (driver), “X7” (front passenger), “Q9” (rear offside) and “W9” (rear nearside). The next vehicle (“Bravo”) was a Ford S-Max, and contained “U2”

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<sup>1</sup> See *R (on the application of E7) v Sir Christopher Holland* [2014] EWCA 452 (Admin) at §54, per Sir Brian Leveson P.

(driver), “G6” (front passenger), “U9” (rear offside) and “X9” (rear nearside). The third car (“Charlie”) was a Ford Mondeo, and contained “H9” (driver), “J4” (front passenger), “G11” (rear offside) and “Z15” (rear nearside). The fourth and last vehicle (“Delta”) was a Volkswagen Transporter and contained “N7” (driver), “G1” (front passenger), “V3” (rear offside) and Police Constable (“PC”) Philip Higgins (rear nearside). For ease of reference, the occupants of the police vehicles are shown diagrammatically in Figure 4.

**Figure 4: The occupants of the police vehicles on 3 March 2012**



- 5.5** Except for X9 and Z15, who were in charge of special munitions, each of the AFOs was armed with a Heckler and Koch MP5 carbine and holstered self-loading pistol, each with 30 rounds of ammunition, and a Taser with three cartridges. In accordance with that morning’s briefing,<sup>2</sup> X9 (the rear nearside passenger in Bravo) and Z15 (the rear nearside passenger in Charlie) each carried a shotgun containing special breaching rounds (“RAM rounds”), with which to immobilise the stolen Audi, and a CSDC and window-breaking hammer. X7, the front passenger in Alpha, was the operational firearms commander (“OFC”). His roles<sup>3</sup> were: (i) to assume responsibility for the placement of the Mobile Armed Support to Surveillance (“MASTS”) team once it had been placed on State Amber; (ii) to call the team to State Red; (iii) to manage the time and place of any “strike” in accordance with the strategy; and (iv) to manage the immediate aftermath of the “strike”.
- 5.6** The MASTS vehicles could communicate with one another by means of a dedicated closed radio network, and were also able to monitor the channel used by the surveillance officers. X7 used his personal mobile telephone to maintain contact with Superintendent (“Supt”) Mark Granby, the tactical firearms commander (“TFC”).
- 5.7** The stolen Audi remained in the position in which it had been observed earlier by other officers; it was stationary in the Jackson Avenue car park, facing the exit onto Thompson Avenue, having reversed into the far right-hand corner space as viewed from the vehicle entrance on Jackson Avenue (see Figure 5). Immediately to its offside was a tall, dense hedge, and behind it was a strip of grass and a fence. Parked two bays away on its nearside, facing the fence, was an unoccupied car (“the green car”)

<sup>2</sup> Bundle F/1277; Bundle C/338.

<sup>3</sup> Bundle E/86.

belonging to a member of the public. The Audi's occupants were Mr Grainger (driver), Mr Totton (front passenger) and Joseph Travers (rear passenger). They were dressed in nondescript casual clothing, but were also wearing hats that could be rolled down to form face masks and motorcycle gloves (the latter were referred to by some police officers as "tactical gloves"). Whereas the Audi's rear side windows and windscreen were heavily tinted, its front windscreen and front side windows were not, a crucial piece of information that had not been included in that morning's briefing to the AFOs.<sup>4</sup> Several of the officers were later to notice that the Audi's engine was running when they were at the scene, and one of them said the car radio was playing.<sup>5</sup> I think it unlikely that Mr Grainger started the engine after the police convoy arrived; it had probably been running throughout the vehicle's stay in the car park.

**Figure 5: The car park and surrounding area on the morning of 4 March 2012 (Jackson Avenue bottom; Common Lane top right; Thompson Avenue left; Cherry Tree public house top left)**



**5.8** For the sake of clarity, I will continue to refer to each of the occupants of the stolen Audi by name. In adopting that practice, I nevertheless keep in mind – as should the reader – that none of the AFOs knew at the time which individual was occupying which seat in the Audi. Indeed, they were not aware that one of the passengers was Mr Travers.

## B. State Amber

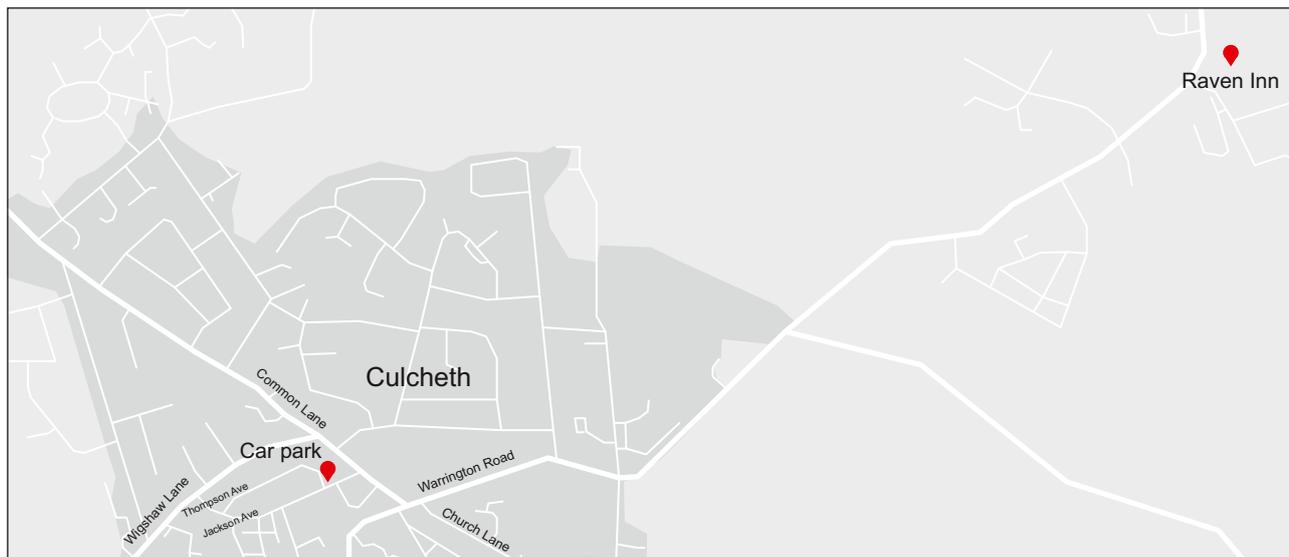
**5.9** The MASTS team had spent the day at Leigh Police Station. Upon receiving information that the stolen Audi was heading towards Culcheth, the four vehicles left Leigh (between about 18:00 and 18:15) and set off in convoy in the same direction. At the direction of the OFC, X7, they stopped in the car park of the Raven Inn on Warrington Road (see Figure 6), just over a mile from the centre of Culcheth. There, Alpha, Bravo and Charlie "laid up" awaiting further instructions, while Delta continued

<sup>4</sup> Briefing transcript, 3 March 2012, Bundle C/332. See also G6, TS/4309:13–15.

<sup>5</sup> H9, TS/5262:24–5263:9.

towards Culcheth with orders to lay up closer to the village; after exploring the area for a few minutes to find a suitable spot, Delta's driver decided to park in Church Lane.<sup>6</sup>

**Figure 6: Location of Raven Inn public house**



**5.10** At or shortly after 18:45, X7 received information that the stolen Audi had stopped in the Jackson Avenue car park, together with details of its position. The source of that information was an officer from the Dedicated Surveillance Unit (“DSU”). A short while later, at or about 18:52,<sup>7</sup> the surveillance team lost visual contact with the stationary Audi for nearly a quarter of an hour (see Chapter 4). That “significant time period where eyes were lost”<sup>8</sup> immediately compounded the risk to the public, because it meant that, for all anyone knew, the occupants of the vehicle had already left it and were on the point of committing a serious crime. It should have led (but did not) to an urgent reappraisal by firearms commanders of the tactical options available to them, in particular whether to abandon the planned “strike” and, instead, disrupt the activities of the organised crime group (“OCG”) for the immediate protection of the public.<sup>9</sup> As it was, at the end of that period, the firearms commanders (including X7) did not know whether the three occupants were still inside the vehicle.

**5.11** In his witness statement dated 9 March 2012,<sup>10</sup> X7 said:

At approximately 1900hrs I received a telephone call from J18 [Supt Granby]. As a result of the conversation I mobilised the three remaining vehicles on to Warrington Road. As I turned on to Warrington Road, I remained on the phone with J18 who told me to place the team on state AMBER.<sup>11</sup>

**5.12** When X7 gave oral evidence, it became clear that, during that conversation, Supt Granby told him there were persons inside the stolen Audi in the car park. The effect of Supt Granby placing the team on State Amber was to hand over control of the operation to X7 as OFC. Supt Granby’s mobile telephone records<sup>12</sup> show that he made two calls to X7 at about this time. The first was at 19:04:47 and lasted

<sup>6</sup> N7, TS/5754:6–24. See Figure 6.

<sup>7</sup> Bundle E/298; John Wallace, TS/22:848–849.

<sup>8</sup> Ian Arundale, TS/6989:3.

<sup>9</sup> Arundale, TS/6989:14–6990:19.

<sup>10</sup> Bundle E/88.

<sup>11</sup> *Ibid.*

<sup>12</sup> Bundle R/547.

33 seconds. The second, at 19:07:07, was a shorter call lasting just 12 seconds. X7 told the Inquiry:

I think the sequence of events was Mr Granby was on the phone to myself. Obviously, he had concerns that we had no view of [the occupants of the stolen Audi]. He asked me to try and get myself a little bit closer so we could be in a position to react, so that is when we started moving from the pub car park at a steady pace, nice and slow. And it was whilst I was on the phone during that conversation, that is when he said – that is when we got the information through that there were three in that vehicle.<sup>13</sup>

**5.13** In my view, the likeliest explanation for the two calls is that it was during the first that Supt Granby passed on to X7 the information that the stolen Audi was occupied and during the second that he put the team on State Amber.<sup>14</sup> That interpretation is consistent with the evidence of Police Constable Ray Evans, a surveillance officer who drove into the Jackson Avenue car park and confirmed the presence of occupants in the front seats of the Audi. He parked his car in a bay facing the Audi, slightly off-centre, to afford himself a better view. As he left the car park on foot, he was able to see that there were persons inside the Audi. In his witness statement dated 8 March 2012,<sup>15</sup> PC Evans gave the time at which he made that observation as 19:05, which was the time entered by the log keeper to whom he had communicated it,<sup>16</sup> and in his oral evidence to the Inquiry<sup>17</sup> he confirmed that 19:05 was the “exact time”<sup>18</sup> when he had first seen the Audi.

**5.14** It is therefore likely to have been at or very shortly after 19:05 that the remaining three MASTS vehicles left the Raven Inn car park and began heading towards Culcheth. At or about 19:07, while they were still en route, Supt Granby placed the team on State Amber, handing control of the arrest phase of the operation to X7. By that stage, given the times when the two calls were made, the team must have been very close to Culcheth, since it could not have taken more than a couple of minutes to cover the distance between the Raven Inn and the mini-roundabout at which Warrington Road meets Common Lane.

## C. State Red

**5.15** According to X7, it was as the convoy approached the mini-roundabout that he placed the team on State Red. It is not possible to fix the precise moment at which he did so. The police vehicles would by then have been not much more than 200 yards from their destination. At the mini-roundabout, they turned right onto Common Lane, and then left onto Jackson Avenue. Although the entrance to the car park is only a short distance along Jackson Avenue, the Inquiry heard evidence<sup>19</sup> that the Delta vehicle was held up by traffic.<sup>20</sup> Even so, it is unlikely to have taken the convoy more than a minute or so to cover the very short distance between the mini-roundabout and the entrance to the Jackson Avenue car park. Detective Sergeant (“DS”) Deborah Hurst, Operation Shire’s deputy Senior Investigating Officer (“SIO”), speculated that a 23-second telephone call timed at 19:10:23 that she had received from her line

<sup>13</sup> X7, TS/5474:20–5475:3.

<sup>14</sup> X7, TS/5546:17–5547:16.

<sup>15</sup> Bundle J/36. See also Ray Evans, witness statement, 29 May 2012, Bundle A/75.

<sup>16</sup> Bundle C/829.

<sup>17</sup> Evans, TS/754:19.

<sup>18</sup> Evans, TS/754:18–22.

<sup>19</sup> G1, TS/5816:20–23.

<sup>20</sup> N7, TS/5757:22–5758:4.

manager, Detective Inspector (“DI”) Robert Cousen, may have been the call during which he informed her that Mr Grainger had been shot.<sup>21</sup> If she is right about that (and I am inclined to think she is), it places a limit on the latest time at which the arrest phase ended, whence it follows that X7 had probably called State Red at about 19:07 or 19:08.

**5.16** During this stage of proceedings, DS Hurst conducted a number of telephone conversations with, among others, DI Cousen. She made no note of them and, with the exception of the call at 19:10:23, was unable to tell the Inquiry what they were about. I find it disturbing that throughout this critical “strike” phase of the operation, when her mind should have been on the task in hand, she was conducting a personal conversation by text message with Detective Superintendent (“D Supt”) Anthony Creely, whom she described as a “close friend”.<sup>22</sup> Although D Supt Creely was DI Cousen’s line manager, he was not part of Operation Shire’s investigation team. Further, as DS Hurst admitted,<sup>23</sup> none of the many messages that she exchanged with D Supt Creely had any connection with the work of either participant. I reject her claim that these private conversations did not compromise her ability to focus on her work.<sup>24</sup> In the course of her working shift on 3 March 2012, she sent no fewer than 46 text messages to D Supt Creely, including messages timed at 18:30:42, 18:51:08, 18:53:03, 18:56:43 and 18:59:15;<sup>25</sup> during the same period D Supt Creely sent 48 text messages to DS Hurst, including messages timed at 18:50:20, 18:51:59, 18:55:31, 18:58:12, 18:58:54 and 19:01:17.<sup>26</sup> DS Hurst allowed herself to be distracted by purely personal matters at a critical stage of events when she should have been devoting her full attention to the events unfolding in Culcheth.<sup>27</sup> While there is no evidence to suggest that her lack of concentration contributed to the outcome of those events, it nonetheless reflects a deplorably casual approach to her responsibilities as Deputy SIO.

**5.17** X7 told the Inquiry that his plan was a deliberately simple one.<sup>28</sup> It was that the officers from Alpha should take the driver’s side of the stolen Audi, those from Bravo should take the passenger side, and the officers in the remaining two cars should “fill in” as necessary.<sup>29</sup> He insisted that he had broadcast the plan to other vehicles in the team. His initial account, which he provided within hours of the incident, gives the impression that it was only at the last moment, as the convoy drove across the car park itself, that he made the broadcast. In his oral evidence, he stood by the account he had provided in his statement of 9 March 2012, in which he said that he had communicated the plan to the other vehicles as the team was approaching the car park.<sup>30</sup> Either way, none of his colleagues could remember hearing any such radio message (although he was successful in broadcasting State Red to the vehicles behind Alpha<sup>31</sup>).

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<sup>21</sup> Deborah Hurst, TS/5144:15–25.

<sup>22</sup> Hurst, TS/5044:1–11.

<sup>23</sup> Hurst, TS/5158:20–23.

<sup>24</sup> Hurst, TS/5135:24–5136:4.

<sup>25</sup> Bundle R/538–545.

<sup>26</sup> Bundle R/1384–1400.

<sup>27</sup> Hurst, TS/5149:15–5150:25; TS/5153:24–5160:13.

<sup>28</sup> X7, TS/5480:9–10.

<sup>29</sup> X7, TS/5479:23–25. Of the other two cars, only Charlie participated in the “strike”. Delta, having become separated from the convoy in traffic, went to the wrong car park.

<sup>30</sup> Bundle E/89.

<sup>31</sup> H9, TS/5250:20–24.

- 5.18** X7 is convinced that he made the broadcast. His rear nearside passenger, W9, also thought that he transmitted the plan by radio.<sup>32</sup> However, the evidence that it did not reach the rest of the convoy is compelling. Not one officer in any of the other vehicles recalled hearing it. In order to make the transmission, it would have been necessary for X7 to press a button and keep it depressed.<sup>33</sup> Whether he simply did not have enough time to make the broadcast, or whether (as I think more likely) there was some technical problem with the transmitter or in his operation of it, the fact is that his plan did not reach the AFOs travelling in the rest of the convoy. Had the plan remained as X7 originally formulated it, I do not believe his failure to communicate it would have made any practical difference to the outcome. By the early part of 2012, the training of AFOs had already moved away from the rather prescriptive method that had once assigned specific roles to individual officers<sup>34</sup> to a more flexible approach that encouraged officers to use their initiative,<sup>35</sup> or “find work”, as several witnesses put it.<sup>36</sup> In its basic form, therefore, X7’s plan did not entail any departure from the standard procedures with which all MASTS-trained AFOs could be expected to be familiar.<sup>37</sup>
- 5.19** However, the plan underwent a last-minute modification. It was while he was, as he believes, broadcasting his instructions to his colleagues that X7 heard Q9 offer to cover the stolen Audi from his position in the back of Alpha. In his own statement dated 9 March 2012,<sup>38</sup> Q9 confirmed that he made that suggestion as the police convoy was approaching the car park, adding that the other officers in Alpha agreed with it. Whether they were right to do so at such a late stage is another matter. Q9’s proposal represented a significant departure from the standard approach to a MASTS “strike”. Although AFOs were trained in the provision of static cover from a vehicle in the context of Armed Response Vehicle (“ARV”) stops<sup>39</sup> and specialist anti-terrorist tactics,<sup>40</sup> it formed no part of MASTS training<sup>41</sup> and was not, therefore, something that Q9’s colleagues would have anticipated. Consequently, it was important, if possible, to warn the AFOs in the other vehicles about it, if only to avoid the obvious risk – which in the event materialised<sup>42</sup> – of an AFO unwittingly crossing Q9’s arc of fire during the arrest phase.
- 5.20** For reasons discussed elsewhere in this Report (see Chapter 6), I do not criticise Q9 for his late decision to provide static cover. Ian Arundale QPM, the Inquiry’s expert witness, did not do so, and given Q9’s erroneous assumption that his colleagues approaching on foot would be unable to see inside the Audi (see paragraphs 6.52–6.58), it was entirely reasonable for him to modify the plan. X7 did not, however, communicate Q9’s intention to the others.<sup>43</sup> The simplest and most likely explanation is the one X7 gave to the Inquiry, which was that he did not have time to do so.<sup>44</sup>

<sup>32</sup> W9, TS/4720:5–7.

<sup>33</sup> X9, TS/4780:6–15.

<sup>34</sup> E.g. GMP MASTS Training Package, March 2010, Bundle G1/38–39.

<sup>35</sup> E.g. GMP MASTS Training Package, March 2011, Bundle G1/215. See also Arundale, TS/7147:21–7150:15.

<sup>36</sup> E.g. W9, TS/4739:12–14; X9, TS/3990:4.

<sup>37</sup> Arundale, TS/7146:12–22.

<sup>38</sup> Bundle A/269.

<sup>39</sup> X7, TS/5481:4–6.

<sup>40</sup> W4, TS/5285:5–18; TS/5386:7–14.

<sup>41</sup> Arundale, TS/7145:2–13.

<sup>42</sup> J4, TS/4425:18–20.

<sup>43</sup> Q9, TS/4889:4–7.

<sup>44</sup> X7, TS/5482:5–10.

## D. The “strike”

- 5.21** Apparent sunset<sup>45</sup> in Culcheth on 3 March 2012 was at 17:52. By 19:00, it was dark. There was, however, some artificial lighting in the car park itself, as well as a certain amount of illumination emanating from commercial buildings in Common Lane.
- 5.22** Three of the police cars (Alpha, Bravo and Charlie) drove into the car park through the designated vehicle entrance at relatively low speed, so as not to attract the attention of the occupants of the stationary Audi. Delta did not enter the car park at this stage. Alpha, Bravo and Charlie headed straight across the car park, following the shortest route to the Audi in accordance with the one-way system indicated by white arrows on the tarmac (see Figure 5). X7 had considered other options, such as approaching the Audi head-on, either via the exit directly opposite it or by following the longer, clockwise route against the car park’s one-way system, but rejected them as less satisfactory than his chosen route. Despite the increased risk to which it subjected the officers in the offside seats, I do not think that X7’s decision to position the Alpha vehicle broadside on to the stolen Audi was an unreasonable one. I accept the opinion of Mr Arundale that it was reasonable in the circumstances.<sup>46</sup>
- 5.23** W4 brought Alpha to a halt with its offside across the front of the stolen Audi (see Figures 7–10). In the course of the evidence, there was some debate about whether the two vehicles “collided”. Some of the photographs (see, for example, Figure 10) suggest that Alpha’s offside came into contact with the Audi’s front bumper, but I am sure the contact was glancing and must have taken place at very low speed. It would probably not have been audible, and would certainly not have produced enough noise to be confused with the report of a firearm.<sup>47</sup> It was a skilful piece of driving by W4, who was not personally aware of any contact between the two cars.<sup>48</sup>

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<sup>45</sup> I.e. allowing for the (very small) apparent delay caused by atmospheric refraction.

<sup>46</sup> Arundale, TS/7107–7108; David Whittle, TS/6306.

<sup>47</sup> X7, TS/5513; TS/5549.

<sup>48</sup> W4, TS/5332:22–24.

Figure 7: The police cars halted in position



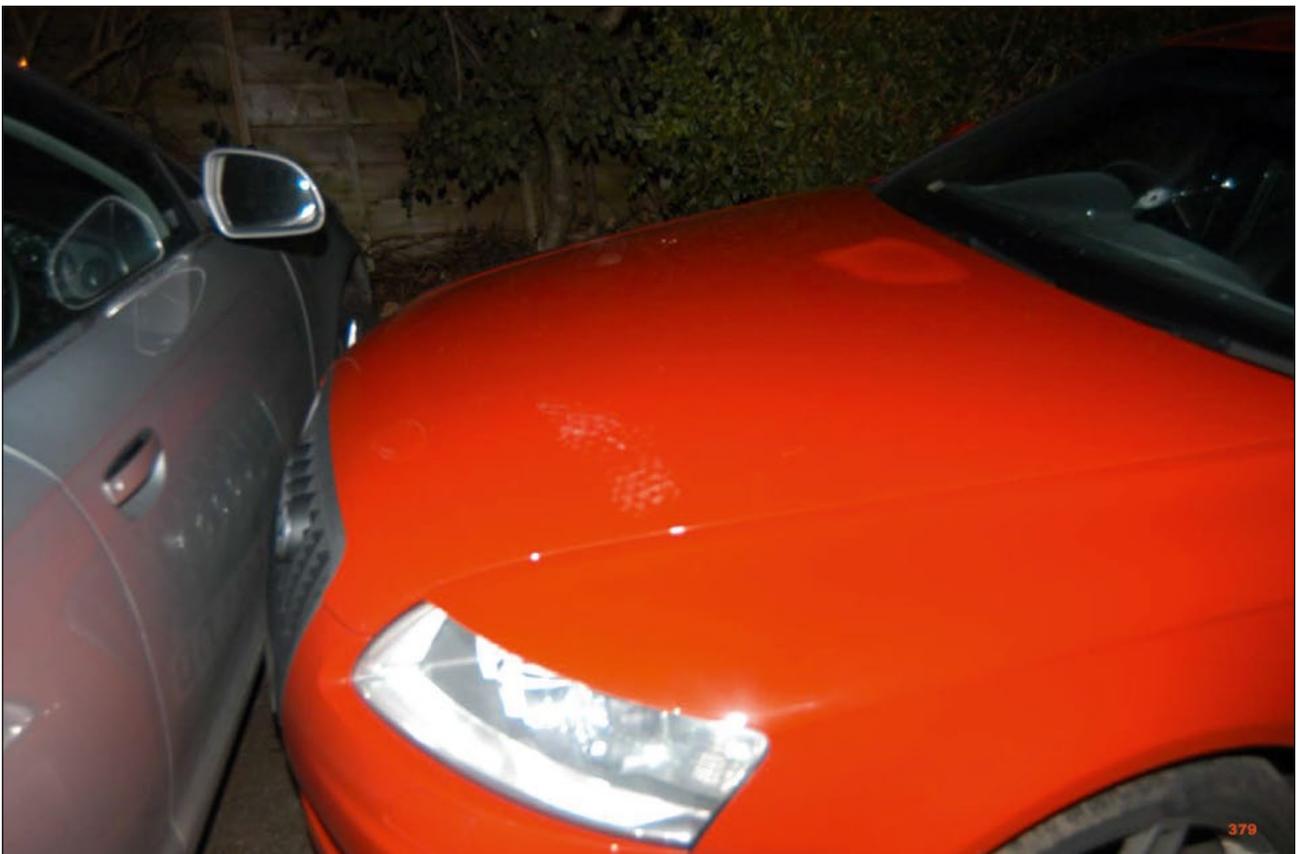
Figure 8: Position of the stolen Audi and the Alpha car (view of Alpha nearside)



**Figure 9: Position of the stolen Audi and the Alpha car (view across Alpha windscreen)**



**Figure 10: Position of the stolen Audi and the Alpha car (view of Audi bonnet and Alpha front offside door)**



- 5.24** Bravo and Charlie vehicles were closely following Alpha. Bravo was less than ten yards behind Alpha,<sup>49</sup> which “put a spurt on”<sup>50</sup> in the last few moments. The three cars halted in the positions shown in Figure 7. Bravo probably came to rest two or three seconds<sup>51</sup> after Alpha. On the instructions of J4, who was concerned that three vehicles entering nose to tail would alert the occupants of the stolen Audi, the driver of Charlie, H9, held back about three car lengths behind Bravo,<sup>52</sup> but then accelerated into the car park.<sup>53</sup> By the time Charlie came to a halt, Alpha and Bravo were already stationary.<sup>54</sup> The AFOs began to alight from all three cars as soon as they stopped, although the nearside occupants of Alpha had a slight head start and were closer to the Audi than any other officers. The first officer out of Alpha was W9,<sup>55</sup> followed by X7, who was held up slightly because he was still holding his radio transmitter and had to pick up and don his police cap.<sup>56</sup> The likelihood is that Bravo’s occupants alighted a couple of seconds after W9, followed a second or two later by the officers from Charlie.
- 5.25** Q9, in accordance with the agreed plan, remained inside Alpha. He had lowered the rear offside window at which he was seated when the vehicle was about halfway across the car park.<sup>57</sup> In order to be able to aim his carbine, he turned his upper body to face the window, with his left foot in the foot well and his right lower leg tucked beneath him on the back seat.<sup>58</sup> W4 also remained in his seat; as events turned out, he was not to get out of the car until after Q9 had shot Mr Grainger.
- 5.26** The stolen Audi was effectively boxed in. Close to its offside was the tall hedge to which I have already referred. Immediately behind it was a narrow strip of grass, behind which was a low wall topped by a high fence. The parking bay adjacent to the Audi on its near side was vacant, but the next space was occupied by the green car. Alpha was broadside on to, and in contact with, the front of the Audi, with its bonnet very close to the tall hedge. Bravo was a couple of yards behind Alpha, practically in line astern but very slightly displaced towards the vacant parking bay alongside the Audi.<sup>59</sup> Having pulled to the left of Bravo, Charlie had come to a halt with its front offside wheel alongside and very close to Bravo’s rear bumper. The Audi had nowhere to go.<sup>60</sup> That did not entirely obviate the risk that its driver might try to ram his way out, but any such attempt, no matter how determined, was unlikely to succeed. Even within such a relatively confined manoeuvring space, however, the Audi presented a risk to the AFOs from its potential use as a weapon by the driver.

<sup>49</sup> U9, TS/3841:9–11.

<sup>50</sup> X9, TS/3987:19–22. See also W4, TS/5334:15–19.

<sup>51</sup> X9, TS/3987:23–3988:3.

<sup>52</sup> H9, TS/5251:25–5252:7; J4, witness statement, 9 March 2012, Bundle E/150.

<sup>53</sup> H9, TS/5252:8–13.

<sup>54</sup> *Ibid.*

<sup>55</sup> W9, TS/4681:11–13. See also X7, TS/5485:21–5486:10.

<sup>56</sup> X7, TS/5486:4–12.

<sup>57</sup> Q9, TS/4892:16–18.

<sup>58</sup> Q9, TS/4890:16–17.

<sup>59</sup> U2, TS/4172:4–4173:25.

<sup>60</sup> David Totton, TS/5980:24.

## E. The fatal shot

- 5.27** There are only three witnesses who can describe the circumstances of the fatal shot, namely the officer who fired it (Q9), the driver of the vehicle from which he did so (W4) and Mr Totton, who was sitting next to Mr Grainger in the front passenger seat of the stolen Audi.
- 5.28** Mr Totton was a thoroughly unreliable witness. He undoubtedly tried to mislead the Inquiry in certain important areas of his evidence. Although his description of the arrest phase is broadly consistent with the evidence available from other sources, I have approached it with considerable reserve. Wherever his version of events differs in detail from that of Q9 or W4, I prefer their accounts to his.
- 5.29** Mr Totton told the Inquiry that Q9's shot came through the windscreen of the stolen Audi as soon as the Alpha vehicle pulled up.<sup>61</sup> He said he saw a bright torch shining into the interior of the Audi from the back of Alpha<sup>62</sup> but did not hear any warning or challenge before the shot.<sup>63</sup> He heard what he described as a "crackle" and felt shards of glass hitting his face. It happened, he claimed, in "a split of a second as that car has come to a stop"<sup>64</sup> and "before it has even stopped".<sup>65</sup> As soon as he heard the shot, Mr Totton looked at Mr Grainger, who was still sitting in the driver's seat, and then, "within a split second of that",<sup>66</sup> he opened the passenger door with his right hand and got out of the Audi. Attempting to scramble behind the boot of the green car parked on the Audi's nearside,<sup>67</sup> he slipped and lost his footing.<sup>68</sup> Armed police officers then restrained him and pinned him face down.<sup>69</sup> As he lay on the ground in that position, he heard two loud bangs<sup>70</sup> (evidently the reports of the shotgun with which Z15 deflated the stolen Audi's front and rear nearside tyres). Mr Totton did not hear any glass breaking, nor was he aware of CS being deployed: "there was no gas [*sic*] while I was in the actual vehicle".<sup>71</sup>
- 5.30** Q9<sup>72</sup> and W4<sup>73</sup> agree that Q9 discharged his carbine within three or four seconds of Alpha coming to a halt. Both officers told the Inquiry that Q9 had shouted the challenge "Armed police, show me your hands!" beforehand, as soon as the vehicle stopped.<sup>74</sup> Q9's account, dealt with in greater detail elsewhere in this Report (see Chapter 6), was that both front occupants of the Audi initially put their hands up, but Mr Grainger suddenly and deliberately lowered first his right and then his left hand out of the officer's view.<sup>75</sup> Neither Q9 nor W4 saw any other officer near the stolen Audi at the time of the shot.<sup>76</sup> The plan was for other AFOs to approach the Audi, but

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<sup>61</sup> Totton, TS/5969:4–6.

<sup>62</sup> Totton, TS/5968:8–14.

<sup>63</sup> Totton, TS/5971:11–25.

<sup>64</sup> Totton, TS/5993:11–12.

<sup>65</sup> Totton, TS/5998:23.

<sup>66</sup> Totton, TS/5973:8–10.

<sup>67</sup> Totton, TS/5981:1–9.

<sup>68</sup> Totton, TS/5980:3.

<sup>69</sup> Totton, TS/5980:14–15.

<sup>70</sup> Totton, TS/5982:7.

<sup>71</sup> Totton, TS/5985:12.

<sup>72</sup> Q9, TS/4909:6–8.

<sup>73</sup> W4, TS/5349:16–18; TS/5350:10–17.

<sup>74</sup> Q9, TS/4900:19–4901:7; W4, TS/5334:23–5335:6.

<sup>75</sup> Q9, TS/4902:6–4904:22.

<sup>76</sup> W4, TS/5349:19–5350:21; Q9, TS/5024:18–19.

the evidence clearly demonstrates<sup>77</sup> that Q9 fired his weapon before any of them had reached it. The nearest was W9, who told the Inquiry he had just rounded Alpha's boot on his way to the Audi's front nearside door when he heard Q9's shot.<sup>78</sup> W9 estimated that it had taken him about three seconds to reach Alpha's boot after the car had halted,<sup>79</sup> at which time Bravo was still in the process of coming to a stop.<sup>80</sup> As he got out of the Alpha vehicle, he heard someone shout "Armed police, show me your hands!"<sup>81</sup> and he estimated that the sound of the shot followed within "a couple of seconds"<sup>82</sup> of that challenge.

**5.31** X7 described hearing a "loud bang",<sup>83</sup> which he thought was likely to have been the sound of Q9's shot.<sup>84</sup> In his witness statement dated 9 March 2012, he said that he had heard the bang as he ran past the front of Alpha, and at the time he had assumed it to be the sound of vehicles colliding.<sup>85</sup> He told the Inquiry that, having reflected further, he thought the bang was more likely to be the discharge of a firearm,<sup>86</sup> adding that when he heard it, he had still been at or near the passenger door of Alpha,<sup>87</sup> well before he got to the driver's door of the stolen Audi.<sup>88</sup> Bravo's driver, U2, heard the shot<sup>89</sup> as he opened his door to get out of his vehicle,<sup>90</sup> no more than two seconds after he had pulled up.<sup>91</sup> He confirmed that W9 was by then at the rear of Alpha, moving towards the Audi.<sup>92</sup>

**5.32** I do not find it surprising that some witnesses did not recall having heard any verbal challenge from Q9. The same persons, with the sole exception of Mr Totton, also failed to register the sound of the shot, which must have been very loud.<sup>93</sup> At least one, U9, was wearing ear defenders. The occupants of Charlie were still inside their vehicle at the time. I think it extremely unlikely that an officer as competent and experienced as Q9 would have omitted to issue the conventional challenge as soon as he could. I am sure that he did shout "Armed police, show me your hands!", once,<sup>94</sup> as the Alpha vehicle drew to a halt. The shot probably followed within a couple of seconds of that challenge. At the moment when Q9 fired, W9 was rounding Alpha's boot on his way to the Audi, probably no more than three or four paces from its nearside front door. X7 had only just got out of Alpha and was probably still on that vehicle's nearside. The AFOs from Bravo had only just begun to alight, and their colleagues in Charlie, which may not even have come to a stop by the time Q9 fired, were probably still inside their vehicle.

<sup>77</sup> U2, TS/4215:4–7.

<sup>78</sup> W9, TS/4694:2–6.

<sup>79</sup> W9, TS/4691:6–4692:7.

<sup>80</sup> W9, TS/4683:5–10.

<sup>81</sup> W9, TS/4690:5–10. In his witness statement dated 9 March 2012, W9 had said that it was as he was running around the back of the Alpha car that he heard the shout "Armed police, show me your hands!": Bundle E/108.

<sup>82</sup> W9, TS/4692:8–4693:4.

<sup>83</sup> X7, TS/5489:13–14.

<sup>84</sup> X7, TS/5493:4–15.

<sup>85</sup> Bundle E/90.

<sup>86</sup> X7, TS/5493:4–15.

<sup>87</sup> X7, TS/5489:7–10.

<sup>88</sup> X7, TS/5558:10.

<sup>89</sup> U2, TS/4174:15–4175:23.

<sup>90</sup> U2, witness statement, 9 March 2012, Bundle E/132.

<sup>91</sup> U2, TS/4174:15–4175:23.

<sup>92</sup> U2, TS/4175:24–4176:13.

<sup>93</sup> X7, TS/5493:19–21.

<sup>94</sup> Q9, TS/4900:22–4901:1.

- 5.33** By the time W9 rounded Alpha's boot, Mr Totton had already got out of the stolen Audi, and was close to its front passenger door.<sup>95</sup> He was facing away from the officer, towards the patch of grass behind the Audi.<sup>96</sup> It cannot have taken W9 more than a second or two to cover the remaining three or four paces. I am sure that he was the first officer from any vehicle to reach the Audi. He saw no police officer on the driver's side of the Audi,<sup>97</sup> a clear indication that X7 had not yet arrived.<sup>98</sup> W9 was unable to say whether the front passenger door from which Mr Totton had just emerged was closed or open.<sup>99</sup> The fact that, when X9 later deployed the CSDC, he smashed the front nearside window<sup>100</sup> tends to suggest that at that stage the door was shut, implying in turn that Mr Totton must have closed it behind him for some reason. I think that improbable. When U2 reached the door after the CSDC had been deployed, he found it open.<sup>101</sup> On balance, I am inclined to think the door was open, or at least ajar, when X9 reached it; it is possible that in the heat of the moment he broke the window reflexively, without pausing to make a dynamic threat assessment, in what he himself described as a "continuous course of action"<sup>102</sup> that he had doubtless rehearsed countless times during his training.
- 5.34** The next officer to reach the stolen Audi was X7. He came around the front of Alpha, passing in front of its bonnet. The hedge, the line of which was indented, did not significantly impair his progress (see Figure 7). He made straight for the front offside door of the Audi, intending to challenge the driver and prevent him from using the vehicle as a weapon.<sup>103</sup> Taken in context, X7's statement in oral evidence that he was "the first one there"<sup>104</sup> refers to the fact that he was the first officer to reach the driver's side window, which he noticed was open.<sup>105</sup> He took up a position near the car's "A" pillar, between the wing mirror and the front wheel, aiming his weapon down into the vehicle. He was able to see through the windscreen and the side window.<sup>106</sup> He did not see anyone in the passenger seat,<sup>107</sup> from which I infer that Mr Totton had already got out of the Audi and was being tackled on the other side of the vehicle by W9.
- 5.35** For reasons explained later in this chapter (see paragraphs 5.36–5.39) and in the following chapter, I am sure that Mr Grainger had been shot by the time X7 reached him. He was, however, still conscious. Not realising that Mr Grainger was injured, X7 pointed his carbine at him and shouted: "Armed police, show me your hands!"<sup>108</sup> Turning his head slightly, Mr Grainger looked directly at the officer and raised both hands.<sup>109</sup> X7 continued to shout instructions at Mr Grainger, telling him to keep his hands where they were. Moments later,<sup>110</sup> however, the CSDC went off inside the Audi's passenger compartment. Mr Grainger reacted by flinching slightly to his

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<sup>95</sup> W9, TS/4699:10–4701:3.

<sup>96</sup> *Ibid.*

<sup>97</sup> W9, TS/4735:2–4736:21.

<sup>98</sup> W9, TS/4761:14–19.

<sup>99</sup> W9, TS/4699:21–22.

<sup>100</sup> X9, TS/3996:18–3997:12; TS/4003:16–4004:7.

<sup>101</sup> U2, witness statement, 9 March 2012, Bundle E/133. In his oral evidence, U2 said he might have opened it himself: U2, TS/4178:18–19.

<sup>102</sup> X9, TS/4000:1–8.

<sup>103</sup> X7, witness statement, 9 March 2012, Bundle E/89–90.

<sup>104</sup> X7, TS/5494:5.

<sup>105</sup> X7, TS/5493:23–5494:5; TS/5563:6–8.

<sup>106</sup> X7, TS/5499:20–5500:14.

<sup>107</sup> X7, TS/5561:14–17.

<sup>108</sup> X7, TS/5495:3–4; G6, TS/4300:25–4301:3; TS/4302:5–7.

<sup>109</sup> X7, TS/5495:16–5496:19.

<sup>110</sup> X7, witness statement, 9 March 2012, Bundle E/90.

right (i.e. away from the front nearside door through which the canister had been deployed)<sup>111</sup> in what X7 described as an “involuntary ... twitch” of his head,<sup>112</sup> and then very slowly lowered his hands to his knees out of sight.<sup>113</sup> Fearing that he might be about to drive the car,<sup>114</sup> X7 struck him on the right arm with the muzzle of his carbine while shouting at him to keep his hands up.<sup>115</sup> The officer explained that, although the possibility that Mr Grainger might be reaching for a weapon had crossed his mind, he did not see any necessity to shoot him because, on glancing down, he could see no sign of a weapon.<sup>116</sup> Mr Grainger then slumped to his right, and X7 saw his eyes roll back.

**5.36** There are some superficial similarities between Q9’s description of Mr Grainger first raising and then lowering his hands and the account given by X7 of the actions he witnessed from his position alongside the Audi’s “A” pillar. I am nevertheless confident that X7 was describing an entirely separate movement from the one that Q9 had seen. The similarities are coincidental. What X7 saw was Mr Grainger raising his hands for the second time (the first having been in response to Q9’s earlier challenge). In reaching that conclusion, I do not overlook the fact that Q9, who continued to cover the Audi’s interior at close range after discharging his carbine, did not see Mr Grainger raise his hands again. The simple explanation, I have no doubt, is that on the second occasion, Mr Grainger’s hands were not elevated sufficiently high to bring them within Q9’s field of view,<sup>117</sup> which did not extend below Mr Grainger’s sternum.<sup>118</sup>

**5.37** It is true that, under pressure from Leslie Thomas QC,<sup>119</sup> X7 appeared to concede that he had seen Mr Grainger raise his hands to the level of his upper chest (which, if it had really happened, ought to have been visible to Q9). Hugh Davies QC, however, was entirely right to question that concession.<sup>120</sup> When X7 first described the gesture, it was in response to an invitation from Jason Beer QC, Leading Counsel to the Inquiry, to demonstrate what he had seen.<sup>121</sup> The officer said:

It was a pivot of the elbow, sir. It was not a full up round the head, it was a – I would say around lower chest height.<sup>122</sup>

**5.38** The officer accompanied those words with a demonstration of which I made a note at the time. With his elbows down by his sides, he raised his forearms to an angle of about 45 degrees, until his hands were at approximately the same level as his lower chest. I am confident in accepting the accuracy of that description. The officer himself could not say that Mr Grainger’s hands would have been visible to somebody looking in through the windscreen.<sup>123</sup> I am sure they were not visible to Q9.

**5.39** Bravo’s three passengers (G6, X9 and U9) alighted simultaneously, followed by their driver, U2, who was last out of the vehicle.<sup>124</sup> G6, the front passenger, told the Inquiry

<sup>111</sup> X7, TS/5498:3–5.

<sup>112</sup> X7, TS/5498:6–12.

<sup>113</sup> X7, TS/5499:1–11.

<sup>114</sup> X7, TS/5501:2–15.

<sup>115</sup> X7, TS/5500:25–5501:1.

<sup>116</sup> X7, TS/5501:2–5502:22.

<sup>117</sup> Q9, TS/4948:8–13.

<sup>118</sup> Q9, TS/4901:11–15; TS/4977:14–16.

<sup>119</sup> X7, TS/5527:16–5528:20.

<sup>120</sup> X7, TS/5562:6–5563:1.

<sup>121</sup> X7, TS/5496:20–5497:5.

<sup>122</sup> X7, TS/5496:22–24.

<sup>123</sup> X7, TS/5563:2–5.

<sup>124</sup> U2, TS/4174:10–14.

that, as he got out, he saw X7 rounding the front nearside wing of Alpha<sup>125</sup> and W9 passing between Alpha's boot and Bravo's bonnet.<sup>126</sup> That picture, coupled with the fact that U2 heard the report of a conventional firearm as he opened his door,<sup>127</sup> tends to confirm my view that Bravo's occupants were getting out of their vehicle when Q9 fired his weapon.

**5.40** Realising that X7 was the only AFO going to the stolen Audi's offside, G6 decided to follow him around Alpha's bonnet, passing X7 on his way to the rear offside door. In his first witness statement, G6 said:

As I reached the front off side wheel arch of the Audi I was right behind X7 and I heard a shot, then as I passed X7 and began to cover the rear off side door I heard a second shot. I then lit up the rear off side door window with the torch on my carbine, the window was tinted but there was light coming into the vehicle from the opposite side. I then saw the CSDC fill the front of the car and I shouted to open the doors. At that time I was aware I was on my own on that door and shouted for support. I then heard a third shot.<sup>128</sup>

**5.41** In a later statement,<sup>129</sup> and in his oral evidence to the Inquiry,<sup>130</sup> G6 qualified his original account by saying that he should have described what he had heard as three "bangs" rather than three "shots". He explained that, although he normally wears ear defenders on the firing range, he had not been wearing them on the evening of 3 March. That fact, he thought, had led him to overestimate the volume of the first bang, which he now believed to have been the sound of the front passenger window being broken as the CSDC went in:

I was working on the basis that three rounds had been fired and there was no other explanation for any other bang and that the bang or the pop that I heard must have been that. However, in hindsight and knowing the window had already gone, I would have said it was the window right from the beginning.<sup>131</sup>

**5.42** G6 is an experienced AFO. He impressed me as an honest and thoughtful witness. His explanation for revising his interpretation of the three bangs he heard strikes me as entirely reasonable, and I accept it. I am sure he is right in suggesting that the first noise he heard, as he passed the stolen Audi's front wheel arch, was that of the front passenger window being broken.

**5.43** The two later bangs which G6 heard were made by Z15 discharging the shotgun into the front and rear tyres of the stolen Audi. The first came as G6 began to cover the Audi's rear offside door. By then, although G6 did not realise it at the time, Mr Totton was outside the vehicle.<sup>132</sup> When G6 looked in at the tinted rear offside window of the passenger compartment, he could see light coming from the opposite side.<sup>133</sup> That suggests to me that the rear nearside door was probably open, which in turn implies that the Audi's sole rear occupant, Mr Travers, was being extracted from the vehicle (if, indeed, he was not already outside it). It was then that G6 saw CS filling the front of the car.<sup>134</sup> Shortly afterwards, he heard the second shotgun discharge.<sup>135</sup>

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<sup>125</sup> G6, TS/4298:12–19.

<sup>126</sup> G6, TS/4298:20–4299:5.

<sup>127</sup> U2, witness statement, 9 March 2012, Bundle E/132.

<sup>128</sup> G6, witness statement, 9 March 2012, Bundle E/123–124.

<sup>129</sup> G6, witness statement, 21 May 2012, Bundle E/126.

<sup>130</sup> G6, TS/4308:15–4309:5.

<sup>131</sup> G6, TS/4346:14–19.

<sup>132</sup> G6, TS/4338:16–25.

<sup>133</sup> G6, witness statement, 9 March 2012, Bundle E/124.

<sup>134</sup> *Ibid.*

<sup>135</sup> *Ibid.*

Finding himself unable to open the rear offside door, he shouted “Locked doors!” to his colleagues. Almost immediately, U2 appeared from G6’s left, having rounded the Audi’s boot, and informed him that the back of the car was now clear of occupants.<sup>136</sup>

- 5.44** U2 (Bravo’s driver) had initially made for the stolen Audi’s nearside. As he approached, he saw a number of AFOs struggling with two suspects who seemed to him to be resisting arrest, so he kicked the thigh of one of them in order to prevent him from rising to his feet;<sup>137</sup> it is not clear whether it was Mr Totton or Mr Travers that he kicked. Upon seeing G6 covering the rear offside door and hearing him shout “Locked doors!”, U2 went around the back of the Audi to tell G6 that the back of the passenger compartment had already been cleared. According to U2’s witness statement, it was while he was moving round the vehicle to G6 that he heard two shotgun discharges. In the mistaken belief that Mr Grainger was struggling with the officers at the driver’s door, U2 suggested to his colleagues that they should try to extract Mr Grainger through the front passenger door. When the officers on the opposite side relinquished their grip, U2 saw Mr Grainger’s left arm fall across the car’s centre console<sup>138</sup> as he fell back into his seat.<sup>139</sup> It was then that U2 heard one of his colleagues shout “He’s been shot!”<sup>140</sup> That colleague was almost certainly W4, Alpha’s driver.
- 5.45** With his own door blocked by the bonnet of the stolen Audi, W4 had initially remained in his seat. On seeing Mr Grainger slump in his seat, he scrambled across Alpha’s front passenger seat in order to leave the vehicle by the front nearside door,<sup>141</sup> a process that must have taken him several seconds at least. Having reached his new vantage point in time to see the CSDC go into the Audi “well after [Q9’s] shot had been fired”,<sup>142</sup> he then stood with his feet in the passenger footwell so that he could look across Alpha’s roof towards the Audi. It was at that point, unsure whether his colleagues had realised that Mr Grainger was injured, that W4 began to shout, “He’s been shot, he’s been shot!”<sup>143</sup>
- 5.46** J4 was Charlie’s front seat passenger. It was he who – unaware that Q9 had decided to provide static cover from the rear offside seat of Alpha – clambered over the stolen Audi’s bonnet to reach the vehicle’s offside, crossing Q9’s arc of fire in the process. Having alighted from Charlie, he moved “at a medium pace”<sup>144</sup> towards the front nearside of the stolen Audi. By the time he reached it, the front side window had been smashed<sup>145</sup> and he could see CS particles in the air.<sup>146</sup> The front passenger seat was empty.<sup>147</sup> Mr Grainger appeared to be asleep, with his head “rolled down on his neck”,<sup>148</sup> and did not respond to a challenge from J4.<sup>149</sup> It was at that point that J4 decided to support the AFOs on the Audi’s offside. To that end, he followed the most direct route, across the bonnet of the Audi.<sup>150</sup> In doing so, he unwittingly crossed

<sup>136</sup> *Ibid.*

<sup>137</sup> U2, witness statement, 9 March 2012, Bundle E/132.

<sup>138</sup> U2, TS/4192:3–7.

<sup>139</sup> U2, witness statement, 9 March 2012, Bundle E/133.

<sup>140</sup> U2, TS/4192:22–23.

<sup>141</sup> W4, witness statement, 9 March 2012, Bundle E/102.

<sup>142</sup> W4, TS/5350:22–5351:1.

<sup>143</sup> W4, witness statement, 9 March 2012, Bundle E/102.

<sup>144</sup> J4, TS/4402:14.

<sup>145</sup> J4, TS/4403:16.

<sup>146</sup> J4, TS/4405:14.

<sup>147</sup> J4, TS/4403:25–4404:1.

<sup>148</sup> J4, TS/4404:25.

<sup>149</sup> J4, TS/4405:5–4406:8.

<sup>150</sup> J4, TS/4407:3–4408:9.

Q9's arc, at extremely close range.<sup>151</sup> He confirmed that the boot print on the bonnet of the stolen Audi shown in some of the photographs (see, for example, Figure 10) was likely to be his.<sup>152</sup> Together with a colleague, he unsuccessfully attempted to remove Mr Grainger from the Audi by pulling him through the driver's window. When U2 suggested extracting him through the open front nearside door instead, J4 noticed blood on the chest area of Mr Grainger's T-shirt<sup>153</sup> and made his way around the back of the Audi to the opposite side, where, having checked that there was no one hiding inside the boot,<sup>154</sup> he helped provide trauma care to Mr Grainger.

**5.47** Bravo's rear offside passenger, U9, walked quickly towards the stolen Audi's nearside "B" pillar,<sup>155</sup> pointing his carbine at the vehicle.<sup>156</sup> Very soon after reaching the Audi, he heard the sound of its front nearside window breaking as the CSDC was deployed.<sup>157</sup> U9 then<sup>158</sup> became aware of the presence alongside him of G11,<sup>159</sup> who confirms that the CSDC had been put into the vehicle.<sup>160</sup> With the object of preventing any of the Audi's occupants from escaping along the strip of grass behind it, G11 had approached the Audi from behind, passing around the green car parked next to it. U9 opened the Audi's rear nearside door, where he and G11 saw Mr Travers cowering<sup>161</sup> in the back.<sup>162</sup> Both officers shouted the standard challenge: "Armed police, show me your hands!"<sup>163</sup> They pulled Mr Travers out of the vehicle and placed him in a prone position on the ground,<sup>164</sup> where G11 restrained him with handcuffs.<sup>165</sup> U9 told the Inquiry that it was while he was helping to secure Mr Travers that he heard two shotgun discharges.<sup>166</sup> His colleague G11 was aware only of the second,<sup>167</sup> but confirms that by the time it was fired he and U9 had already extracted Mr Travers from the vehicle and were in the process of handcuffing him.<sup>168</sup>

**5.48** Charlie's driver, H9, was probably the last of the AFOs from any of the police vehicles to reach the stolen Audi. As the driver, he would normally be last out of the car,<sup>169</sup> but on this occasion he was further delayed by the fact that he could not find his respirator and had to leave without it. Realising that the majority of AFOs were covering the Audi's nearside, he decided that he should head for the offside "to assist X7".<sup>170</sup> He therefore went along the nearside of Alpha and passed between its bonnet and the hedge. By the time he arrived at X7's side, Mr Grainger was completely unresponsive, with his eyes closed and his hands in his lap.<sup>171</sup> The fact that G6 was already at the

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<sup>151</sup> J4, TS/4425:18–20.

<sup>152</sup> J4, TS/4407:21–24.

<sup>153</sup> J4, TS/4413:1–7.

<sup>154</sup> J4, TS/4413:11–16.

<sup>155</sup> U9, TS/3846:20–3847:10.

<sup>156</sup> U9, TS/3850:4–9.

<sup>157</sup> U9, TS/3853:9–14.

<sup>158</sup> U9, TS/3854:24–3855:8.

<sup>159</sup> U9, TS/3854:17–21.

<sup>160</sup> G11, witness statement, 9 March 2012, Bundle E/163–164.

<sup>161</sup> U9, TS/3858:22–3859:6.

<sup>162</sup> U9, TS/3854:22–23.

<sup>163</sup> U9, TS/3858:17–21; G11, witness statement, 9 March 2012, Bundle E/164.

<sup>164</sup> U9, TS/3859:5–17.

<sup>165</sup> U9, TS/3860:1–3.

<sup>166</sup> U9, TS/3860:7–14; U9, witness statement, 9 March 2012, Bundle E/139.

<sup>167</sup> G11, witness statement, 9 March 2012, Bundle E/164; G11, TS/5601:14–17; TS/5603:5–9.

<sup>168</sup> *Ibid.*

<sup>169</sup> J4, TS/4400:25.

<sup>170</sup> H9, TS/5257:18.

<sup>171</sup> H9, witness statement, 9 March 2012, Bundle E/144; H9, TS/5257:23–5258:7.

rear offside door of the stolen Audi,<sup>172</sup> having preceded H9 past X7 along the line of the hedge, strongly suggests that by the time H9 arrived alongside X7, the CSDC had already been deployed. Although H9 did not hear the window break or see the canister go in, he did notice the building presence of CS material inside the front passenger compartment.<sup>173</sup>

- 5.49** Confused by Mr Grainger's unresponsive state, H9 drew his Taser weapon.<sup>174</sup> He tried to open the driver's door of the stolen Audi from the outside, but found it locked.<sup>175</sup> He then made an unsuccessful attempt to find the interior door handle by reaching in through the window.<sup>176</sup> H9 recalled some discussion among the AFOs as to whether they could extract Mr Grainger by pulling him through the driver's door window. In fact, it appears from the evidence of J4, Charlie's front passenger, that he and an unidentified colleague actually tried to implement that suggestion by pulling on Mr Grainger's arms.<sup>177</sup> According to J4, that happened after X9 had put the CSDC into the Audi and while Z15 was in the process of deflating the nearside tyres with RIP rounds.<sup>178</sup> I have no doubt that it was the attempt by U2's colleagues to pull Mr Grainger through the open driver's door window that misled U2 into supposing that Mr Grainger was engaged in a struggle with them.
- 5.50** In the event, H9 and his colleagues adopted U2's suggestion that they should remove Mr Grainger from the vehicle by passing him through the nearside door.<sup>179</sup> It was only at that stage, as Mr Grainger's upper clothing rode up and exposed his chest, that H9 realised that Mr Grainger had been shot.<sup>180</sup>
- 5.51** As soon as the shouting came to an end, H9 noticed that the stolen Audi's radio was playing.<sup>181</sup> He helped provide trauma care to Mr Grainger, initially by fetching and preparing a defibrillator and then by administering chest compressions until the arrival of paramedics.<sup>182</sup> A colleague, J4, assisted by inserting an oropharyngeal tube in Mr Grainger's airway.

## F. The use of special munitions

- 5.52** X9, Bravo's rear nearside passenger, was the officer who used the CSDC, from which he had removed the pin as soon as X7 called State Red.<sup>183</sup> His reasons for removing the pin at such an early stage were, first, that he wanted to concentrate his attention on the threat assessment he would have to make at the scene, and, second, that he wished to avoid having to arm the canister under extreme pressure of time, should it be required.<sup>184</sup> He was holding the CSDC in his right hand, a window breaker in his left hand, and he also carried a shotgun in a sling.<sup>185</sup> He ran as fast as he could<sup>186</sup>

<sup>172</sup> H9, witness statement, 9 March 2012, Bundle E/144.

<sup>173</sup> H9, TS/5261:9–20.

<sup>174</sup> H9, TS/5259:2–8.

<sup>175</sup> H9, TS/5258:15–21.

<sup>176</sup> *Ibid.*

<sup>177</sup> J4, witness statement, 9 March 2012, Bundle E/150; J4, TS/4410:14–25.

<sup>178</sup> J4, witness statement, 9 March 2012, Bundle E/150.

<sup>179</sup> H9, TS/5260:10–13.

<sup>180</sup> H9, TS/5260:14–19. See also J4, TS/4406:9–19.

<sup>181</sup> H9, TS/5262:24–5263:9.

<sup>182</sup> H9, TS/5263:10–5264:5.

<sup>183</sup> X9, TS/3996:2–7.

<sup>184</sup> X9, TS/3996:18–3997:12.

<sup>185</sup> X9, TS/3992:7–15.

<sup>186</sup> X9, TS/3995:23.

around the front of Bravo towards the stolen Audi's nearside and made straight for the front passenger window,<sup>187</sup> through which he would have to deploy the canister. As he reached the window, he saw Mr Grainger in the driver's seat and another male in the back of the car. Not realising that Mr Grainger was incapable of resistance,<sup>188</sup> he smashed the window "without delay"<sup>189</sup> and threw the canister into the passenger compartment, where it discharged its payload, covering the Audi's interior with CS.

**5.53** A witness statement which X9 made six days later seems to suggest that it was only after he had already decided to deploy the canister, and while he was in the process of doing so, that he first saw the driver.<sup>190</sup> X9 told the Inquiry that he had noticed the driver before he took the decision to put the canister into the Audi. He said that in his written statement he had been attempting to describe a single "continuous course of action"<sup>191</sup> that had lasted only a few seconds.

**5.54** I understand X9's explanation, and I accept that in all probability he had indeed noticed Mr Grainger inside the Audi before deciding to smash its front nearside window, but the fact remains that he was at a loss to provide a convincing justification – that is to say, a justification specific to the situation he faced in the car park – for deploying the canister. He offered no reasons at all for doing so in his first statement.<sup>192</sup> In a subsequent statement, made at the request of the Independent Police Complaints Commission ("IPCC"),<sup>193</sup> he merely listed his experience of previous, unrelated MASTS deployments, the intelligence with which he had been briefed on the morning of 3 March and in subsequent updates, and his belief, based on the movements and location of the subject vehicle, that its occupants were "in the final stages of preparation for an offence".<sup>194</sup> None of those generic reasons related directly to the situation that X9 faced in the car park or to any contingency that arose after State Red was called.

**5.55** The only evidence of any dynamic assessment at the scene by X9 is to be found in his statement of 28 May 2012:

As I alighted my vehicle and approached the subject vehicle I could see the driver Anthony Grainger in the vehicle. As I arrived at the front passenger window, I was unaware of any colleagues containing the car. I therefore formed the opinion that the driver and occupants were not under control and posed a real threat to my colleagues either through their actions or weaponry or by use of the vehicle, and I deployed the canister to afford us the maximum advantage in controlling any occupants.<sup>195</sup>

**5.56** In fairness to X9, he did not know at the time that Q9 had shot and incapacitated Mr Grainger. However, by the time X9 deployed the CSDC, X7 was already on the opposite side of the Audi, challenging Mr Grainger through the driver's window and covering him with his carbine. Further, Mr Totton was outside the vehicle, on the same side as X9, and was probably face down on the ground being detained by W9, who had reached the Audi before any other officer. Further, G6's evidence that, looking from the rear offside of the Audi, he could see "light coming into the vehicle from

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<sup>187</sup> X9, TS/3992:14–15.

<sup>188</sup> X9, TS/4009:6–8.

<sup>189</sup> X9, witness statement, 9 March 2012, Bundle E/117.

<sup>190</sup> *Ibid.*

<sup>191</sup> X9, TS/4000:1–8.

<sup>192</sup> X9, witness statement, 9 March 2012, Bundle E/115.

<sup>193</sup> X9, witness statement, 28 May 2012, Bundle E/119.

<sup>194</sup> X9, witness statement, 28 May 2012, Bundle E/119–120.

<sup>195</sup> *Ibid.*

the opposite side”<sup>196</sup> suggests that U9 had probably opened the opposite door and, with G11’s help, was already in the process of extracting Mr Travers from the back of the Audi.

- 5.57** I accept that X9’s decision to remove the pin from the canister before alighting from the Bravo vehicle, while not reversible, did not necessarily commit him to deploying it against the Audi’s occupants; he could, as he pointed out, have safely discharged the canister’s payload out of harm’s way if he had decided not, after all, to set it off inside the Audi. At the same time, making every allowance for X9’s reasons for removing the pin in advance of any possible contingency arising in the car park, it is difficult to avoid the conclusion that he had decided beforehand that he would deploy the canister unless some contingency arose that rendered it unnecessary, rather than the other way round.
- 5.58** Despite the presence of CS inside the passenger compartment, X9 claims that he was able to see Mr Grainger raise his hands “from below the dashboard towards chest height”.<sup>197</sup> In his witness statement of 9 March 2012,<sup>198</sup> he said that he believed Mr Grainger raised his hands “either through shock of being challenged or to capitulate”. In his oral evidence to the Inquiry, however, he said that “it was more of a flinch of a movement”.<sup>199</sup> Like X7, who had a better view and was able to give a slightly more detailed account, X9 may have seen (or more probably glimpsed) elements of both reactions. I am sure that Mr Grainger raised his hands in response to X7’s challenge and, moments later, flinched in response to the incoming CSDC.
- 5.59** It was at that stage that X9 became aware of other AFOs surrounding the stolen Audi and heard the distinctive sound of a shotgun round being discharged. In his “peripheral vision”<sup>200</sup> he saw Mr Totton going to the ground near the Audi’s boot and being challenged by W9. Apart from the fact that he was wearing a respirator, which slightly reduced his peripheral vision,<sup>201</sup> the most likely explanation for X9’s failure to notice W9 or Mr Totton before he deployed the canister is that he was concentrating on his own role and “remained focused on the nearside of the car”<sup>202</sup> until he had carried it out. As X9 went to help W9 restrain Mr Totton, he heard the sound of a second shotgun round immediately behind him.<sup>203</sup>
- 5.60** The officer who fired the shotgun rounds was Z15, Charlie’s rear nearside passenger. Although he and X9, as the special munitions officers, were each carrying a CSDC and Remington 870 12-gauge shotgun, they had agreed in advance that X9 was to have “primacy” with the former and Z15 with the latter.<sup>204</sup> The purpose of the shotgun was to enable the Audi to be disabled by deflating its tyres with breaching (RAM) rounds.
- 5.61** According to Greater Manchester Police’s (“GMP”) *Standard Operating Procedure 28*, it is the individual AFO equipped with authorised special munitions who is responsible for deciding whether to use them:

<sup>196</sup> G6, witness statement, 9 March 2012, Bundle E/124.

<sup>197</sup> X9, witness statement, 9 March 2012, Bundle E/117.

<sup>198</sup> *Ibid.*

<sup>199</sup> X9, TS/4008:9.

<sup>200</sup> X9, TS/4010:23.

<sup>201</sup> X9, TS/3939:12–14.

<sup>202</sup> X9, witness statement, 9 March 2012, Bundle E/117.

<sup>203</sup> *Ibid.*

<sup>204</sup> Z15, TS/4517:24–4518:25.

The ultimate responsibility for the use of special munitions lies with the individual AFO. If it is clear in the circumstances that the use of special munitions is not proportionate, necessary or justified then they would [*sic*] not be used.<sup>205</sup>

**5.62** However, at the briefing on the morning of 3 March, X7 had told the special munitions officers:

In respect of pursuits, these people have been seen driving aggressively and at speed on several occasions, we must prevent any pursuit taking place to be, in that case we're going to have to start looking at any tactical contact to prevent the pursuit taking place, and while we're on the subject of the shotgun, this car is a very powerful car, we need to be looking at disabling it at the earliest opportunity OK.<sup>206</sup>

**5.63** Those words, while clearly intended to discourage undue hesitation, did not go so far as to override Z15's personal discretion. Later in the briefing, X7 reminded all AFOs that they should "carry out continuous dynamic risk assessments on ... this operation in relation to threats encountered and acts of threat".<sup>207</sup> As one of the special munitions officers, therefore, Z15 can have been left in no doubt that the ultimate responsibility for using the shotgun was his alone; indeed, he said as much in the course of his oral evidence to the Inquiry.<sup>208</sup>

**5.64** As soon as he got out of Charlie, Z15 made his way around the back end of the police vehicle and headed straight for the Audi's front nearside.<sup>209</sup> He assessed that the stolen vehicle was in a position to reverse as much as 10 to 15 feet onto the narrow grass strip behind it,<sup>210</sup> although, as he conceded<sup>211</sup> to Mr Beer QC, photographs taken in daylight (see, for example, Figure 11) suggest that he had somewhat overestimated its reversing room. He could tell that the engine was running,<sup>212</sup> and he saw Mr Grainger sitting in the driver's seat;<sup>213</sup> in common with his colleagues, Z15 was not to know that Mr Grainger had by this time been shot and incapacitated. He saw an officer (evidently X7) challenging Mr Grainger through the driver's window.<sup>214</sup> There was no one in the front passenger seat.<sup>215</sup>

**5.65** Z15 went straight to the front nearside tyre and deflated it with a RAM round. He then became aware that Mr Totton was on the ground, being restrained by W9 and X9. They were on Z15's right-hand side, not far from the rear nearside wheel. Interposing his own body between the Audi and Mr Totton, W9 and X9, Z15 deflated the Audi's rear nearside tyre with another RAM round. In the belief that Mr Grainger was not co-operating with his colleagues, he then decided to make his way around the Alpha vehicle to the offside of the Audi, so that he could disable the remaining two tyres. He chose that route because he judged that it would be unsafe to pass behind the stolen car while Mr Grainger was still at the wheel.<sup>216</sup> Realising that it would take too long to get there, however, Z15 changed his mind, stowed his shotgun and returned to the Audi's nearside front passenger door.<sup>217</sup>

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<sup>205</sup> Policy and Procedure Bundle/597 and 601.

<sup>206</sup> Briefing transcript, 3 March 2012, Bundle C/340.

<sup>207</sup> Briefing transcript, 3 March 2012, Bundle C/344–345.

<sup>208</sup> Z15, TS/4514:7–4516:6.

<sup>209</sup> Z15, witness statement, 9 March 2012, Bundle E/156.

<sup>210</sup> *Ibid.*

<sup>211</sup> Z15, TS/4540:7–16.

<sup>212</sup> Confirmed by J4, witness statement, 9 March 2012, Bundle E/150.

<sup>213</sup> Z15, witness statement, 9 March 2012, Bundle E/156.

<sup>214</sup> *Ibid.*

<sup>215</sup> Z15, TS/4542:23–25.

<sup>216</sup> Z15, TS/4550:18–4551:16.

<sup>217</sup> Z15, TS/4553:5–17.

- 5.66** The advantage – indeed the sole point – of using tyre-breaching Hatton rounds is that they are capable of disabling a motor vehicle which might otherwise be used as a weapon or a means of escape. They are not, however, infallible.<sup>218</sup> They also have several disadvantages. Discharging a RAM round into a tyre mounted on an alloy wheel is liable to disperse shrapnel, as it did in this case.<sup>219</sup> The discharge makes a loud report which, if only because the rounds are necessarily discharged at extremely close range, may lead subjects and AFOs alike to conclude that they are under fire and react accordingly.<sup>220</sup> Further, as with a CSDC, the officer deploying the munition is particularly vulnerable to attack, yet unable to defend himself, imposing an additional responsibility on his colleagues.<sup>221</sup>
- 5.67** The overall impression I am left with is that, in the absence of unambiguous evidence that the occupants had surrendered promptly (which, in the context of a MASTS intervention, necessarily means within a few seconds) and were demonstrably compliant, the common assumption among AFOs was that special munitions, once authorised, would be deployed without further consideration. That this view, while clearly unsatisfactory, was not confined to X9 or Z15 is graphically confirmed by the CSDC training video footage shown to the Inquiry,<sup>222</sup> which, while difficult to reconcile with the dynamic process of threat assessment envisaged by official guidance,<sup>223</sup> probably reflects what was expected of any GMP officer carrying special munitions in a decisive MASTS intervention. The haste with which the CSDC and shotgun were deployed on 3 March thus reflects a flaw in GMP’s policy with regard to its use rather than any deficiency in individual AFOs’ personal application of that policy.
- 5.68** Given the disadvantages I have summarised, Hatton rounds should only be used when absolutely necessary. On 3 March, Z15 discharged two such rounds while his colleagues were attempting to detain two suspects on the ground nearby, exposing all concerned to the risk of flying shrapnel.<sup>224</sup> It is easy for someone such as myself, with no personal experience to inform his judgement, to be wise after the event, but I find myself in agreement with Mr Arundale’s opinion that Z15’s use of shotgun rounds was, on balance, not appropriate.<sup>225</sup> The CSDC, which was an unauthorised munition, should not have been in use at all.
- 5.69** I have already referred (see Chapter 4) to the danger that the subjects of a MASTS “strike” may wrongly assume that they are under attack from members of a rival OCG. Mr Totton, indeed, had himself survived an attempted assassination by another gang at the Brass Handles public house in Salford in a notorious incident that had resulted in two fatalities. The danger of such confusion is one that those who plan and command police firearms operations should strive to eliminate. For armed officers to approach subjects unobtrusively, in plain clothes, is a necessary and fully justified *ruse de guerre*; to reveal themselves prematurely would be liable to defeat the purpose of the “strike” and increase the risk to all concerned, including innocent members of the public. From the moment a “strike” is called, however, the subjects must be in no doubt that those who confront them are police officers.

<sup>218</sup> Arundale, TS/7086:22–24.

<sup>219</sup> Z15, TS/4571:12–4573:16.

<sup>220</sup> Arundale, TS/7086:1–21.

<sup>221</sup> *Ibid.*

<sup>222</sup> MASTS CSDC training video dated 6 June 2007, Bundle V, exhibits item 20.

<sup>223</sup> Arundale, TS/7147:11–20.

<sup>224</sup> Z15, TS/4572–4573.

<sup>225</sup> *Report of Ian Arundale QPM*, 4 November 2016, §702; Arundale, TS/7126:1–3.

- 5.70** I have seen an example of the clothing worn by AFOs on 3 March 2012. Apart from police-issue baseball caps (which cannot be worn in conjunction with respirators), the only unambiguous police insignia visible from the front were small labels bearing the legend “POLICE”. Inadequate even by day, they are quite useless in the dark, particularly where, as on 3 March 2012, the subjects are looking into bright “tac” (tactical) lights. As for the baseball cap, it is questionable whether it constitutes a sufficiently identifiable form of police insignia even if it could be donned over a respirator in the first place. The objection in this context is that its very ubiquity is almost incompatible with the requirement for distinctiveness. It is, in fact, precisely the kind of headgear likely to be favoured by members of OCGs. I cannot help thinking that it ought to be possible to devise more conspicuous insignia and less confusing apparel for use by AFOs.
- 5.71** Similar considerations apply to warnings and commands. As Mr Arundale pointed out, the cogent objection to the use of sirens during an armed “strike” is that they may drown verbal commands. That does not apply to blue flashing lights, which are both conspicuous and unambiguous. In any case, the events of 3 March show that shouted verbal commands are not always heard or, if heard, understood, even by other police officers. In a fraught, fast-moving situation, an AFO may be hard put not to gabble the standard warning: “Armed police, show me your hands.” Even if his warning is audible, it may not be comprehensible to subjects sitting inside a vehicle, perhaps (as on 3 March) with the radio playing. One solution is to amplify such warnings by means of a loudspeaker, which, besides eliminating the risk of subjects wrongly assuming that they are under attack by criminal rivals, would have the incidental advantage of helping to dominate them from the outset. In the great metropolis of Tokyo, as I have often seen for myself, emergency vehicles routinely use public address systems to negotiate congested traffic by issuing unmistakable instructions to other road users. I see no reason why, in a MASTS vehicle “strike”, AFOs should not combine amplified verbal commands with the use of flashing blue lights.

## **G. Evidence from members of the public**

- 5.72** Before leaving this section of my narrative, I wish to say a few words about the evidence provided by “lay witnesses” (i.e. bystanders).
- 5.73** Mr Stephen Delaney told the Inquiry that he was walking across the Jackson Avenue car park towards a gap in the hedge giving access to the adjoining car park of the Cherry Tree pub (see Figure 5) when a red car containing at least two men passed dangerously close to him before reversing into the corner space which we know the stolen Audi occupied at the time of the “strike”; the obvious inference from the totality of his account is that the red car was the stolen Audi. Mr Delaney said that he had protested to the driver about the manner of his driving, but the men in the red car laughed at him.
- 5.74** Mr Delaney carried on walking through the gap in the hedge. He then changed his mind and decided to retrace his steps. As he did so, he saw a silver or grey car, which can only have been the Alpha vehicle, pull up across the front of the red car. He told the Inquiry that the time interval between the arrival of the red car and that of the police convoy was only about a minute. That, while broadly consistent with his account of

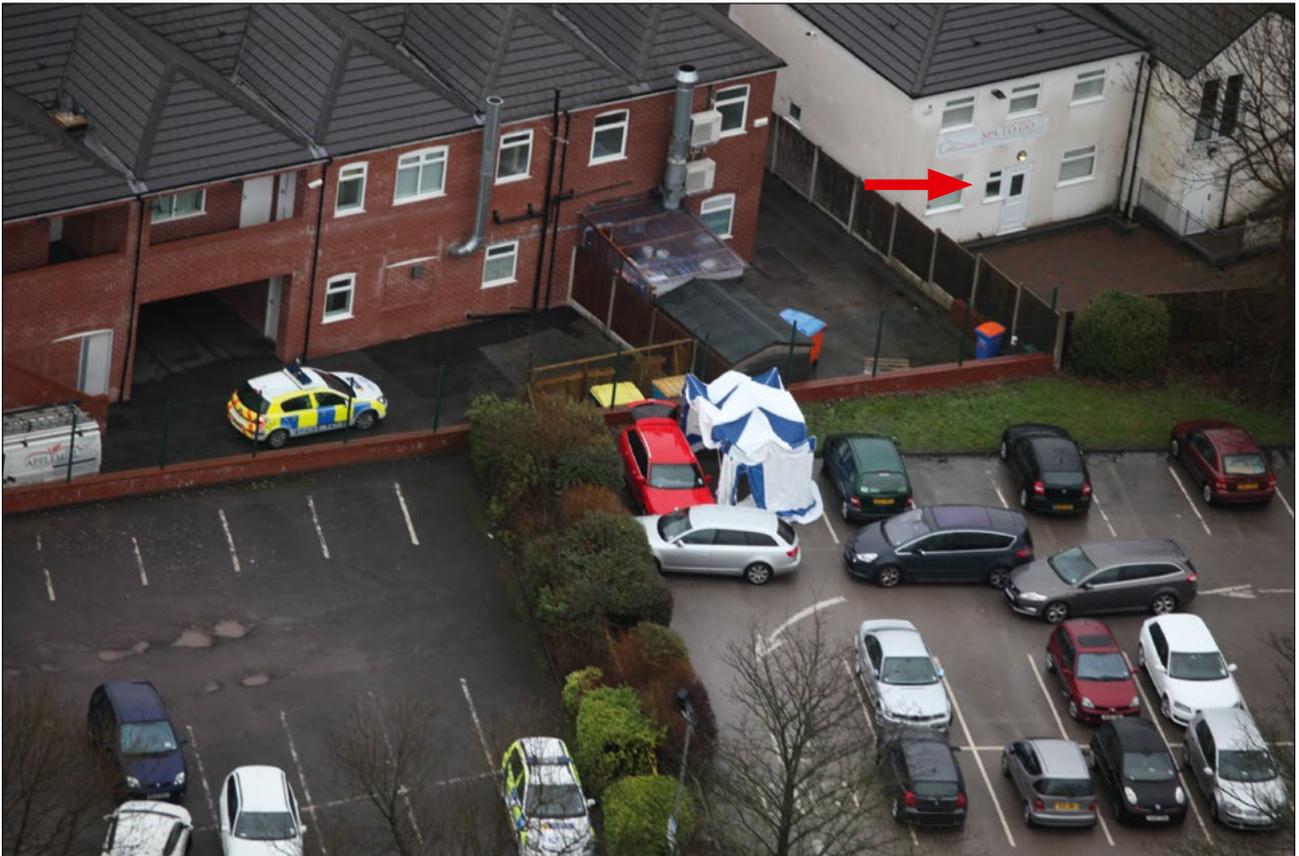
passing through the gap in the hedge and almost immediately turning round to retrace his steps, is impossible to reconcile with the evidence of other witnesses.<sup>226</sup>

- 5.75** The same applies to Mr Delaney's colourful description of events in the car park after the arrival of the police convoy, none of which corresponds to anything said by other witnesses at the scene. Much of the detail was new, in the sense that he had not included it in his original witness statement.
- 5.76** Mr Delaney had spent the afternoon watching rugby on television in the village club. During that period he had consumed something like four pints of cider. I have no doubt that he was an honest witness. I do not, however, regard his recollection of events as sufficiently accurate for me to place reliance upon any part of it.
- 5.77** Jessica Brown was 15 years old in March 2012. In summary, her account of events was as follows. During the early evening of 3 March, she was in Culcheth with some friends. Her mother sent her a text message instructing her to return home. Miss Brown told the Inquiry that she had noticed a dark-coloured car in the Jackson Avenue car park. She could hear its engine running. It was stationary, several spaces away from the corner known to have been occupied by the stolen red Audi. At one point she saw the driver outside the vehicle, leaning against the driver's door.
- 5.78** Miss Brown heard a series of bangs, at which point someone ushered her inside the Indian Tiffin restaurant. She went into a back room and observed what she could from a small window. The dark car was still in place. A man she assumed to be the driver she had noticed earlier was lying alongside it, having apparently been either shot or detained. After 15 or 20 minutes, she left the restaurant and returned home.
- 5.79** The following day, Miss Brown spoke to a police officer, who made brief notes of what she told him. She also gave interviews to various media organisations.
- 5.80** I am sure that Miss Brown was doing her utmost to give an accurate account of what she had witnessed on the evening of 3 March. I do not doubt that she was somewhere in the vicinity of the Jackson Avenue car park at the material time. However, there are significant inconsistencies between what she said the day after the incident and what she said during her oral evidence to the Inquiry. To take only one example, she had told the police officer who spoke to her that she had been inside a local pizza restaurant, two doors away from the Indian Tiffin, when she heard the bangs.
- 5.81** Even if Miss Brown's later description of where she was is correct, photographs of the scene clearly indicate that she could not have seen a man lying on the ground in the car park from the small window she identified as her vantage point (see Figure 11).

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<sup>226</sup> Even allowing for the theoretical possibility that the red Audi might have left its parking space and returned to it, undetected, during the interval while it was not under effective surveillance, the evidence of PC Evans suggests that it had been continuously stationary in the corner space for at least two minutes, probably longer, before the armed officers arrived. That is far longer than it would have taken Mr Delaney to walk the extremely limited distance he said he covered during the same interval.

**Figure 11: Aerial view of the car park (the red arrow indicates Jessica Brown's vantage point)**



**5.82** Like Mr Delaney, Miss Brown was an honest witness who did her best to help the Inquiry. In common with Mr Delaney, however, her version of events is not internally consistent or readily reconcilable with the known facts as established by other evidence. Again, I have concluded that Miss Brown's recollection is too confused to be reliable.

# Chapter 6: The Actions of Q9

## A. Background

- 6.1** The only person who knows why “Q9” placed his finger on the trigger of his MP5 carbine, illuminated the laser aiming device and fired one round to the centre mass of Anthony Grainger<sup>1</sup> is Q9 himself. He says he did it because he believed that Mr Grainger was reaching for a firearm, thereby placing Q9 and his colleagues in extreme danger.<sup>2</sup> This chapter considers whether Q9’s stated belief was honestly held by him and whether it amounted to a legal justification for his decision to shoot Mr Grainger.
- 6.2** Q9 is an experienced police constable in Greater Manchester Police (“GMP”). He qualified as an authorised firearms officer (“AFO”) on 3 March 2005,<sup>3</sup> joined the Tactical Firearms Unit (“TFU”) in November 2005<sup>4</sup> and qualified in Mobile Armed Support to Surveillance (“MASTS”) operations in September 2006.<sup>5</sup> By March 2012, he was a qualified counter-terrorist specialist firearms officer (“CTSFO”),<sup>6</sup> a firearms instructor and a close quarters combat (“CQC”) live fire instructor.<sup>7</sup> He was, at the time of the events with which this Inquiry is concerned, both “occupationally and operationally competent” as a MASTS AFO.<sup>8</sup> In the words of Ian Arundale QPM, the Inquiry’s expert witness, he could fairly be described as “a highly trained and occupationally experienced firearms officer”.<sup>9</sup> Giving evidence to the Inquiry, Q9 estimated that by 3 March 2012 he had probably taken part in more than 100 authorised MASTS deployments, of which between 15 and 20 had resulted in “decisive action”.<sup>10</sup> He had never previously fired a weapon at any person.<sup>11</sup>

## B. Approach to the issues

- 6.3** The approach that domestic law takes to the issue of self-defence, or defence of another, depends on whether the issue arises in criminal or civil proceedings.
- 6.4** In criminal proceedings, the test is set out in section 76 of the Criminal Justice and Immigration Act 2008, which materially provides:
- (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

<sup>1</sup> Q9, witness statement, 9 March 2012, Bundle A/270.

<sup>2</sup> *Ibid.*

<sup>3</sup> *Report of Ian Arundale QPM*, 4 November 2016, §185.

<sup>4</sup> Q9, TS/4997:15.

<sup>5</sup> Q9, TS/4784:18–19.

<sup>6</sup> *Report of Ian Arundale QPM*, 4 November 2016, §185.

<sup>7</sup> Q9, TS/4790:18–20.

<sup>8</sup> *Report of Ian Arundale QPM*, 4 November 2016, §186.

<sup>9</sup> *Ibid.*, §470.

<sup>10</sup> Q9, TS/4791:3–15.

<sup>11</sup> Q9, TS/4792:17–22.

- (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 ...<sup>12</sup>

**6.5** In civil proceedings, a different approach applies: a defendant who uses force in self-defence or in defence of another must establish that there were reasonable grounds for his belief that it was necessary to do so. If the defendant holds an honest, but mistaken, belief that there was an imminent threat, and the belief was unreasonable, his defence fails. This is clearly established by the decision of the House of Lords in *Ashley v Chief Constable of Sussex Police* [2008] 1 AC 962 – see, for example, per Lord Neuberger at [85]:

[85] ... where a defendant was not actually under the threat of imminent attack, self-defence can only be an answer to a claim in battery if he reasonably, as well as honestly, believed that he was under such a threat.<sup>13</sup>

**6.6** The reason why the law approaches the issue differently according to the nature of the proceedings was explained by the House of Lords in *Ashley*, per Lord Scott at [17]–[18]:

[17] ... [the] plea for consistency between the criminal law and the civil law lacks cogency for the ends to be served by the two systems are very different. One of the main functions of the criminal law is to identify, and provide punitive sanctions for, behaviour that is categorised as criminal because it is damaging to the good order of society. It is fundamental to criminal law and procedure that everyone charged with criminal behaviour should be presumed innocent until proven guilty and that, as a general rule, no one should be punished for a crime that he or she did not intend to commit or be punished for the consequences of an honest mistake. There are of course exceptions to these principles but they explain, in my opinion, why a person who honestly believes that he is in danger of an imminent deadly attack and responds violently in order to protect himself from that attack should be able to plead self-defence as an answer to a criminal charge of assault, or indeed murder, whether or not he had been mistaken in his belief and whether or not his mistake had been, objectively speaking, a reasonable one for him to have made. As has often been observed, however, the greater the unreasonableness of the belief the more unlikely it may be that the belief was honestly held.

[18] The function of the civil law of tort is different. Its main function is to identify and protect the rights that every person is entitled to assert against, and require to be respected by, others. The rights of one person, however, often run counter to the rights of others and the civil law, in particular the law of tort, must then strike a balance between the conflicting rights. Thus, for instance, the right of freedom of expression may conflict with the right of others not to be defamed. The rules and principles of the tort of defamation must strike the balance. The right not to be physically harmed by the actions of another may conflict with the rights of other people to engage in activities involving the possibility of accidentally causing harm. The balance between these conflicting rights must be struck by the rules and principles of the tort of negligence. As to assault and battery and self-defence, every person has the right in principle not to be subjected to physical harm by the intentional actions of another person. But every person has the right also to protect himself by using reasonable force to repel an attack or to prevent an imminent attack. The rules and principles defining what does constitute legitimate self-defence must strike the balance between these conflicting rights. The balance struck is serving a quite different purpose from that served by the criminal law when answering the question whether the infliction of

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<sup>12</sup> Criminal Justice and Immigration Act 2008, section 76(3)–(4).

<sup>13</sup> *Ashley v Chief Constable of Sussex Police* [2008] 1 AC 962 at [85].

physical injury on another in consequence of a mistaken belief by the assailant of a need for self-defence should be categorised as a criminal offence and attract penal sanctions ...<sup>14</sup>

- 6.7** The issue that arises in the current investigation, conducted as a public inquiry under the Inquiries Act 2005, is: which approach should be applied?
- 6.8** That question has been asked, and answered, in the context of a different species of inquisitorial proceeding, namely inquests conducted by coroners into certain deaths.
- 6.9** In *R (Duggan) v Assistant Deputy Coroner for the Northern District of Greater London* [2017] 1 WLR 2199, it was suggested that the coroner ought to have directed a jury (but wrongly failed to do so) that it should reach its conclusion as to whether the police officer who shot Mark Duggan had killed him lawfully or unlawfully by reference to the civil law. The Court of Appeal disagreed, holding:

[91] There are several differences between the criminal law and the civil law on self-defence. In a prosecution for assault or homicide it is for the prosecution to prove that the act was not done in lawful self-defence. In the civil law the burden of proving self-defence lies on the defendant. In a criminal court the prosecution must disprove self-defence to the criminal standard of proof. In civil proceedings the defendant must prove self-defence to the civil standard of proof.

[92] Moreover, and importantly in the present context, there is a difference between the criminal law and civil law as to the relevance of reasonableness to the issue of the defendant's honest and genuine belief of imminent danger of being attacked where that belief was mistaken. In the criminal law ... the question whether the belief was reasonable is at most relevant to whether the belief was in fact honestly and genuinely held. In the civil law the defendant must not only hold the belief but it must be objectively reasonable. That distinction was maintained and justified on policy grounds by the House of Lords in *Ashley v Chief Constable of Sussex* [2008] 1 AC 962 [the Court then cited paragraphs 17 and 18 of Lord Scott's speech, as set out above] ...

[93] We were not shown any domestic case which requires an enquiry as to breach of the civil law at an inquest. The judgment of the Divisional Court gave a succinct and lucid historical account of the former verdicts at an inquest of justifiable or excusable homicide and the modern conclusions of lawful and unlawful killing. As that account shows, it has never been the function of an inquest to concern itself with civil liability for a death, and the conclusion of lawful killing has always been understood to have been linked to crime and amounted to a statement that the jury believed that the deceased was probably not the victim of a homicide.

[94] So far as concerns Article 2, there is no decision of the ECHR [European Court of Human Rights] which expressly states that the procedural requirements of Article 2 impose an obligation on the state to investigate a breach of the civil law. Indeed, such an interpretation of Article 2 would be contrary to the policy and purpose underlying Article 2 and was implicitly rejected in *Da Silva*.

[95] The procedural requirements of Article 2 are imposed on the state. As was observed by Lord Scott in *Ashley* in the passages quoted earlier in this judgment, the criminal law identifies, and provides punitive sanctions for, behaviour that is categorised as criminal because it is damaging to the good order of society. The civil law of tort, on the other hand, is concerned with disputes between citizens or persons or bodies in the exercise of private rather than public functions. As was made clear in *Da Silva*, the procedural requirements of Article 2 are concerned with the public's confidence in the state's monopoly on the use of force and that, where appropriate, the official investigation must lead to the punishing of those responsible for the unjustified use of force. Similar points had been made by the ECHR in *Nachova v Bulgaria* (2006) 42 EHRR 43 (at para. 113) about the need for the investigation to be effective in the sense of being capable of leading to the identification and punishment of those responsible. Those requirements are consistent with standards and

<sup>14</sup> *Ibid.* at [17]–[18]. See also per Lords Bingham at [3], Rodger at [53], Carswell at [76] and Neuberger at [85]–[86].

consequential penalties imposed by the criminal law rather than those imposed to resolve private disputes.

[96] Consistently with that analysis, in *Jordan* the ECHR rejected the argument that civil proceedings would be an adequate compliance by the state with the procedural requirements of Article 2 even though they would provide a judicial fact-finding forum, with the attendant safeguards and the ability to reach findings of unlawfulness, with the possibility of damages. The ECHR's rejection (at para. 141) was on the grounds that it is a procedure undertaken on the initiative of the applicant, not the authorities, and it does not involve the punishment of any alleged perpetrator.

[97] Furthermore, the very question addressed by the ECHR in *Da Silva* was whether, for the purposes of Article 2, the criminal law of self-defence in England and Wales was a sufficient justification of killing where the belief of an imminent threat was both mistaken and not objectively reasonable. In holding that it was sufficient justification, the ECHR was implicitly, if not explicitly, deciding that Article 2 does not require an investigation into the objective reasonableness of the belief which might found a civil action. That conclusion is given added weight by the fact, accepted by the parties to the appeal, that the ECHR in *Da Silva* was aware of *Ashley* and, hence, of the clear distinction made there between the subjective reasonableness of the defendant's belief for self-defence in a criminal prosecution and the objective reasonableness of the defendant's belief for self-defence in the civil law.<sup>15</sup>

- 6.10** Having regard to the Terms of Reference of this Inquiry (see Appendix A) and the circumstances in which I have come to conduct it, as well as its subject matter and inquisitorial nature, I take the firm view that I should apply the criminal, and not the civil, law when assessing the legality of the use of lethal force by Q9.
- 6.11** The Terms of Reference of this Inquiry, announced on 17 March 2016 by the Home Secretary (then the Rt Hon Theresa May MP), require me, *inter alia*, to “ascertain when, where, how and in what circumstances Mr Anthony Grainger came by his death during a Greater Manchester Police operation”.<sup>16</sup> The four questions raised – the when, where, how and in what circumstances – are precisely the same questions that a Coroner investigating the death of Mr Grainger would be required to ask and answer in an inquest into Mr Grainger's death under the Coroners and Justice Act 2009; see section 5(1)(b) of the 2009 Act, read with section 5(2) of the 2009 Act. This is no accident: the Inquiry was set up because of the impossibility of conducting an inquest into Mr Grainger's death in which the tribunal of fact could see and hear all relevant evidence.<sup>17</sup> As the Home Secretary said when announcing this Inquiry in the House of Commons: “It has been necessary to convert the inquest to a statutory inquiry so as to permit all relevant evidence to be heard by the Judge. **I have agreed with Judge Teague that the inquiry will have the same scope as the current inquest**, which is being adjourned prior to the setting up of the inquiry” (my emphasis).<sup>18</sup>
- 6.12** As I have said, the reason why the investigation into Mr Grainger's death could not proceed by way of an inquest was solely because of an inability to place before the tribunal of fact all relevant evidence. It would be odd indeed if this fact had the unintended consequence that a different substantive legal framework fell to be applied when judging the legality of Q9's use of force.

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<sup>15</sup> *R (Duggan) v Assistant Deputy Coroner for the Northern District of Greater London* [2017] 1 WLR 2199 at [91]–[97].

<sup>16</sup> See Appendix A.

<sup>17</sup> See paragraphs 1.21–1.33.

<sup>18</sup> House of Commons Debate (17 March 2016), *Hansard*, vol. 607, cols.52WS–53WS, <https://hansard.parliament.uk/Commons/2016-03-17/debates/16031732000017/StatutoryInquiryAnthonyGrainger>.

**6.13** In any case, these are truly inquisitorial proceedings. They have very many similarities with coronial proceedings: the reasons which led the Court of Appeal to conclude in *Duggan* that coroners in inquests ought to apply the criminal, and not the civil, law as to self-defence apply *mutatis mutandis* to the present proceedings. In this regard, I do not believe that the correct approach is (as some core participants suggested) to decide whether these Inquiry proceedings are more “like” civil proceedings than criminal proceedings (or whether the functions of the Inquiry are closer to those of a civil court than a criminal court). That is because there is already a very close analogue to the current proceedings in the form of inquests, where the position as to the approach to be taken has already been clearly established.

## C. Q9 as a witness

**6.14** As a witness to objective facts, as opposed to his own thoughts and motives, Q9 was honest and generally accurate. When it came to more subjective matters he was, like many witnesses, somewhat less reliable. Although he did his best to assist the Inquiry, he occasionally contradicted himself when describing the factors he had considered when making his risk assessment on 3 March 2012. He also overstated the strength of his belief that he and his colleagues were facing an imminent lethal threat. That is not surprising. Q9 has repeatedly relived in his own mind the crucial seconds leading up to Mr Grainger’s death.<sup>19</sup> For a man in his position, it must be all but impossible to avoid the understandable but insidious temptation – inevitably increasing with the passage of time – to reconstruct his thought processes retrospectively and confuse the result with genuine recollection. In that sense, Q9 is not immune from the very perils of hindsight which his Counsel, Hugh Davies QC (rightly in this particular context), was at pains to urge me to shun. While Q9 did his best to defeat that temptation, he did not always succeed.

**6.15** In a critical situation of the kind faced by Q9 on 3 March 2012, “it is the individual AFO who must assess the immediacy and proximity of the threat and make an operational decision as to whether it is absolutely necessary to discharge a firearm”.<sup>20</sup> Each AFO is personally accountable for his decisions and actions<sup>21</sup> and must be in a position to justify those decisions and actions on the basis of his honestly held belief as to the circumstances that existed at the time and his professional and legal responsibilities.<sup>22</sup> The *Manual of Guidance on the Management, Command and Deployment of Armed Officers* lists five factors which may inform an AFO’s appreciation of the critical nature of a situation, namely his own observation and assessment of the situation; his perception of any imminent threat; his understanding of the wider police operation; any information or intelligence that has been communicated to him; and any direction or authorisation given to him.<sup>23</sup>

**6.16** There were, as it turned out, no weapons of any description in the stolen Audi: none could have been seen by Q9 before he shot Mr Grainger. It is therefore necessary to scrutinise the basis of Q9’s claimed, but erroneous, belief that Mr Grainger was equipped with a firearm, the grounds for which fall into two broad categories, namely those based upon Q9’s prior knowledge of Mr Grainger (whether acquired from

<sup>19</sup> Q9, TS/5021:16–21.

<sup>20</sup> ACPO, ACPOS and NPIA (2011) *Manual of Guidance on the Management, Command and Deployment of Armed Officers*, third edition, §2.21.

<sup>21</sup> *Ibid.*, §2.22.

<sup>22</sup> *Ibid.*, §2.23.

<sup>23</sup> *Ibid.*, §2.24.

briefings or other sources) and those based upon his own observation and assessment on the occasion that he shot him.

- 6.17** What happens when an AFO decides whether to discharge his weapon in a critical situation? Some considerable effort of the imagination is required to appreciate what is really involved. It is not just a matter of recognising that a person acting in defence of himself or another cannot “weigh to a nicety the exact measure of his necessary defensive action”.<sup>24</sup> Nor is it enough merely to guard against the obvious dangers of hindsight. The real problem is the subtly dangerous assumption we are apt to make that an AFO’s decision to fire, or not to fire, must of necessity be the result of a process of conscious deliberation that can be subjected to reliable logical analysis after the event. Sometimes that may be true, but we cannot safely assume it to be so in all circumstances.
- 6.18** What is clear is that a firearms officer confronted by multiple subjects in a critical situation rarely, if ever, has time to carry out a methodical dynamic risk assessment of each individual by reference to the National Decision Model.<sup>25</sup> As one officer put it, “the whole thing could be over in ten seconds”.<sup>26</sup> In reality, his dynamic risk assessment of the overall threat posed by the subjects may have to be completed in less than a tenth of that time. To an onlooker, and even, perhaps, to the officer himself, it may appear to be an almost wholly instinctive process, conducted with little or no reference to the contents of briefings or manuals. That is pure illusion. In truth, it is the product of natural aptitude, long training, practice and experience, all of which predispose the officer to respond in a particular way.
- 6.19** There is nothing really unfamiliar or surprising about this. Many skilled human activities demanding near-instantaneous decisions – whether in the arts, science or sport – involve similar difficulties, albeit with far less momentous consequences. The cellist sight-reading a piece of music does not work out the individual notes, calculating in each case which finger of the left hand must be placed in what spot on which string. By a seemingly intuitive process that he himself scarcely understands but which is the result of years of tuition and practice, the eye, hand and brain co-operate to produce the correct notes (or most of them) before the musician himself is aware of having worked out what they are. The observational astronomer using a stopwatch to time a lunar occultation has no way of knowing precisely when or where the faint star will suddenly pop into view as it emerges from behind the dark limb of the Moon, yet somehow activates the stopwatch before his brain is conscious of having registered the star’s appearance. The skilled fly-fisher raises his rod in response to some visual stimulus of which he becomes fully aware only after he has hooked the trout that momentarily seized his sunk fly. To the onlooker, these abilities may seem to speak of a mysterious sixth sense, but they are in each case the natural outcome of long training, practice and experience.
- 6.20** That is not to suggest that the decisions involved in such actions are not deliberate, or that they are beyond rational analysis, or that those who make them are not fully responsible for what they do. It is merely to recognise that there may be a subliminal element which the decision-maker might afterwards find difficult to retrieve or articulate. A firearms officer who has discharged his weapon in a critical situation, genuinely unaware that a particular consideration influenced his decision to fire, may be misled into denying its relevance. Alternatively, the difficulty of explaining a decision taken in

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<sup>24</sup> *R v Palmer* [1971] AC 814 at [832], per Lord Morris of Borth-y-Gest.

<sup>25</sup> U9, TS/3805:10–15.

<sup>26</sup> U9, TS/3796:1–2.

a fraction of a second may tempt him to advance by way of retrospective justification considerations that did not, in fact, influence his decision. He may even do both.

- 6.21** An example from the present Inquiry illustrates the point. In his witness statement dated 9 March 2012, Q9 outlined his belief that the subjects of Operation Shire were in some way linked to a serious armed robbery in Bolton (“the Bolton robbery”), with the clear implication that the circumstances of that offence were, or at least might have been, a factor in his decision to shoot Mr Grainger.<sup>27</sup> In his evidence to the Inquiry, however, he denied that the Bolton robbery had played any part in his thinking on the evening of 3 March.<sup>28</sup> Although Q9 may now believe that to be true, his own evidence reveals that on the day of the shooting the offence had been preying on his mind sufficiently to cause him to discuss its circumstances with colleagues while the MASTS team was “laid up” at Leigh Police Station.<sup>29</sup>
- 6.22** The fact that Q9 discussed the Bolton robbery with colleagues provides a useful reminder that, while his decision to discharge his weapon may well have been reached in less than one second, it had been preceded by a lengthy period of inactivity during which the AFOs were able to reflect upon, and discuss, their knowledge of the subjects of Operation Shire under comparatively relaxed conditions. The speed with which events unfolded during the arrest phase meant that Q9 probably had less than a second in which to decide whether to shoot Mr Grainger. However, it does not follow from the obvious fact that he had no time to review each and every individual item of information previously communicated to him that such material did not significantly inform his decision. During the preceding 12 hours, he had been able to reflect upon and discuss with his colleagues the circumstances of the Bolton robbery (as well as, presumably, the contents of the morning’s briefing).
- 6.23** No doubt, at a conscious level, the dominant factor influencing an AFO’s response to a critical situation is what he sees “on the ground”, rather than any background information he may possess concerning a subject.<sup>30</sup> At a subconscious level, however, the distinction between the officer’s assessment of what he sees and his store of background knowledge is far less stark, if only because what the AFO knows – or thinks he knows – may predispose him to interpret – or misinterpret – what he sees on the ground in a particular way. Even where the officer has less than a second in which to decide how to respond to a critical situation, his prior knowledge of the subjects may well inform his dynamic risk assessment in such a way as to make it more or less likely that he will discharge his weapon.
- 6.24** I accept that where, as on 3 March 2012, an AFO faces a critical situation in which several subjects are believed to be acting in concert, it may be unrealistic to expect him to distinguish between the varying risks posed by different individuals, even if he can correctly identify them in the first place. While there was good reason to anticipate that Mr Grainger would be occupying the driving seat of the stolen Audi that evening, the last Dedicated Surveillance Unit (“DSU”) officer to observe the car, moments before Superintendent (“Supt”) Mark Granby declared State Amber, had been unable to confirm the number of occupants, let alone their individual identities. When the police convoy drove into the car park, therefore, Q9 could not be certain that the man at the wheel of the Audi would be Mr Grainger. Even when he discharged his

<sup>27</sup> Q9, witness statement, 9 March 2012, Bundle A/268.

<sup>28</sup> Q9, TS/4865:14–22.

<sup>29</sup> Q9, witness statement, 9 March 2012, Bundle A/268; interview under caution, 13 June 2012, Bundle B/78–80; TS/4858:7–18.

<sup>30</sup> Ian Arundale, TS/6899:13–6900:2.

weapon, he did not know whether he was shooting Mr Grainger or David Totton.<sup>31</sup> For the purposes of conducting a dynamic risk assessment in those circumstances, the AFOs would have to take into account all the background information they possessed about all three subjects, without differentiating between them.<sup>32</sup>

**6.25** Q9's evidence to the Inquiry was that on 3 March 2012 he relied solely on what he had been told at that day's briefing,<sup>33</sup> and not upon earlier briefings or any additional knowledge he might have acquired from other sources. Nevertheless, I cannot avoid examining the overall state of Q9's knowledge of Mr Grainger and the other subjects of Operation Shire in some detail, not least because Q9 has at times given the clear impression that, contrary to what he told the Inquiry, his actions on 3 March were indeed influenced by background knowledge that he could not have acquired from that morning's briefing (or, in some cases, from any briefing). In any case, as some of Q9's colleagues confirmed,<sup>34</sup> it is in practice difficult to eradicate the influence of information provided on earlier occasions.

**6.26** Before 3 March 2012, Q9 had not had any personal dealings with Mr Grainger.<sup>35</sup> Such prior knowledge as he possessed concerning Mr Grainger and the other two subjects of Operation Shire came from three sources: the briefing he received on the morning of 3 March 2012; the briefings he had received in earlier armed deployments against the same subjects; and personal and anecdotal information he had picked up elsewhere. All his knowledge of Mr Grainger came, whether officially or unofficially, through the firearms unit.<sup>36</sup>

## D. Briefings attended by Q9 prior to 3 March

**6.27** I have dealt elsewhere in this Report with the extent to which it is reasonable to expect an AFO to make his own assessment of the information provided to him at a briefing. Summarising the position, it is not his job to conduct some kind of independent review of what he is told at a briefing. A briefing may (and, where possible, should) include, in summary form, helpful background information as to the likelihood of an operation's subjects being armed. Mindful that "the content of a briefing may directly affect the response of armed officers to subsequent perceived threat from a subject",<sup>37</sup> those whose job it is to prepare and deliver briefings must take care to ensure that they present the most accurate picture possible. An AFO has enough on his plate without having his mind cluttered with unnecessary background detail, let alone having to worry whether the information with which he has been provided is accurate. He is entitled to assume that those who have the responsibility of authorising his deployment and preparing and conducting any briefing have done their jobs properly. In Operation Shire, with rare exceptions, they did not do so.

**6.28** Q9 was involved in the very first authorised MASTS deployment in connection with Operation Shire, on 15 December 2011. On that occasion, the firearms authority was rescinded before the MASTS team left its holding point, as the risk of a robbery

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<sup>31</sup> Q9, TS/5016:23–5017:1.

<sup>32</sup> Q9, TS/4900:7–18.

<sup>33</sup> Q9, TS/4858:2–6; see also TS/5002:4–11.

<sup>34</sup> For example, U9, TS/3792:22–3793:4; X9, TS/3954:20–3955:1; J4, TS/4369:1–4.

<sup>35</sup> Q9, TS/4798:25–4799:6.

<sup>36</sup> Q9, interview under caution, 10 April 2012, Bundle B/31.

<sup>37</sup> ACPO, ACPOS and NPIA (2011) *Manual of Guidance on the Management, Command and Deployment of Armed Officers*, third edition, §6.71.

had passed without any sign of movement from the subjects (see Chapter 2).<sup>38</sup> Nevertheless, Q9 was present at the morning briefing, the audio recording<sup>39</sup> of which confirms that the subjects of that day's operation were four members of the Corkovic family, together with Mr Totton and a man called Adam Brown. All were said to be intent on committing armed "cash-in-transit" robberies in the Greater Manchester area. All were characterised as violent men with a propensity to use weapons (including, in the case of three of the Corkovics, firearms). Of Mr Totton, the briefing officer said this:

Subject Five, David Totton, who I believe is just in the periphery of this. He's a white male, thirty-two years, heavy build. Warnings for firearms, which is for possession of a shotgun in 1999. Weapons, he used an iron bar during a Section 47 in 2001, and violence, there is ten incidents of assaults in the past five years on his record. His intent is conspiracy to commit armed robbery.<sup>40</sup>

- 6.29** Mr Grainger did not feature in the briefing. He did not come to the attention of Operation Shire's investigation team until 25 January 2012, when surveillance officers first saw him at the wheel of the stolen blue BMW.
- 6.30** By the time he was interviewed by the Independent Police Complaints Commission ("IPCC"), Q9 had forgotten that he had been briefed on 15 December 2011.<sup>41</sup> He accepted, when giving evidence to the Inquiry, that what he was told on that date could not have affected his reasoning on 3 March 2012.<sup>42</sup> However, although he told the Inquiry that he would work solely on the basis of intelligence provided to him on the day of a deployment,<sup>43</sup> he went on to say that on 3 March he had recalled and taken into account information provided at an earlier briefing, on the morning of 26 January.<sup>44</sup>
- 6.31** That was the occasion of Q9's next involvement in Operation Shire, just one day after the first sighting of Mr Grainger, when the stolen Audi and BMW travelled to the Stoke-on-Trent area. On this occasion, the MASTS team actually deployed; Q9 drove the "Alpha" vehicle.<sup>45</sup> No form of intervention took place.
- 6.32** As a result, it appears, of an "operator error" by the operational firearms commander ("OFC")<sup>46</sup> concerned, the briefing on 26 January 2012 was not recorded. Although the slide presentation for that briefing survives,<sup>47</sup> it contains no detail of the information or intelligence provided to the armed officers. Apart from listing details of significant vehicles and addresses, the relevant section of the presentation merely indicates that "the subjects of this operation are believed to be engaged in armed robberies in the North West region",<sup>48</sup> adding that there would be "further updates from TFC [tactical firearms commander]/sponsor".<sup>49</sup>

<sup>38</sup> Robert Cousen, witness statement, 10 January 2013, Bundle E/11. See also Tactical Firearms Command log, 15 December 2011, Bundle G1/2495–2497.

<sup>39</sup> Briefing transcript, 15 December 2011, Bundle F/1132.

<sup>40</sup> *Ibid.* See also Bundle F/1134.

<sup>41</sup> Q9, interview under caution, 10 April 2012, Bundle B/22–23; see also Q9, TS/4801:4–5.

<sup>42</sup> Q9, TS/4801:16–4802:3.

<sup>43</sup> Q9, TS/4805:3–15.

<sup>44</sup> Q9, TS/4834:24–4835:4.

<sup>45</sup> Briefing slide presentation, 26 January 2012, Bundle G1/339. See also Q9, interview under caution, 10 April 2012, Bundle B/27.

<sup>46</sup> Report re briefing packs and deployments, G2/692. See also Stuart Ellison, TS/1748:25–1749:5.

<sup>47</sup> Briefing slide presentation, 26 January 2012, Bundle G1/315.

<sup>48</sup> Bundle G1/319.

<sup>49</sup> *Ibid.*

- 6.33** Strictly speaking, the only subject of the operation at that stage was Mr Totton.<sup>50</sup> Robert Rimmer and Mr Grainger should more accurately have been listed as “associates” of Mr Totton (see Chapter 2). In the event, however, Superintendent Stuart Ellison, as TFC, orally corrected the error during the briefing. At the very end of the briefing, individual threat assessments were provided for the original subjects of Operation Shire, namely the four Corkovics and Mr Brown, who were now being treated as associates of Mr Totton. The slide presentation, which presumably incorporated unaltered slides “cut and pasted” from earlier briefings, continued to describe them as “subjects”.<sup>51</sup>
- 6.34** The main “threat assessment” section of the presentation on 26 January listed Mr Totton, Mr Rimmer and Mr Grainger, in that order, as the three “subjects”, with a separate slide for each indicating his presumed “capability” and “intent”. The presentation gave the same “intent” for all three men, namely “conspiracy to commit armed robbery”. For Mr Totton, under the heading “capability”, the presentation listed “warnings”<sup>52</sup> for firearms (“possession of shotgun in 1999”), weapons (“used iron bar during s47 2001”) and violence (“10 incidents of assaults in the past 5 years”). The presentation indicated that Mr Rimmer had warnings for “Violence/Weapons – Subject has served 5 and a half years for a Section 18 assault whereby he stabbed a girlfriend’s ex-partner in the abdomen”. In relation to Mr Grainger, the presentation listed warnings for weapons (“previously conspired to commit robberies with firearms”) and violence (“numerous arrests for Sec 18/20 offences”) and described him as a “Group 1 offender”. Q9’s understanding of the last phrase was that it meant the subject had been “highlighted” (but not necessarily convicted) in connection with “serious violent crimes”.<sup>53</sup> When interviewed about Mr Totton’s risk assessment, however, Q9 said he had understood that Mr Totton had been convicted of “possession of a shotgun in 1999”,<sup>54</sup> despite the fact that the relevant slide makes no reference to such a conviction. When giving evidence to the Inquiry, Q9 said that he had assumed from the fact the briefing had “linked” Mr Totton to the possession of a shotgun that he must have been convicted of possession,<sup>55</sup> although he had not made the same assumption on 3 March.<sup>56</sup>
- 6.35** Q9 was also a member of the MASTS team on Wednesday 1 February 2012. A recording of the briefing delivered that morning survives,<sup>57</sup> again listing the subjects as Mr Totton, Mr Rimmer and Mr Grainger. In relation to each, the “threat assessment” summary was practically identical in content and wording to the assessments provided at the briefings on 15 December and 26 January; the only difference was that it omitted from Mr Totton’s threat assessment any reference to an iron bar, but included his past use of a machete in the commission of offences.<sup>58</sup>
- 6.36** The briefing on 1 February included this passage under the heading of information and intelligence:

Although there is no specific information in relation to the use of firearms for this operation, [Mr Totton] has previous marking for possession of a shotgun. Intelligence also links

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<sup>50</sup> Ellison, TS/1746:23–1748:1.

<sup>51</sup> Bundle G1/355, 357, 359, 361 and 363.

<sup>52</sup> The provenance, significance and reliability of such warnings are considered in Chapter 2 of this Report.

<sup>53</sup> Q9, TS/4855:14–21.

<sup>54</sup> Q9, interview under caution, 10 April 2012, Bundle B/39.

<sup>55</sup> Q9, TS/4852:19–4853:1.

<sup>56</sup> Q9, TS/4853:12–15.

<sup>57</sup> Briefing transcript, 1 February 2012, Bundle F/1146.

<sup>58</sup> Bundle F/1148.

[Mr Totton] to the planning, preparatory phases of armed robberies in the North West area, whereupon firearms have been discharged, on one occasion at police.<sup>59</sup>

- 6.37** The same briefing included an assertion that Mr Totton had been responsible for the discharge of firearms. In fact, Mr Totton's name does not feature in the relevant crime report,<sup>60</sup> even as a suspect. As on 26 January, the briefing concluded with brief individual threat assessments for the Corkovics and Mr Brown, now correctly referred to as "associates".<sup>61</sup> On that occasion, Q9's assigned role was as "Charlie 3" (i.e. the rear nearside passenger in the "Charlie" vehicle), but the MASTS team was not, in the event, physically deployed.
- 6.38** On 22 February, having realised that there was no evidence to suggest any active co-operation between the Corkovics on the one hand and, on the other, Mr Totton, Mr Rimmer and Mr Grainger, Detective Inspector ("DI") Robert Cousen, Operation Shire's Senior Investigating Officer, divided the investigation into two separate strands. In effect, that decision involved a recognition by the Robbery Unit that it was dealing with two distinct organised crime groups, rather than one. Thereafter, briefings to AFOs no longer referred to members of the Corkovic group. Unfortunately, however, the division of the operation into two entirely separate strands was not explained to those AFOs who continued to participate in MASTS operations in Operation Shire, having already attended earlier briefings.<sup>62</sup>

## E. The briefing on 3 March 2012

- 6.39** Following the division of Operation Shire into two strands, the only authorised MASTS deployment in which Q9 played any part was the final deployment on 3 March. The briefing for that day included some significant departures from earlier briefings attended by Q9, which had proceeded upon the basis that the subjects were planning robberies of cash and valuables in transit ("CVIT"). On 3 March, the briefing began with a summary<sup>63</sup> of an offence which, so it was said, the subjects (i.e. Mr Totton, Mr Rimmer and Mr Grainger) had committed in 2008:

There is intelligence to suggest that these subjects were responsible for a robbery in 2008 in Preston, where they broke into a bank and lay in wait for staff to arrive. On their arrival, they were held at gunpoint using shotgun, handgun, tied up and forced to hand over keys to the strong room. Subjects made good their escape with a substantial amount of money.<sup>64</sup>

- 6.40** Those details had not featured in any previous briefing attended by Q9. The remainder of the briefing on 3 March contained only the briefest of allusions to the possibility of a CVIT robbery, giving the assessed risk to CVIT custodians as "medium".<sup>65</sup> Given that the briefing of 1 February had assessed the equivalent risk as "high",<sup>66</sup> there appears to have been some subsequent downgrading of the likelihood of the anticipated offence taking the form of a CVIT robbery.

<sup>59</sup> *Ibid.*

<sup>60</sup> Bundle G2/1400–1406.

<sup>61</sup> Bundle F/1155.

<sup>62</sup> G6, TS/4254:13–15.

<sup>63</sup> The accuracy of the summary is considered in Chapter 3. It relates to Operation Ascot – an operation that took place in 2005, not 2008.

<sup>64</sup> Bundle C/333.

<sup>65</sup> Briefing transcript, 3 March 2012, Bundle C/335. See also slide presentation, Bundle F/1271.

<sup>66</sup> Briefing transcript, 1 February 2012, Bundle F/1148. See also slide presentation for 31 January 2012, Bundle G1/511.

**6.41** As to possible targets, the TFC (Supt Granby) told the AFOs:

Subjects have been observed conducting recces in Culcheth town centre, although it is unclear at this time what the specific target may be.<sup>67</sup>

**6.42** Later in the briefing, the OFC (“X7”) added that on their reconnaissance visits, the subjects had been taking particular interest in a secure compound forming part of Sainsbury’s supermarket premises. Referring to aerial images,<sup>68</sup> he added:

There’s a locked gate there and a padlocked gate there. Here on this bush line has got a metal fence behind it, they’ve been seen driving up here and a third subject has been seen emerging from this bush line here with a hacksaw and getting into the vehicle and driving off. There’s nothing to suggest, other than, obviously they’ve had their recces, but whether this is going to be the target, we don’t know ...<sup>69</sup>

**6.43** The assertion that a subject had been seen in the vicinity of Sainsbury’s with a hacksaw was without foundation (see paragraphs 3.61–3.68). Supt Granby also showed the AFOs a close-up image of the shopping parade near the car park, making specific reference to the local post office, the branch office of Cheshire Building Society and Thomas Cook’s retail premises.<sup>70</sup>

**6.44** In relation to each individual subject, the threat assessment provided at the briefing was, for all practical purposes, identical to that which had been given at previous briefings attended by Q9.

**6.45** On 3 March, there was no reference, as there had been on 1 February, to the absence of any specific information that the subjects would be in possession of firearms. Neither was there any form of assessment or guidance as to whether the available intelligence justified an assumption that the subjects would have access to firearms.<sup>71</sup> A number of witnesses attempted to explain the omission as merely a difference in personal style, on the basis that the two briefings had been presented by different TFCs.<sup>72</sup> I do not accept that view. There must, of course, be some degree of latitude in how a briefing is expressed, but that cannot extend to the omission of what might be regarded as core elements. On 1 February, Superintendent Chris Hankinson had given the AFOs an assessment as to the risk that the occupants of the stolen Audi would be equipped with firearms, making it clear that there was no specific information to suggest that they would. He did the same on 2 February, as did Chief Inspector (“CI”) Alan Wood on 3 February. On 2 March, Chief Inspector Michael Lawler provided what was, if anything, an even more carefully worded assessment:

Before we go into the threat assessment, we all need to be aware: there is no current information or intelligence to say the subjects have either possession or immediate access to firearms, or other less lethal weapons. However, my assumption is that they are about to commit armed robbery, based on their previous criminal behaviour. They will either have firearms or less lethal weapons.<sup>73</sup>

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<sup>67</sup> Briefing transcript, 3 March 2012, Bundle C/334.

<sup>68</sup> Bundle F/1282.

<sup>69</sup> Briefing transcript, 3 March 2012, Bundle C/341.

<sup>70</sup> Briefing transcript, 3 March 2012, Bundle C/342.

<sup>71</sup> Q9, TS/4849:6–20.

<sup>72</sup> U2, TS/4120:6–4122:21; W9, TS/4630:16–23; H9, TS/5240:5–9; W4, TS/5317:5–8; X7, TS/5434:23–5436:6. I cannot exclude the possibility that some officers may have been influenced by the evidence of others. It was clear that most, if not all, of the GMP witnesses were familiarising themselves beforehand with the transcripts of evidence given by colleagues who had already testified to the Inquiry.

<sup>73</sup> Briefing transcript, 2 March 2012, Bundle F/1176.

- 6.46** It is clear that the usual practice, followed in Operation Shire by at least three different TFCs, was to give AFOs a considered assessment, one way or the other, as to the likelihood that the subjects would have access to firearms. The sole exception was the final briefing on 3 March, when Supt Granby gave no such guidance. That cannot be dismissed as a difference of personal “style”. It was a serious omission. To object that it would have been even more serious to have omitted information positively indicating that the subjects would be in possession of firearms is no answer. Nor is it sufficient to assert (as one officer did<sup>74</sup>) that silence amounts to the same thing, or to suggest (as another did<sup>75</sup>) that the very fact that a MASTS deployment had been authorised was sufficient in itself, or to imply (as yet another did<sup>76</sup>) that the omission did not really matter because AFOs would ultimately rely on their own observations at the scene.
- 6.47** The considered judgement of commanders as to the risk that the subjects of an operation will be armed with guns, or indeed other weapons, is a relevant and important piece of information that should be included in every MASTS briefing. The point is not, of course, to obviate the need for individual AFOs to exercise their own judgement at the scene. It is to give them some idea of what to expect, even if the range of possible risks anticipated by their commanders is so wide as to throw individual officers back on to their own completely unaided resources. The very fact (if it be so) that there is no specific intelligence about the presence of firearms or other weapons is something that those deployed on a MASTS operation are entitled to know in advance.
- 6.48** Unfortunately, as Q9 himself acknowledged to the IPCC investigators,<sup>77</sup> the briefing on 3 March was completely silent as to the risk of firearms being present within the stolen Audi. Without such an assessment, the officers were left, in the apt phrase of Jason Beer QC, Leading Counsel to the Inquiry, to “fill in the dots” themselves.<sup>78</sup> Unfortunately, not all the officers filled in the dots so as to arrive at the same conclusion. Unlike Q9, who said he took the word “armed” to mean “armed with guns”, the overwhelming majority understood it to cover a wide range of possible weapons, including, but by no means confined to, firearms. The distinction is an important one. Although Q9 adopted the suggestion of his Counsel, Mr Davies QC, that all the AFOs “reached the identical capability assessment for the group, in other words, they may have had firearms”,<sup>79</sup> that does not accurately reflect Q9’s own assessment, which clearly differed from that of his colleagues. He told the Inquiry that he had interpreted the reference at the morning briefing to an “armed” robbery, taken in context, to refer to a robbery with firearms, as opposed to weapons of a different description.<sup>80</sup> If that is correct, it suggests that even before he arrived at the scene, Q9, in contradistinction to his fellow officers, had already concluded that the occupants of the stolen Audi would (not “might”) have one or more guns in the vehicle with them. Indeed, he went on to say that when the “strike” was called (i.e. before he had seen any of the subjects do anything) he was “sure” that firearms were in the vehicle.<sup>81</sup>
- 6.49** How did Q9 “fill in the dots” so as to arrive at that position? He was asked the same question during his second interview with IPCC investigators:

<sup>74</sup> X7, TS/5437:12–18.

<sup>75</sup> U2, TS/4122:15–20.

<sup>76</sup> W4, TS/5317:3–23.

<sup>77</sup> Q9, interview under caution, 10 April 2012, Bundle B/48.

<sup>78</sup> Q9, TS/4849:5–20.

<sup>79</sup> Q9, TS/5003:1–4.

<sup>80</sup> Q9, TS/4834:6–4835:4.

<sup>81</sup> Q9, TS/5012:11.

**Question:** ... In terms of access to firearms, you hadn't had any intelligence that day to actually indicate that he was actually in possession of a firearm?

**Reply:** No, but the whole picture painted from the intelligence was, these were three people in a car who were going to commit an armed robbery in Culcheth, and my rationale is that you don't commit an armed robbery without a firearm, and the intelligence that had led up – the preparation they'd done around Sainsbury's, the previous intelligence where they'd broken into the bank in Preston and held people – I formulated the opinion that, and as well as the other members of the firearms team, that they were going to go into the strong room at Sainsbury's, and the only way from my perspective how you break into the strong room at Sainsbury's is by threatening someone with a firearm.<sup>82</sup>

- 6.50** Q9 knew there was no intelligence to suggest that there was to be a robbery of Sainsbury's.<sup>83</sup> However, although the briefing on 3 March included a list of potential targets, it had opened with the wholly inaccurate assertion that the subjects of Operation Shire had been responsible for a robbery at Preston some years earlier involving the use of firearms. It was primarily that statement, coupled with the equally inaccurate claim that one of the subjects of Operation Shire had been seen with a hacksaw emerging from a bush line near a metal perimeter fence at the back of Sainsbury's, that led Q9 to conclude that the subjects' target was to be Sainsbury's and that the modus operandi, like that of the Preston robbery, would involve threatening members of the store's staff with firearms.
- 6.51** There were, however, other factors arising from the way commanders briefed the AFOs that affected Q9's assessment. They were matters about which he should have been, but was not, briefed. I have already referred to two significant omissions from the briefing on 3 March. The first is the failure to provide any considered assessment as to the likelihood that the subjects would have firearms with them in the stolen Audi, which left the AFOs to attempt their own individual assessments. The second is the failure to inform the AFOs (including Q9) who had been deployed before 22 February that Operation Shire had been divided into two strands, and that Mr Totton, Mr Rimmer and Mr Grainger were not collaborating with the notorious Corkovic crime group. That omission meant that those particular officers were liable – as Q9 did on 3 March – to base their dynamic threat assessments in part upon irrelevant information which they had heard at previous briefings and which tended to elevate the risk that AFOs would encounter firearms in any decisive intervention.
- 6.52** There was a third, equally significant, omission. Judging from such evidence as survives, not one of the briefings (including that of 3 March) contained any reference to the fact that the stolen Audi was fitted with so-called "privacy glass" in the rear windscreen and rear side windows but not the front side windows. Given that the usual rehearsal was not practicable, those responsible for planning the operation and briefing the AFOs who were to conduct it should have ensured that the AFOs knew exactly what to expect. Q9 has repeatedly stated that the presence of "privacy glass" was a factor in his thinking, both in his decision to provide static cover through the Audi's front windscreen and in his decision to shoot Mr Grainger. He mistakenly believed that the tinted glass extended to both front side windows,<sup>84</sup> leading him to assume that the only clear view into the interior of the vehicle would be through the front windscreen. In his witness statement of 9 March, he said:

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<sup>82</sup> Q9, interview under caution, 13 June 2012, Bundle B/121. The punctuation is my own, the original transcript offering very little assistance.

<sup>83</sup> Q9, TS/5028:3–8.

<sup>84</sup> Q9, interview under caution, 13 June 2012, Bundle B/91.

I started to formulate a plan in my head about how I would deploy on to this vehicle. I quickly realised the best option for me would be to cover from the rear offside seat of our vehicle. This would provide protection to the rest of the firearms team deploying on foot as they would not have a clear view into the vehicle due to the privacy glass.<sup>85</sup>

**6.53** He made the same point when he was interviewed under caution:

My rationale for it was the whole team was vulnerable because nobody had sight into the car other than myself from my position of cover and ["W4"] from where he stopped.<sup>86</sup>

He was to repeat it yet again when giving evidence to the Inquiry.<sup>87</sup>

**6.54** In fact, the front side windows were not equipped with privacy glass. Contrary to Q9's understanding, AFOs approaching the front compartment from either side would have been able to see inside just as well as he could. In fact, because they could approach closer than Q9, they would, as X7 was later to discover,<sup>88</sup> have a better view than Q9. That Q9's erroneous belief contributed to the proposal that he should provide static cover from his position inside the Alpha vehicle is confirmed by the fact that it formed part of his discussion with his colleagues when he was formulating his plan:

Question: When was it discussed among the AFOs that it had privacy glass fitted on all the side windows?

**Answer: On the night?**

Question: Yes.

**Answer: At some point in the car when I was formulating my plan.**

Question: Was that therefore just those in the alpha car?

**Answer: It possibly would have been, yes.**

Question: Was that with X7 participating?

**Answer: As I remember, yes sir.**

Question: What was the impact of this knowledge that it had privacy glass on all four side windows, effectively?

**Answer: They agreed my tactical plan was sound.<sup>89</sup>**

**6.55** Q9's belief that AFOs approaching the stolen Audi would not be able to see and thus control the actions of the driver or front passenger significantly influenced his decision to provide static cover from inside the Alpha vehicle. It must also have played some part in his subsequent decision to shoot Mr Grainger.

**6.56** That Q9 and his colleagues were left to learn about the tinted windows from a discussion in the TFU office<sup>90</sup> reflects seriously incompetent planning and briefing by their commanders. The office chatter – for that is what it amounted to – led Q9 to believe that at some stage before 3 March DSU officers had reported the presence of privacy glass “on all sides”<sup>91</sup> of the Audi. He thought it was “common knowledge in the operations team”.<sup>92</sup> It was not. “X9” had no recollection of being told anything

<sup>85</sup> Q9, witness statement, 9 March 2012, Bundle A/269.

<sup>86</sup> Q9, interview under caution, 13 June 2012, Bundle B/148.

<sup>87</sup> Q9, TS/4871:24–4874:15.

<sup>88</sup> X7, TS/5501:18–20.

<sup>89</sup> Q9, TS/4873:24–4874:11.

<sup>90</sup> Q9, interview under caution, 13 June 2012, Bundle B/91.

<sup>91</sup> Q9, TS/4873:1–2.

<sup>92</sup> Q9, TS/4986:12–16.

about the Audi's windows being heavily tinted.<sup>93</sup> "G6" did not know about it.<sup>94</sup> Neither did "Z15".<sup>95</sup> "U9" did not remember being told, but assumed he must have been because "every time I have come up against a vehicle that has tinted windows, it is of significant importance to the AFOs and the surveillance officers do tell you that there [are] tinted windows".<sup>96</sup>

**6.57** It is perfectly obvious that the presence of tinted windows in a vehicle which is to be the subject of a MASTS deployment is, in U9's phrase, "of significant importance to the AFOs". Although I have found no reference to it in the surveillance logs, I accept that it is something that DSU officers may conceivably have mentioned at some stage during Operation Shire. However, a live broadcast description would only be heard by those firearms officers (if any) who had been deployed on the occasion in question, and in any event it may not have included the vital detail that the Audi's front side windows were clear.

**6.58** The presence of heavily tinted privacy glass in some windows of the stolen Audi should not have been left to be circulated by surveillance officers, still less disseminated by means of office gossip. Why the AFOs' briefing packs did not incorporate high-quality photographs of the stolen Audi, of which the DSU must have had an abundance,<sup>97</sup> is beyond understanding. Even if, for some reason, it was not possible to provide the AFOs with such photographs, the briefing on 3 March should have included a detailed description of the vehicle, with accurate and complete information about its windows. That is not something that can only be said with the luxury of hindsight, as might legitimately be said of a single ad hoc deployment arising at short notice. By 3 March, Operation Shire had been running for many weeks and the TFU had been briefed on MASTS operations on no fewer than nine previous occasions (see Appendix E). There is no excuse for the failure to brief firearms officers about the privacy glass in the Audi.<sup>98</sup>

## F. Q9's information from sources other than official briefings

**6.59** Since Q9 was personally present at the briefings discussed in the preceding paragraphs, it is certain that he must have been provided with all the information and intelligence covered in them. The same does not necessarily apply to information which he says he obtained from other sources. Unlike the content of official briefings, it is impossible to verify Q9's knowledge by reference to any surviving contemporaneous record. One of the striking, but not entirely surprising, features of Q9's evidence was the extent to which he was apparently able to recall the details of intelligence compared with his fellow AFOs. In part, that is only to be expected from a principal officer who has been questioned in greater detail and whose account has been subject to more detailed scrutiny. There is, however, another possible explanation. It would not be surprising if, having learned that the man he shot had been unarmed, Q9 had made some subsequent effort to uncover information which might tend to justify his decision to fire. The temptation to do so would be practically irresistible. With the passage of

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<sup>93</sup> X9, TS/3991:13–16.

<sup>94</sup> G6, TS/4309:13–15.

<sup>95</sup> Z15, TS/4552:8–14.

<sup>96</sup> U9, TS/3851:23–3852:14.

<sup>97</sup> Cousen, TS/1481:19–1482:9.

<sup>98</sup> Arundale, TS/7100:15–7101:1.

time, it is only to be expected that Q9 might find it increasingly hard to keep separate in his mind what he had known at the time and what he had subsequently discovered.

- 6.60** That Q9 may at times have consulted relevant sources before providing his accounts is suggested by the summary in his witness statement dated 9 March of the briefing he had received six days earlier. The terms in which he set out the intelligence concerning the robbery at Preston were virtually identical to the wording in the relevant presentation slide. When Mr Beer QC pointed out the many verbal coincidences to him, Q9 denied that he had had the briefing in front of him when he made the statement. He was not alone, however, in the accuracy with which he was able to reproduce the precise words of the briefing. When Mr Beer QC asked Q9 whether a copy of the relevant slide was being passed around among the AFOs, the officer replied: “Not that I recall, sir.” It is to be noted in Q9’s favour that in his interview under caution, when he presumably did not have the slide presentation in front of him, he was again able to reproduce the wording of the relevant portion of the briefing with impressive accuracy.<sup>99</sup>
- 6.61** Further, in his statement of 9 March, Q9 went on to list the warnings for each of the subjects, although he did not include all the detail provided at the briefing. I am inclined to accept that he did not have the slide presentation before him as he was making his statement. I cannot, however, exclude the possibility that he had refreshed his memory from it during the six days that had passed since Mr Grainger’s death. Provided he did not conceal the fact, there would have been nothing improper in his doing so when making a statement days or weeks after the event. In the case of a statement made within hours of the briefing, it would be better not to consult the presentation, because at such a short remove an officer ought to be able to recall what he had been told, and his unaided recollection would reveal the most important piece of information, namely the understanding he had gained from the briefing. However, where considerable time has elapsed, as had unfortunately been allowed to happen in the present case, checking the briefing record would in my view be a legitimate means of ensuring that the witness accurately reproduced what had been said at the time. Even if the actual words used at the briefing may have departed from the wording shown on the slides, it would make little practical difference, since the AFOs would have seen the slides at the briefing in any event.
- 6.62** The same cannot be said where no contemporary record exists of the precise terms in which information has been provided to an AFO. In general, no officer ought to bolster his recollection by researching material from other, “unofficial” sources. The reason he may rely on the accuracy of information provided at a briefing is that he is entitled to assume that it has undergone a carefully controlled and conducted process of verification<sup>100</sup> as part of a methodical threat and risk assessment carried out in accordance with the *Manual of Guidance*.<sup>101</sup> Where, however, an AFO has, or believes he has, relevant information from other sources, the safeguards provided by the process of research preceding a formal briefing do not apply. In such circumstances, the AFO should draw the additional information to the attention of the briefing officers so that it can be checked and either verified or corrected.<sup>102</sup> For an officer to check sources or documentary records that go behind the briefing process after a deployment, but before making a witness statement, is objectionable because

<sup>99</sup> Q9, interview under caution, 10 April 2012, Bundle B/33–34.

<sup>100</sup> ACPO, ACPOS and NPIA (2011) *Manual of Guidance on the Management, Command and Deployment of Armed Officers*, third edition, §§6.9–6.16.

<sup>101</sup> *Ibid.*, §§6.17–6.25.

<sup>102</sup> Minutes of Gold meeting, 28 June 2012, Bundle Y/99a.

it is no longer an exercise in refreshing the memory but an attempt at reconstruction, with all the obvious hazards that are bound to accompany such a process.

**6.63** Although he had never personally met Mr Grainger, Q9 had gleaned information from other sources which, he understood, related to him. Q9's statement of 9 March 2012 included this passage:

It was within my knowledge that this group of offenders were in some way linked to an armed robbery at a bank in Bolton where one offender had opened fire on an attending police patrol, with a shotgun.<sup>103</sup>

**6.64** The statement also noted that, during the afternoon of 3 March, there had been some discussion about that matter among the AFOs, and also about the possibility that Sainsbury's strong room might be the intended target of the subjects of the operation.<sup>104</sup>

**6.65** In his evidence to the Inquiry, Q9 initially insisted that he had relied only upon the "official briefing", as opposed to what Mr Beer QC characterised as "chatter" among the AFOs.<sup>105</sup> He said that he thought the information about the Bolton offence had originated in a risk assessment meeting.<sup>106</sup> As he went on to admit,<sup>107</sup> however, he had not personally attended any such meetings. He could only assume that someone who had been present at a risk assessment meeting had told him about the bank robbery in Bolton.<sup>108</sup> In short, it came from "discussion in the office",<sup>109</sup> which amounts in substance to "chatter" among AFOs.

**6.66** As it happens, there had been a risk assessment meeting at which a robbery in Bolton was discussed. The meeting did not go back "to December at the initiation of Operation Shire", as Q9 was to tell the IPCC investigators.<sup>110</sup> That was an assumption on his part.<sup>111</sup> It was a risk assessment meeting that took place on the afternoon of 25 January 2012, when DI Cousen briefed the duty TFC, Supt Ellison, with a view to obtaining authority for a MASTS deployment the following day. DI Cousen provided such information as he could about Mr Totton, who at that time was the operation's sole subject, but Supt Ellison felt that he needed more details about Mr Totton's associates:

It was almost, actually, a foot-on-the-ball moment, to say: "Listen, let's just hold our horses here, because there are a lot of unknowns. I want to be able to assess the threat accurately, or as far as possible accurately with the unknowns", and I was starting to ask questions about what the unknowns meant, and ... DC Dave Clark was offered as a solution ... to close some of those knowledge gaps.<sup>112</sup>

**6.67** It was in those circumstances that Detective Constable ("DC") David Clark, Operation Shire's disclosure officer, came into the meeting at very short notice to answer Supt Ellison's questions (see section E of Chapter 2).

**6.68** Unusually among the GMP firearms commanders whose actions and evidence this Inquiry has had to consider, Supt Ellison took time to consider DI Cousen's application

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<sup>103</sup> Q9, witness statement, 9 March 2012, Bundle A/268.

<sup>104</sup> *Ibid.*

<sup>105</sup> Q9, TS/4858:2–6.

<sup>106</sup> Q9, TS/4858:19–25. See also Q9, interview under caution, 13 June 2012, Bundle B/77–78.

<sup>107</sup> Q9, TS/4860:22–25.

<sup>108</sup> Q9, TS/4858:19–4861:16.

<sup>109</sup> Q9, TS/4861:17–22.

<sup>110</sup> Q9, interview under caution, 13 June 2012, Bundle B/77.

<sup>111</sup> Q9, TS/4861:14–16.

<sup>112</sup> Ellison, TS/1737:1–9.

carefully and maintained a reasonably detailed record of what he was told.<sup>113</sup> Although his command log contains no reference to a Bolton robbery, he recalled some mention at the meeting of a robbery which does appear to correspond to an offence which is known to have taken place in Bolton on 13 April 2000. On that day, three masked men, armed with firearms that included a MAC-10 automatic weapon, a handgun and a shotgun, robbed a bank and fired at a police patrol which attempted to intervene:

There was mention of an offence involving Stuart Grainger and Anthony Grainger, but it was an offence that Stuart Grainger was convicted of ... It was ... a robbery and there was a MAC-10 fully automatic weapon involved and also the discharge of shotgun pellets toward officers.<sup>114</sup>

**6.69** Although Supt Ellison was unable to recall why he had not made a note of that information at the time, I think the simplest and most likely explanation is that he regarded it as having no direct relevance to the decision he had to take:

However, as I probed further, it became clear that Stuart Grainger was the one convicted of that offence, not Anthony Grainger, and that [i.e. Anthony Grainger] was the context I was looking for.<sup>115</sup>

**6.70** In fact, while Supt Ellison's recollection of what DC Clark told him closely matches the known facts of the Bolton robbery, the relevant crime report indicates that Stuart Grainger was acquitted of involvement in the offence, and neither his brother Anthony nor Mr Totton are recorded as having been suspects at all.<sup>116</sup>

**6.71** DC Clark, who had no opportunity to conduct any preparatory research before entering the risk assessment meeting, did his best to provide such information as he could from memory. According to a statement he made nearly six months later, he mentioned "a robbery that occurred on a bank in Bolton in 2000 when area officers attended at a personal attack alarm at the NatWest Bank to find a robbery in progress".<sup>117</sup> He added the following details:

On entering the bank officers had a shotgun discharged at them causing pellet injuries to a number of them. Another officer who approached the getaway car parked outside the bank had a MACH-10 [sic] machine pistol discharged at him. The brother of Anthony Grainger, Stuart Grainger, was later charged with this offence as he used the same gun to commit a murder.<sup>118</sup>

**6.72** How accurately that summary reflects the details that DC Clark provided to Supt Ellison at the risk assessment meeting is far from clear. DC Clark made no note at the time of what he had said at the briefing.<sup>119</sup> Before making his witness statement, moreover, he checked at least part of the relevant crime report,<sup>120</sup> something he had not had an opportunity to do at the time.<sup>121</sup> DC Clark would not accept the suggestion of Mr Beer QC that there was a resultant danger that his statement might have included information he had subsequently read in the crime report but had not told Supt Ellison at the time.<sup>122</sup> In my view, however, that risk is obvious, and DC Clark's

<sup>113</sup> Tactical Firearms Command log, 25 January 2012, Bundle G1/2319–2361.

<sup>114</sup> Ellison, TS/1741:10–16.

<sup>115</sup> Ellison, TS/1742:9–14.

<sup>116</sup> Bundle G2/1400.

<sup>117</sup> David Clark, witness statement, 19 July 2012, Bundle A/33.

<sup>118</sup> *Ibid.*

<sup>119</sup> Clark, TS/1834:11–1835:1.

<sup>120</sup> Clark, TS/1849:13–21.

<sup>121</sup> Clark, TS/1834:11–1835:1.

<sup>122</sup> Clark, TS/1847:21–25.

refusal to acknowledge it reinforces the danger, mentioned above, of attempting to reconstruct evidence concerning exchanges<sup>123</sup> of information, whether at meetings or briefings, by reference to documentary material that had not been accessed at the material time.

**6.73** DC Clark's earliest written account of his contribution to the meeting was in a report dated 18 July 2012 in which, referring to the Bolton robbery in 2000, he gave the following details:

The offenders in the bank discharged a shotgun at officers causing injury. The driver left in the car outside the bank also discharged a mach ten [sic] machine pistol at the officer who approached him.<sup>124</sup>

**6.74** Before making that report, DC Clark had not consulted any official records.<sup>125</sup> It may, therefore, give a slightly better idea of what he had told the risk assessment meeting. One potentially significant difference is that the earlier report, written purely from DC Clark's unaided recollection, specifies that it was the driver of the car used by the robbers who fired an automatic weapon at approaching police officers.

**6.75** Q9 was not present at the risk assessment meeting on 25 January.<sup>126</sup> He said he could not recall who had told him about the Bolton robbery,<sup>127</sup> but he thought it was someone who had attended such a meeting.<sup>128</sup> I think he was probably mistaken in presuming<sup>129</sup> the meeting to be one that took place in December 2011, at the beginning of Operation Shire. I have seen no evidence that the Bolton robbery was discussed at any risk assessment meeting other than the one on 25 January. In all probability, that is the meeting that Q9 had in mind.

**6.76** It is impossible to be certain who told Q9 about the Bolton robbery. When Mr Beer QC pursued the matter with him, Q9 would only say that it was probably someone who was "putting the operation together for Operation Shire",<sup>130</sup> which I take to mean a colleague from the TFU. It was not Supt Ellison, a conscientious officer who seems to have judged that the information about the Bolton offence was irrelevant for his purposes (see section E of Chapter 2).

**6.77** What about the other individuals who had been present at the risk assessment meeting? DI Cousen and DC Clark were not firearms officers, although DI Cousen would have played some part in briefing the MASTS team; to that extent he might be said to have a limited role in "putting the operation together". The only other people recorded as having been present at the relevant stage of the meeting were Detective Sergeant ("DS") David Johnstone of the DSU, Police Sergeant Neil Cook (Assistant Chief Constable ("ACC") Terry Sweeney's staff officer) and J4, the tactical adviser ("TA").<sup>131</sup> PS Cook was there purely as an observer and had nothing to do with organising the operation. DS Johnstone had only attended the meeting in order "to provide a perspective on what the [surveillance] team had seen that morning".<sup>132</sup> The transcript of the following morning's MASTS briefing has not survived, but the slide presentation

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<sup>123</sup> Bundle G2/683–684.

<sup>124</sup> *Ibid.*

<sup>125</sup> Clark, TS/1843:12–14.

<sup>126</sup> Q9, TS/4860:24–25.

<sup>127</sup> Q9, TS/4861:21–22.

<sup>128</sup> Q9, TS/4861:1–4863:2.

<sup>129</sup> Q9, TS/4861:14–16.

<sup>130</sup> Q9, TS/4861:19–4862:7.

<sup>131</sup> Tactical Firearms Command log, 25 January 2012, Bundle G1/2319.

<sup>132</sup> Ellison, TS/1711:25–1712:1.

contains no indication that he or any other representative of the DSU was present at the briefing (as had happened on 15 December 2011). It therefore seems very unlikely that DS Johnstone was the person who told Q9 about the Bolton robbery. It was, in any case, Supt Ellison's evidence that once he had concluded that the criteria for an armed deployment had been met, DI Cousen, DS Johnstone and DC Clark "would not necessarily have been part of the conversation".<sup>133</sup> From that point on, Supt Ellison would have been discussing the appropriate tactics with his TA, J4, who was certainly very closely involved in "putting the operation together". Probably because he did not complete it at the time,<sup>134</sup> J4's own log<sup>135</sup> is too inaccurate and unreliable to be of any use as a record of what was said during the risk assessment meeting on 25 January. A necessarily uncertain process of elimination suggests that of all those present, the person most likely to have told Q9 about the Bolton offence is J4. However, I cannot confidently exclude other possibilities, and I am not prepared to condemn J4 on the basis of what amounts, in the end, to no more than strong suspicion.

- 6.78** Whoever it was who told Q9 about the Bolton robbery acted with a disturbing degree of irresponsibility. It was irresponsible because of the obvious risk, of which J4 among others was certainly well aware,<sup>136</sup> that Q9 might not be able to put the information out of his mind in a critical situation. There was no evidence to suggest that Mr Totton, Mr Rimmer or Mr Grainger had taken part in that offence; nor were any of them recorded as having been suspects. The only person accused was Mr Grainger's brother, Stuart Grainger, and he was not convicted. Put bluntly, what Q9's colleague did was to provide Q9 privately with information which the operation's TFC had regarded as so lacking in relevance as to be not worth recording in his meticulously maintained command log. The entirely foreseeable consequence of that action was to reinforce in the mind of the officer who was ultimately to shoot Mr Grainger the idea that the driver of the stolen Audi was likely to be equipped with a loaded firearm which he would be prepared to use against any police officers who attempted to interfere in his criminal activities. That in turn was calculated to predispose Q9 to open fire in a critical situation when, had he known the true position, he might not have done.
- 6.79** I do not believe that the person who told Q9 about the Bolton robbery was acting in bad faith. He probably gave no thought to the possible consequences of exchanging anecdotal information – in effect, office gossip – in this sensitive context. Nevertheless, he ought to have realised that there are sound reasons for the rigorous briefing procedures prescribed by the *Manual of Guidance*. It does not take the luxury of hindsight to appreciate what may well result if those procedures are not scrupulously followed. The whole point of the regime of risk assessment meetings and briefings is to ensure that firearms operations are authorised only where strict criteria have been met, and that those who put them into effect, and who may have to take life or death decisions in little more than an instant, are equipped with the most up-to-date and accurate information that is available.
- 6.80** Here, the problem was compounded by the fact that Q9 had been present at earlier briefings which included the Corkovics. As I have already pointed out (see paragraph 6.51), he did not know<sup>137</sup> on 3 March that the investigating team had by then divided Operation Shire into two strands precisely because the team had realised that the Corkovic group was working entirely independently of Mr Totton, Mr Rimmer and

<sup>133</sup> Ellison, TS/1745:3–1746:3.

<sup>134</sup> J4, TS/4365:1–23.

<sup>135</sup> Bundle G1/2647.

<sup>136</sup> J4, TS/4369:1–4.

<sup>137</sup> Q9, TS/4806:14–16.

Mr Grainger. Q9 said that he did not take into account material he had received about the Corkovics at earlier briefings.<sup>138</sup> The Bolton robbery did not feature in any Operation Shire firearms briefing, yet it was clearly present in Q9's mind on 3 March. He remembered it<sup>139</sup> during the long period that the AFOs spent at Leigh Police Station, and it was he who raised it<sup>140</sup> in discussion with X7. Unlike Q9, however, X7 had some knowledge of the true position and, according to Q9 himself, tried to put him right. Although X7 does not recall the conversation, Q9 told the Inquiry that it was X7 who tried to correct his understanding, pointing out that Mr Totton, Mr Rimmer and Mr Grainger had not been involved in the Bolton robbery, and that others had been convicted of it.<sup>141</sup> Q9 nevertheless persisted in his view that the offence was connected to the subjects of Operation Shire:

I said, "Well, yeah, perhaps they have been convicted, yeah, but this was the same organised crime group."<sup>142</sup>

**6.81** He repeated the same argument in his evidence to the Inquiry:

Question: Is that right, that X7 was saying to you, "Well, no, what you are saying, Q9, is incorrect, because the actual subjects who committed that robbery have been convicted"? Is that what happened?

**Answer: They may well have been convicted – that is what happened. They may well have been convicted, but I was talking about the greater organised crime group.**<sup>143</sup>

**6.82** It is only fair to Q9 to recall that his commanders had failed to tell him, or any of the other AFOs who had taken part in firearms deployments prior to 22 February, that Operation Shire had been divided into two separate strands on that date precisely because the investigating team had realised that Mr Totton, Mr Rimmer and Mr Grainger were operating independently of the Corkovic organised crime group. At the same time, I cannot avoid reminding myself that even after he knew the true position, Q9 spoke about Mr Grainger in terms suggesting that even if he had been properly briefed, he might have continued to regard the Corkovics as relevant to the assessment of any threat posed by Mr Totton, Mr Rimmer and Mr Grainger:

He was involved, or he was featured on the briefings for armed robberies which also featured the Corkovics at some point. So, in my opinion, they were all the same ilk, where they were basically committing armed robberies.<sup>144</sup>

**6.83** It is, I accept, easy for a lawyer such as myself to be censorious about a blanket statement of that kind. It would, rightly, not pass muster in a court of law. For firearms officers, however, a subject's circle of known associates is a legitimate and potentially useful consideration in relation to the subject's personal threat assessment.<sup>145</sup> It is also true that organised crime groups are notoriously fluid, with individuals moving constantly between them. At the same time, it is one thing to take account of a subject's established and current associates, but quite another to treat subjects as so tainted by association that their individual risk assessments might as well be regarded as mutually interchangeable. If no lines are drawn, the process of assessing risks and threats is liable to become so broad as to be virtually meaningless.

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<sup>138</sup> Q9, TS/4808:16–19.

<sup>139</sup> Q9, TS/4863:14–17.

<sup>140</sup> Q9, TS/4858:16–18; see also Q9, interview under caution, 13 June 2012, Bundle B/78.

<sup>141</sup> Q9, TS/4864:20–4865:10; see also Q9, interview under caution, 13 June 2012, Bundle B/79.

<sup>142</sup> Q9, interview under caution, 13 June 2012, Bundle B/79.

<sup>143</sup> Q9, TS/4864:13–19.

<sup>144</sup> Q9, TS/4809:1–5.

<sup>145</sup> Arundale, TS/7168:25–7169:24.

**6.84** I cannot accept Q9’s assertion<sup>146</sup> that the Bolton robbery played no part in his thinking on 3 March. It directly contradicts his own statement of 9 March:

I believed that members of this organised crime group had discharged firearms towards police in the past in order to evade arrest.<sup>147</sup>

Those words can only refer to his summary, earlier in the same statement, of the circumstances of the Bolton robbery. Q9’s claim that he “went solely off the briefing”<sup>148</sup> he had been given is further undermined by his earlier admission<sup>149</sup> that he had made use of information concerning the Corkovics that he remembered being given at the briefing on 26 January. His conversation at Leigh Police Station with X7, which I accept probably did take place as he recounted it, shows that he was sufficiently preoccupied with the Bolton robbery to raise the subject with X7 a matter of hours before Mr Grainger’s death. The fact that Q9 did not accept X7’s attempt at clarification confirms that he continued to regard it as relevant to the subjects of that day’s deployment, and was not willing to put it out of his mind.

**6.85** Q9 told the IPCC investigators that he had also acquired some knowledge of Mr Grainger from Operation Blythe in 2008. Q9’s own participation in that investigation had been as a member of the firearms planning team.<sup>150</sup> Although he made no reference to Operation Blythe in his witness statement, he told the Inquiry that he had recalled it as early as December 2011, when he first became involved in Operation Shire. It had been significant to him personally, because it had been the first operation he had planned. Its relevance from his point of view seems to have been that it linked Mr Grainger to premises in Bury from which firearms had been recovered.<sup>151</sup> Unlike the Bolton robbery, it did not feature in the conversation at Leigh Police Station. On balance, therefore, I am inclined to accept Q9’s evidence<sup>152</sup> that Operation Blythe did not affect his judgement on 3 March.

**6.86** Apart from the failure to brief AFOs about the Audi’s tinted windows, which I regard as a significant and culpable omission in its own right, the failings I have identified in this section of my Report were, taken individually, comparatively unimportant. In combination, however, their effect was toxic. They left Q9 with an inaccurate and exaggerated impression of the threat posed by the occupants of the Audi, as well as of the vulnerability of his colleagues, making it more likely that he would misinterpret and overreact to non-compliant actions at the scene and predisposing him to decide to discharge his weapon when he might not otherwise have done so. In a critical situation such as that which Q9 faced on the evening of 3 March, marginal errors may produce lethal consequences. Taken together, the accumulated errors were not marginal.

<sup>146</sup> Q9, TS/4865:21–22.

<sup>147</sup> Q9, witness statement, 9 March 2012, Bundle A/271–272.

<sup>148</sup> Q9, TS/4866:2–3.

<sup>149</sup> Q9, TS/4834:24–4835:4.

<sup>150</sup> Q9, interview under caution, 10 April 2012, Bundle B/29–30.

<sup>151</sup> *Ibid.* The transcript’s reference to “supply of drugs and firearms which were in a premises on Albert Road in Bury” may result from the unhelpful absence of punctuation, and may be misleading.

<sup>152</sup> Q9, TS/4798:17–19.

## G. Q9's decision to discharge his weapon

**6.87** I have already examined the sequence of events in the car park (see Chapter 5). So far as they relate to the matters to be examined in this chapter, the essential chronology is as follows:

- (i) As soon as the Alpha vehicle came to a halt, Q9 issued a verbal challenge to Mr Grainger: "Armed police, show me your hands!"
- (ii) Within a maximum of four seconds of Alpha coming to a halt, Q9 discharged a single round from his carbine into the chest of Mr Grainger.
- (iii) At the time Q9 shot Mr Grainger, there were no other AFOs alongside the stolen Audi, although the officer nearest to the vehicle ("W9") would have reached it within, at most, two seconds of Q9's shot.
- (iv) X9 did not deploy the CS dispersal canister into the Audi until after Q9 had shot Mr Grainger.
- (v) After he was shot, Mr Grainger remained conscious and capable of responding to instructions for not less than five seconds.

**6.88** In his initial account, given during the early hours of 4 March, Q9 gave the following description of the arrest phase:

On declaration of 'Amber' we moved off. As a result of discussion in the alpha car it was agreed that as officers deployed from the police vehicles I would provide cover through the open rear window of the alpha.

As we neared the car park where the subject vehicle was parked, we were given condition 'Red'. The alpha car drove across the front of the subject vehicle, which had three occupants.

I was wearing a police baseball cap. I pointed my carbine into the subject vehicle. I shouted, "Armed police, show me your hands". The driver and front seat passenger did "show me" their hands. I could see they were wearing gloves.

Officers were deploying to the vehicle. I saw the driver lower his right hand to his groin area. It was deliberate movement as if to grab a firearm. I felt this was a threat to the oncoming team and so I discharged one shot.

I then kept cover into the subject vehicle until the CS canister had been deployed and the officers had the occupants out of the vehicle. The driver was removed over the passenger seat.<sup>153</sup>

**6.89** That is a very brief description. Given the circumstances in which it was made, I do not criticise Q9 for not providing greater detail. At that stage, he was not to know that, for reasons discussed elsewhere in this Report (see Chapter 9), nearly a week would pass before he made a full witness statement.

**6.90** In common with the other AFOs who had taken part in the deployment of 3 March, Q9 made his witness statement<sup>154</sup> on 9 March, six days after Mr Grainger's death. He recounted the arrest phase as follows:

W4 drove our vehicle along Common Lane and then on to Jackson Avenue. I had already put my baseball cap on and was altering my position on the seat so I could cover from the offside rear window. As W4 turned on to the car park off Jackson Avenue, X7 declared state red over the radio. I had hold of my MP5 by the pistol grip in my right hand and my left hand

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<sup>153</sup> Bundle C/356–357.

<sup>154</sup> Q9, witness statement, 9 March 2012, Bundle A/266.

on the electric window button on the door. W4 increased the speed of our vehicle when we were half way along the car park. I activated the electric window so it came fully down.

When the vehicle stopped, I levelled my MP5 towards the front windscreen of the subject's vehicle, taking hold of the fore grip. I illuminated the torch on the front of my MP5 and switched the safety catch to fire. From my position, I was about 3 metres<sup>155</sup> from the windscreen.

I shouted to the vehicle occupants, "Armed police, show me your hands". I could see the driver and the front seat passenger. I could not see the rear seat passenger.

Both the driver and front seat passenger raised their hands above the vehicle's dashboard. They were both wearing gloves. I was aware that the rest of the firearms team would now be deploying on foot towards the vehicle.

As I covered into the vehicle, I saw the driver make a sudden and deliberate movement of his right hand from my view and down towards his lap. I thought he was reaching for a firearm. I quickly realised that the approaching officers were in extreme danger, so I placed my finger on the trigger, illuminated the laser aiming device and fired one round to the centre mass of the driver. The driver slumped back in his seat, having been shot in the chest. I could see the front seat passenger still had his hands above the dashboard. I focused my cover back on to the driver. I couldn't see his hands, so I was watching for any movement and assessing what threat he still posed to the approaching officers.

I then saw that the front seat passenger had started to get out of the vehicle. I knew that the approaching officers would be on aim with their weapons and would be able to see the passenger getting out and deal with any threat that he posed.

I continued to cover the driver. I still could not see the third person in the vehicle. I was then aware that the front passenger window smashed and a split second later the whole of the front cab "fogged" with CS. I could no longer see the driver or any threat he still posed. There were now numerous members of the firearms team around the nearside of the subject vehicle. I put my safety catch to safe and got out of the alpha vehicle using the nearside front door. I went round the back of our vehicle and could see several officers around the subjects who were on the ground.<sup>156</sup>

Although that description of events is considerably more detailed than Q9's initial account, there are no material inconsistencies between the two.

**6.91** Towards the end of his statement, Q9 added the following:

In my mind, I was facing extremely dangerous criminals who committed armed robberies whilst armed with firearms. I believed that members of this organised crime group had discharged firearms towards police in the past in order to evade arrest. Watching the actions of the driver, I knew I had no other options than to open fire. Shouting another challenge would have left the team in imminent danger of being fired upon. It was my honest belief that my colleagues were in extreme danger as a result of the driver's actions in lowering his right hand when he had been instructed to show his hands.<sup>157</sup>

**6.92** As I have already observed, the reference in that passage to members of the same organised crime group discharging firearms at police officers is a reference to the Bolton robbery, the circumstances of which Q9 had already summarised<sup>158</sup> earlier in the same statement.

**6.93** Whereas, in his initial account and witness statement, Q9 identified the front occupants of the Audi only by the positions they occupied (e.g. "the driver" or "the front seat passenger"), in his interviews under caution he sometimes referred to them by name.

<sup>155</sup> Actually, less than two metres: see TS/4988:10.

<sup>156</sup> Q9, witness statement, 9 March 2012, Bundle A/269–271.

<sup>157</sup> Q9, witness statement, 9 March 2012, Bundle A/271–272.

<sup>158</sup> Q9, witness statement, 9 March 2012, Bundle A/268.

I think that merely reflects knowledge acquired after the fact. At the time, he did not know which individual occupied which seat.<sup>159</sup>

**6.94** In the first of those interviews, Q9 effectively confirmed his previous accounts. The answers he gave to the investigators' questions were entirely consistent with those accounts. In his second interview, two months later, he provided some extra detail as to the position he had adopted in the back of the Alpha vehicle:

My right knee was on the seat and my left foot in the footwell ... I'm right-handed, so my MP5 pistol grip was in my right hand and then ... my finger on the button to activate the window ... When the vehicle came to a stop, that's when I levelled my MP5 ... and illuminated the torch.<sup>160</sup>

**6.95** He added that he had activated the electric window when the Alpha car was about halfway across the car park.<sup>161</sup>

**6.96** Q9 clarified the reference in his witness statement to the "laser aiming device", explaining that he had intended to refer to the MP5's reflex ("red dot") sight,<sup>162</sup> rather than its laser aiming system.<sup>163</sup> The only significance of that correction is that the beam produced by the laser aiming system might have been visible to Mr Grainger, whereas the red dot produced by a reflex sight can only be seen by someone using the sight from behind the weapon, and would not be visible to someone in Mr Grainger's position. The situation is not helped by similar confusion in W4's account. In his witness statement, W4 referred to having seen the driver of the Audi "being covered by the ultra-dot from an MP5".<sup>164</sup> As he acknowledged when giving evidence to the Inquiry, he could not possibly have seen the red dot produced by Q9's reflex sight, which is invisible to anyone other than the user. W4's explanation was that he had meant to refer to "the green laser" (or "strobe light").<sup>165</sup>

**6.97** In his second interview, Q9 said that he had illuminated the laser sighting device (which, unlike the reflex sight, has to be activated by pressing a pad on the MP5's foregrip<sup>166</sup>):

Both driver and front seat passenger raised their hands above the dashboard for about a second or so, two seconds, and then the driver has dropped his hand in a deliberate movement down to his lap ... that's when I've illuminated the laser aiming device and fired one shot towards his centre mass.<sup>167</sup>

**6.98** Bearing that in mind, together with the evidence of W4, I think that Q9 probably did activate the laser device on his weapon.<sup>168</sup>

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<sup>159</sup> Q9, TS/4938:10–12; see also TS/4900:3–14.

<sup>160</sup> Q9, interview under caution, 13 June 2012, Bundle B/91–92.

<sup>161</sup> Q9, interview under caution, 13 June 2012, Bundle B/97.

<sup>162</sup> Aimpoint Micro T-1 Tactical Red Dot Sight: see Philip Seaman, TS/5649:10–15.

<sup>163</sup> Q9, interview under caution, 13 June 2012, Bundle B/100.

<sup>164</sup> W4, witness statement, 9 March 2012, Bundle E/102.

<sup>165</sup> W4, TS/5341:2–5.

<sup>166</sup> Seaman, TS/5649:16–18.

<sup>167</sup> Q9, interview under caution, 13 June 2012, Bundle B/109.

<sup>168</sup> That conclusion may, incidentally, help to explain Joseph Travers' claim to have seen a "red beam" shining from the back seat of the Alpha car. Any such beam would, of course, have been green rather than red, but it is possible that Mr Travers was mistaken about the colour (see the exchange at Bundle B/134). Since Mr Travers did not turn up to give evidence to the Inquiry, I have not attached any weight to the account in his witness statement and have not taken it into account in reaching my conclusion that Q9 probably illuminated the laser sighting device on his weapon.

**6.99** Q9 told the IPCC investigators that he had been looking “through the windscreen of the stolen Audi at its front occupants at an angle”,<sup>169</sup> but was at the same level as they were. In fact, because he was effectively sitting with his right leg folded beneath him, he may have been in a slightly elevated position with respect to those inside the Audi. He said that he had “screamed” his armed challenge. Given the very short range, and the fact that he was not wearing a respirator at the time, I am quite sure that Mr Totton and Mr Grainger heard and understood the challenge, as their prompt compliance confirms.<sup>170</sup>

**6.100** There was one significant respect in which, in his second interview under caution, Q9 appeared to depart from his original account. Until then, he had consistently stated that Mr Grainger had lowered only his right hand towards his lap. In his June interview, he modified that account:

Question: So, he dropped both his hands?

**Answer: Both his hands, yeah. His left hand, sorry, his right hand went down first towards his lap, and then his left hand's come down, er, prior to me firing the shot.**<sup>171</sup>

**6.101** He described the same sequence later in the same interview:

Totton kept his hands up, and then Grainger went down to his lap to grab something, I believe, that was a firearm. His other arm's come down, I've shot Grainger, and then Totton still has his hands up ...<sup>172</sup>

**6.102** Counsel to the Inquiry questioned Q9 closely about the apparent change in his account, pointing out that hitherto he had only ever referred to Mr Grainger's right hand.<sup>173</sup> The explanation Q9 gave, which I accept, is that it was only as he fired that Mr Grainger's left hand had begun to descend.<sup>174</sup> Q9 did not seek to suggest that any movement of Mr Grainger's left hand had contributed to his decision to discharge his weapon. That, he said, was why he had not mentioned it earlier: “because the relevance was what he did with his right hand”. I am sure that the true position is that by the time Mr Grainger had begun to lower his left hand, Q9 was already committed to discharging his weapon. That is consistent with the account given by Alpha's driver, W4, which was that Mr Grainger's left hand began to go down after Q9's shot.<sup>175</sup>

**6.103** Throughout his IPCC interviews, Q9 insisted that he had discharged his weapon because he believed that Mr Grainger was reaching for a firearm and posed a lethal threat to Q9 and the approaching AFOs. At one stage, he went so far as to claim that he “had no doubt” that Mr Grainger was in possession of a firearm and was reaching for it.<sup>176</sup> He told the Inquiry that he was “sure to the point of certainty”.<sup>177</sup> That was an overstatement. He could not possibly have been certain of something that he could not see and that was not, in fact, true.

<sup>169</sup> Q9, interview under caution, 13 June 2012, Bundle B/94.

<sup>170</sup> Q9, interview under caution, 13 June 2012, Bundle B/131.

<sup>171</sup> Q9, interview under caution, 13 June 2012, Bundle B/109.

<sup>172</sup> Q9, interview under caution, 13 June 2012, Bundle B/137.

<sup>173</sup> Q9, TS/4904:20–4909:5.

<sup>174</sup> Q9, TS/4905:15; TS/4907:8–9.

<sup>175</sup> W4, TS/5363:15–18; see also TS/5379:5–8.

<sup>176</sup> Q9, interview under caution, 13 June 2012, Bundle B/123–124.

<sup>177</sup> Q9, TS/4912:23–25.

**6.104** In defence of his decision not to wait and see what Mr Grainger did next, Q9 made the point that in such situations “action’s faster than reaction”.<sup>178</sup>

If he had picked up a weapon from his lap and started firing it, then my reaction to that, he would have discharged that weapon prior to my reaction to that.<sup>179</sup>

**6.105** It is fair to say that the phrase “action beats reaction” has attained the status of a maxim among police firearms officers.<sup>180</sup> It is supported by academic research, primarily from the United States.<sup>181</sup> Mr Arundale QPM expressed it in this way:

In simple terms, the cognitive act of deciding to make an action and the physical act by a subject, if an officer always had to wait to physically see a weapon, that wouldn’t leave them time to react appropriately to it.<sup>182</sup>

**6.106** The key word in that explanation is “always”. The phrase “action beats reaction” is a useful maxim, not an inflexible rule. As a general proposition, it is an important consideration which any firearms officer needs to keep in mind when deciding whether it is necessary to discharge his weapon in a critical situation. It cannot, however, “trump” all other considerations. If it did, it would mean that a firearms officer could, and arguably should, fire whenever a subject he believed to be carrying a firearm failed to comply with an instruction to show his hands. A rigid principle that an armed police officer need not wait until he can see a firearm in the hands of a non-compliant subject is no wiser than a “firm instruction”<sup>183</sup> that he must always do so. It all depends on the particular circumstances of the individual case.

**6.107** What were the circumstances on 3 March 2012 as Q9 perceived them to be? Why did he not wait to see what, if anything, Mr Grainger had in his right hand? When the IPCC investigators asked Q9 that question, he replied:

That would have given him the opportunity to fire upon the officers who were approaching the vehicle, and that’s why I shot him, to not give him that opportunity to fire at the officers.<sup>184</sup>

**6.108** He went on to cite the intelligence case, as he understood it,<sup>185</sup> before adding:

I wasn’t prepared to take the chance that he was going to grab a firearm and shoot at my colleagues, myself, you know. Why would I take that chance?<sup>186</sup>

**6.109** Of all the various formulations by which Q9 has expressed his state of mind at the time, that is probably the most accurate.

**6.110** In Q9’s evidence to the Inquiry, there was one important respect in which he modified his explanation for not having waited to see what, if anything, Mr Grainger had in his hand. It first emerged during an exchange with Mr Beer QC:

Question: You had received no intelligence, current intelligence, that suggested that Mr Grainger had a firearm, had you?

**Answer: No.**

Question: You had not seen anything in his hands, had you?

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<sup>178</sup> Q9, interview under caution, 13 June 2012, Bundle B/128.

<sup>179</sup> Q9, interview under caution, 13 June 2012, Bundle B/120.

<sup>180</sup> Arundale, TS/7159:22–24.

<sup>181</sup> Arundale, TS/7159:4–8.

<sup>182</sup> Arundale, TS/7159:10–14.

<sup>183</sup> On the topic of a “firm instruction”, see *Report of Ian Arundale QPM*, 4 November 2016, §§514–515.

<sup>184</sup> Q9, interview under caution, 13 June 2012, Bundle B/120.

<sup>185</sup> Q9, interview under caution, 13 June 2012, Bundle B/121.

<sup>186</sup> Q9, interview under caution, 13 June 2012, Bundle B/122.

**Answer: No.**

Question: You hadn't seen him form his body up in a way as if he was going to fire a weapon at anyone, had you?

**Answer: No.**

Question: You had your weapon trained on him, yes?

**Answer: Yes.**

Question: By this time, you had illuminated the laser aiming?

**Answer: Yes.**

Question: You had your finger on the trigger guard; is that right?

**Answer: Yes.**

Question: So, the time it would take to fire your weapon would be the movement of your [finger] from the guard to the trigger, and depressing it?

**Answer: Yes.**

Question: You had him completely covered at this point, didn't you?

**Answer: I did, yes.**

Question: It would have taken you less time to fire your weapon than it would for Mr Grainger to take out a weapon, to ready his weapon, to place his finger on the trigger of any weapon and to fire it, wouldn't it?

**Answer: No.**

Question: Why not?

**Answer: I don't know what – well, the weapon I thought Anthony Grainger had, I don't know what state it would have been in, and he would have been in a position to grab the weapon and fire laterally across David Totton towards the oncoming team or fire upward towards the driver's door to any other team who were approaching that direction.**

Question: You thought he was going to fire blind, effectively, with the weapon down hidden from your view, through the skin of the vehicle?

**Answer: The skin or the window of the vehicle.<sup>187</sup>**

**6.111** Q9 repeated that explanation to Pete Weatherby QC, Counsel for Gail Hadfield-Grainger:

Question: If you truly thought that he was reaching for a firearm, why did you not wait to see the firearm?

**Answer: Because he would have been in a position to fire it, as soon as he grabbed hold of it, laterally across the car or upwards towards whoever was going to the driver's side of the vehicle.<sup>188</sup>**

**6.112** Q9 went on to tell Mr Beer QC that he was referring to what he called "sense-of-direction shooting" by Mr Grainger from a lowered position (i.e. with the weapon below the level of the dashboard) through the skin of the Audi's doors:

Question: So, you thought that he might fire through the engine, through the vehicle, through the door?

**Answer: Laterally across the car, laterally across the car, so either laterally to his left through the passenger door, passenger window, or upward towards the driver's window.<sup>189</sup>**

<sup>187</sup> Q9, TS/4911:2–4912:14.

<sup>188</sup> Q9, TS/4989:2–7.

<sup>189</sup> Q9, TS/5023:18–5024:8.

**6.113** Q9 agreed that when he decided to discharge his weapon he had seen nobody close to the Audi. There was, therefore, no immediate risk to the other AFOs. At the same time, although Q9 could not see any of his colleagues, he knew that they were approaching the vehicle and would reach it very quickly. My own assessment is that it would have taken the foremost of them no more than another second or two to reach the front offside and nearside doors of the Audi.

**6.114** Q9's assertion that he had anticipated the possibility of Mr Grainger firing a weapon from a lowered position through the Audi's metal skin was not one that he had ever made before giving evidence to the Inquiry. Indeed, in his second IPCC interview he had said (my emphasis):

If Grainger had had a firearm and started firing **through the window**, then all of [the AFOs] were in imminent danger, including myself.<sup>190</sup>

**6.115** In my view, the suggestion that Mr Grainger, while keeping his left hand up (for he had not begun to lower it by the time Q9 decided to fire), might use his right hand to shoot surreptitiously at approaching AFOs is intrinsically implausible. It is not an explanation that Q9 gave at the time for his decision to fire without waiting to see what Mr Grainger had in his right hand. I do not believe that it entered Q9's head at the time. I think it is a product of hindsight, its obvious attraction being that it would provide an effectively irrefutable justification for his decision to fire when he did, thereby forestalling further criticism. The threat Q9 had in mind at the time was the more obvious risk that Mr Grainger might pick up a gun and fire it at approaching AFOs through the Audi's windscreen.

**6.116** Why did Mr Grainger lower his right hand? It is impossible to be certain. The *Manual of Guidance* identifies three possible responses of a subject at the point of contact: fight, flight or compliance.<sup>191</sup> Mr Grainger was not fighting: there was no gun. He was not complying: he disobeyed Q9's instruction to show his hands. That leaves "flight". The most likely explanation for his action is that, like Mr Totton, he was going to make a run for it. He was not intending to start the Audi's engine, which was already running. He probably lowered his hand to open the driver's door.

**6.117** When he gave evidence to the Inquiry, Q9 refused to accept that Mr Grainger could have been reaching for a door handle,<sup>192</sup> insisting that his hand "went down to his lap".<sup>193</sup> That cannot be right. There was nothing in Mr Grainger's lap at the time.<sup>194</sup> Q9 could only accurately say that Mr Grainger had deliberately lowered his right hand out of sight.<sup>195</sup> Once Mr Grainger's hand descended below the level of his upper chest, it was completely invisible to Q9.

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<sup>190</sup> Q9, interview under caution, 13 June 2012, Bundle B/118.

<sup>191</sup> ACPO, ACPOS and NPIA (2011) *Manual of Guidance on the Management, Command and Deployment of Armed Officers*, third edition, §6.52. See also Policy and Procedure Bundle/684.

<sup>192</sup> Q9, TS/4953:16–19.

<sup>193</sup> *Ibid.*

<sup>194</sup> X7, TS/5501:18–20.

<sup>195</sup> Q9, TS/4903:11–14.

**6.118** In order to leave by the driver's door, Mr Grainger would have had to turn his upper body to his right. Q9 denied that he had done so.<sup>196</sup> In answer to Leslie Thomas QC, he said that Mr Grainger had been sitting "face on to the windscreen".<sup>197</sup>

Question: On your version of events, Anthony is not turning to his right – in other words, so we are clear, he is not turning towards the driver's door?

**Answer: I didn't see him turning towards the driver's door.**<sup>198</sup>

**6.119** Although I accept that Q9 did not register any such movement, I have no doubt that Mr Grainger was in the process of turning to his right when Q9 fired.

**6.120** According to Dr Brian Rodgers, the consultant forensic and Home Office pathologist who conducted a post mortem examination in relation to Mr Grainger on 4 March 2012, the bullet fired by Q9 entered Mr Grainger's left anterior upper chest and passed through his chest, without exiting his body, at a slight downward angle from the horizontal plane of between 10 and 20 degrees and at an oblique angle of about 45 degrees across Mr Grainger's body, i.e. from his left to his right.

**6.121** The forensic scientist instructed on behalf of the Inquiry, Dr Philip Seaman, considered those medical findings in conjunction with the results of his own investigation of the scene, the Audi and Mr Grainger's clothing, and firing tests that Dr Seaman conducted. Considering the bullet's trajectory, he concluded that at the moment of impact, Mr Grainger would have been leaning slightly forward (to account for the slight downward angle) and slightly twisted to his right (to accommodate the 45-degree angle from Mr Grainger's left to his right).<sup>199</sup> Because of uncertainty as to the exact position of Q9 when he discharged his weapon, there are some limitations to the precision of those conclusions, particularly with respect to the deduced downward angle.<sup>200</sup> Nevertheless, Dr Seaman was able to say that it was not possible to generate the 45-degree track through Mr Grainger's torso on the assumption that he had been sitting back in his seat, directly facing the windscreen in front of him.<sup>201</sup>

**6.122** Taking its acknowledged limitations into account, I accept Dr Seaman's broad conclusion. I am sure that Mr Grainger was in the process of turning his upper body to his right when he was shot. He was probably also leaning slightly forward, although that is less certain. While I cannot be sure what his intentions were, the most likely explanation is that he was about to open the driver's door with a view to getting out of the vehicle.

## H. Conclusions

**6.123** In considering the actions of Q9, I have done my utmost to judge them by reference to the circumstances as I find that he perceived them to be, not as I, with all the advantages of hindsight, now know them to be.

**6.124** There can be no doubt that the visit to Culcheth on 3 March 2012 was linked to serious crime. However, its purpose was probably not to commit a commercial robbery that evening. Instead, it was almost certainly in connection with a future robbery, perhaps

<sup>196</sup> Q9, TS/5014:17–18.

<sup>197</sup> Q9, TS/4943:13–4944:1.

<sup>198</sup> Q9, TS/4944:13–16.

<sup>199</sup> Seaman, TS/5666:17–24.

<sup>200</sup> Seaman, TS/5669:12–24.

<sup>201</sup> Seaman, TS/5690:5–16.

to conduct reconnaissance or to steal a car for use in the course of such a robbery. Professional, high-end criminals do not sit around for lengthy periods in full view of members of the public when they are on the very point of committing a serious offence. The occupants of the Audi had no weapons with them, and, by the time of the MASTS intervention, there remained few, if any, credible targets. The fact that they were wearing gloves does not undermine that conclusion; they were, after all, in a stolen vehicle, and one of them had been seen wearing gloves during at least one previous reconnaissance trip a few days earlier.<sup>202</sup>

**6.125** Q9 did not act out of malice, nor did he panic. He made a catastrophic but genuine mistake, the roots of which lay mainly – but not exclusively – in the ineptitude with which his superiors had planned and briefed that day’s operation. He and his fellow AFOs were badly let down by their commanders.

**6.126** Partly as a result of irresponsible gossip (about the Bolton robbery) in the TFU office, and partly because planners failed to inform those AFOs who had participated in previous Operation Shire MASTS deployments that the investigation had been divided into two separate strands, Q9 wrongly believed that Mr Totton, Mr Rimmer and Mr Grainger were working as part of a much larger organised crime group, members of which had previously discharged firearms at police officers. At the briefing on 3 March, planners for the first time chose to headline the Preston armed robbery, which had involved the use of firearms but in which none of the Audi’s anticipated occupants had played any part. They incorrectly briefed the MASTS team that the subjects of Operation Shire had been seen reconnoitring the secure area of Sainsbury’s premises with a hacksaw. At the same time, they failed to make it clear to AFOs, as they had done at previous briefings, that they had no intelligence to indicate that there would be firearms inside the Audi, thereby encouraging AFOs to speculate, wrongly, that Sainsbury’s was to be the target that evening of a Preston-style robbery involving firearms.

**6.127** On top of all those errors and omissions, the commanders responsible for planning the deployment of 3 March failed to brief AFOs about the presence of tinted “privacy glass” in some, but crucially not all, of the stolen Audi’s windows. Astonishingly, they said nothing whatsoever about it, even though, following many weeks’ close surveillance of the vehicle, they must have been fully aware of the true position. As a result, Q9 was allowed to retain the false impression, again picked up from gossip in the TFU office, that all the Audi’s windows apart from the front windscreen were heavily tinted. That in turn convinced him, again wrongly, that AFOs approaching the Audi from either side would be prevented from seeing inside the vehicle’s front passenger compartment. Q9’s erroneous belief that his colleagues would be unable to see, let alone control, the Audi’s occupants was, I am sure, the decisive consideration behind his plan (for which I do not criticise him<sup>203</sup>) to provide static cover into the Audi through its windscreen, and it must also have been a critical factor in his decision to discharge his weapon when he did.

**6.128** The combined effect of this sorry litany of negligence was to predispose Q9 to assume the worst in the event of a confrontation with the Audi’s occupants, and to misinterpret

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<sup>202</sup> Surveillance log, 29 February 2012, Bundle O2/846.

<sup>203</sup> Neither does Mr Arundale QPM: see TS/7113:4–7114:3. See also Marcus Williams, TS/6247:5–6248:9. Had Q9’s belief that the front windscreen of the stolen Audi afforded the only clear view into its passenger compartment been correct, his decision to provide static cover from his position in the Alpha vehicle would arguably have complied with the “fundamental” stricture of Kevin Nicholson (from the College of Policing) that an officer performing a covering role must be able “to provide the cover and make reasonable assessments about threat”. See Nicholson, 16 February 2018, TS/87:25–88:13.

and overreact to any sign of non-compliant conduct. Nevertheless, not all firearms officers in his position would have fired when he did.<sup>204</sup>

- 6.129** On the basis of Q9’s honest but distorted view of the circumstances prevailing in the car park on the evening of 3 March, he probably had no more than a second or so in which to reassess Mr Grainger’s intentions before the arrival of other AFOs would force him to make a critical decision. Given his magnified, yet genuine, perception of the threat that he and his colleagues faced, I cannot say that his decision to fire when he did was unlawful. He shot Mr Grainger in the mistaken but honestly held belief that Mr Grainger was on the point of discharging a firearm at approaching police officers.
- 6.130** What was it that caused so highly trained and experienced an officer to make such a blunder? Q9 had not, it seems to me, enjoyed much mental relaxation during the long waiting period before the “strike”. The evidence strongly suggests that he was preoccupied with the nature of the threat posed by the subjects of Operation Shire. His preoccupation extended far beyond what he and his colleagues had heard at that morning’s briefing, for he spent part of the day mulling over the facts of the Bolton robbery. None of this surprises me. It is the kind of thing I would expect an AFO to do in such a situation.
- 6.131** While I cannot say with complete confidence that “tiredness and adrenaline”<sup>205</sup> precipitated Q9’s disastrous decision to discharge his weapon on 3 March, I consider that they were probably contributory factors. His excessive hours of duty that day required him to maintain himself in a state of subliminal tension for far longer than is compatible with public safety. It will be for others to make an informed professional judgement as to where the limit should normally be set (see paragraphs 9.53–9.58). Save in the rarest and most extreme circumstances, however, I find it hard to believe that it can ever be right to expect even specialist firearms officers to embark upon decisive action after more than 12 hours’ continuous duty inclusive of rest periods and refreshment breaks.
- 6.132** For the reasons I have set out in this chapter and elsewhere in my Report, the bulk of the blame for what happened on 3 March lies with those responsible for planning the deployment and for briefing those who were to carry it out. At the same time, however, Q9 cannot escape personal censure. He should have raised his concerns about the Bolton robbery with a senior commander and he should not have ignored X7’s attempt to correct his misunderstanding of the situation.
- 6.133** Towards the end of his evidence, Q9 claimed that, were the same circumstances to arise again, he would do exactly the same. If that was anything more than the ill-judged and needlessly incendiary rhetorical flourish<sup>206</sup> that I took it to be, and genuinely represents Q9’s considered position, I have to say that I regard it with considerable concern. It is not something I would expect to hear from a responsible firearms officer in his position.

<sup>204</sup> *Report of Ian Arundale QPM*, 4 November 2016, §528.

<sup>205</sup> See instructor’s comments in X7’s CQC training record, Bundle X/168: “This will have been a valuable lesson to all that tiredness and adrenaline can lead to mistakes being made.”

<sup>206</sup> Regrettably repeated in his closing submissions. See: Closing statement on behalf of Q9, 12 May 2017, §140.



# Chapter 7: The CS Dispersal Canister

## A. Background

- 7.1** One of the specialist munitions authorised and used on 3 March 2012 was a device called a CS dispersal canister (“CSDC”).<sup>1</sup> The CSDC had formed part of Greater Manchester Police’s (“GMP”) armoury of special munitions since 2007. It had not been approved by the Home Office, nor had it undergone the rigorous process of research and evaluation prescribed by the 2003 *Code of Practice on Police use of Firearms and Less Lethal Weapons* (“Code of Practice” or “Code”). It has never been adopted by any other UK police force and should not have been used by GMP, as that force now accepts.
- 7.2** It seems to me that I cannot adequately inquire into “the suitability or otherwise” of the CSDC deployed in the operation without first establishing how such a device came to form an illicit component of GMP’s store of weaponry in the first place. On that topic, I heard factual evidence from Andrew Holmes (now retired, but at the material time the Inspector in charge of the Tactical Firearms Unit’s (“TFU”) Resource Planning and Tactical Team), David Thompson (now Chief Constable of West Midlands Police but at the material time Assistant Chief Constable (“ACC”) of GMP with responsibility for firearms and specialist operations) and Brian Davies (at the material time the TFU’s operational Chief Inspector (“CI”) and Inspector Holmes’s line manager), as well as evidence from Ian Arundale QPM, the Inquiry’s expert witness.
- 7.3** It was the advent of Taser weaponry during the early years of this century that prompted the UK authorities to establish a national framework of guidance regulating the procurement of new weapon systems. There had been examples of individual police officers seeing items of police equipment while on holiday in the United States and, on their return home, advocating the acquisition of similar technology by their home forces.<sup>2</sup> Concerned to ensure that there was “no *ad hoc* use of unapproved and untested equipment”,<sup>3</sup> the authorities determined that there should be a statutory code of practice setting “a national standard for the evaluation and approval of all less lethal options and weapon systems”<sup>4</sup> and appointed Mr Arundale, as national armed policing lead, to co-ordinate its introduction.<sup>5</sup>
- 7.4** The first two stated purposes of the 2003 *Code* were to set out “the principles in relation to the selection, testing, acquisition and use of firearms and less lethal weapons by police” and “the manner in which those principles are to be implemented within the police service”.<sup>6</sup> Part 4.3 of the *Code*, which regulates the development and approval of new weapons and operating procedures, begins with this declaration:

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<sup>1</sup> The manufacturers’ designation is “CS Flameless Expulsion Hand Grenade”: see *Safety Data Sheet*, Bundle V/Documents/127. In 2009, at the request of Chief Inspector Brian Davies, GMP adopted the euphemistic label “CS dispersal canister” on the grounds that “grenade” sounded “rather sinister”: email message, 5 March 2009, CSDC Late Disclosure Bundle/576. In common with most witnesses and documentary references, and to avoid confusion, this Report uses the expressions “CS dispersal canister” or “CSDC”.

<sup>2</sup> Ian Arundale, TS/6844:15–19.

<sup>3</sup> Arundale, TS/6844:10–12.

<sup>4</sup> Arundale, TS/6945:19–25.

<sup>5</sup> Arundale, TS/6841:25–6843:3.

<sup>6</sup> Home Office (2003) *Code of Practice on Police use of Firearms and Less Lethal Weapons*, §1.1.1.

4.3.1 It is important that the continuing development of weapon systems, including their related operating procedures, should be centrally coordinated. That is to ensure that emerging requirements of the police service may be properly identified and met, that weapon systems may be adequately tested and evaluated for police use, and that good practice may be promulgated and adopted within the service. For those purposes, chief officers of police should monitor emerging operational requirements in their forces, and the availability of new weapon systems, which might improve the safety of operations involving weapons requiring special authorisation.<sup>7</sup>

The whole point of the exercise, as Mr Arundale explained, was that “the Home Secretary and the Government in general did not want police forces to do their own thing”.<sup>8</sup>

## 7.5 The remaining paragraphs of Part 4.3 provide as follows:

4.3.2 The police service should maintain the capability centrally to assess, evaluate and where appropriate adopt effective less lethal weapon systems where they might reduce reliance on conventional firearms or ammunition without compromising the safety of police officers or others who might be affected. For this purpose, Chief Officers co-operating with each other (normally through ACPO) should monitor the availability of new weapon systems.

4.3.3 Where ACPO regard new weapon systems as suitable for further evaluation and testing they should consult the Secretary of State:

- (a) to obtain the Secretary of State’s views on the suitability and independence of bodies to be invited to carry out technical and medical evaluations of new weapon systems, and the procedures to be adopted for those evaluations;
- (b) to ensure that these procedures will be carried out as expeditiously as possible in order to meet police operational needs; and
- (c) to enable the Secretary of State to consider using powers relating to the regulation of equipment and of procedures and practices under the provisions of sections 53 and 53A of the Police Act 1997 (as amended by the Police Reform Act 2002).

4.3.4 The processes for evaluating, assessing and adopting new weapon systems and tactics, and arranging for any related training to accredited standards, must be completed before such weapons and tactics are to be regarded as available generally for use by police forces.

4.3.5 Evaluation and assessment processes for such weapons will include where appropriate a needs analysis, determination of operational requirement, technical evaluation, medical assessment and operational performance trials, and will take into account relevant strategic, ethical, operational and societal issues.<sup>9</sup>

7.6 The expression “weapon system” is a well-known term within police firearms circles<sup>10</sup> and has a wide meaning. According to the *Manual of Guidance on the Management, Command and Deployment of Armed Officers*, third edition (“*Manual of Guidance*”), the “system” includes the weapon or launch platforms, the sighting system, the munitions, the zeroing instructions and Association of Chief Police Officers (“ACPO”) guidance on use.<sup>11</sup>

7.7 In his *Supplementary Report*,<sup>12</sup> Mr Arundale lists some of the practical steps that the process for evaluating new weapon systems typically involves. The starting point is an agreed written operational requirement that must accord with the ACPO generic

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<sup>7</sup> *Ibid.*, §4.3.1.

<sup>8</sup> Arundale, TS/6843:23–6844:1.

<sup>9</sup> Home Office (2003) *Code of Practice on Police use of Firearms and Less Lethal Weapons*, §§4.3.2–5.

<sup>10</sup> Arundale, TS/6947:21–23.

<sup>11</sup> ACPO, ACPOS and NPIA (2011) *Manual of Guidance on the Management, Command and Deployment of Armed Officers*, third edition, §2.14.

<sup>12</sup> *Supplementary (2nd) Report of Ian Arundale QPM*, 5 April 2017, §16.

requirement for less lethal weapon systems. Of particular importance is the need for government or approved independent testing of the weapon system's operation, durability and reliability. Experience has shown that manufacturers' claims cannot be taken on trust. There must be specific toxicology, carcinogenicity and mutagenicity tests for any previously untried chemicals. A detailed risk assessment must be completed and formal legal and health and safety advice obtained. Public consultation and community impact assessments may also be required. Subject to satisfactory initial evaluation and Home Office support, an operational trial will be necessary in order to test the equipment and its operational utility. During any such trial, data collection for all deployments will be necessary. A peer review may be required, as in the case of Taser and the Attenuating Energy Projectile. The authorities are likely to want to have a media strategy in place, as well as a formal review process and management and oversight strategy for the collection and management of data. Final operational approval is a matter for the Home Secretary.

- 7.8** Central government, through the Home Office Scientific Development Branch ("HOSDB"), is well placed to oversee such matters, having access to world-class specialist advice and expertise (including, in the case of chemical munitions such as CS, the Defence Science and Technology Laboratory ("DSTL") at Porton Down). It also funds the Scientific Advisory Council on the Medical Implications of Less Lethal Weapons, a group of highly respected medical and scientific experts.
- 7.9** From 2003, there was "an extremely high level of knowledge among practitioners that this was a carefully controlled process, with the Home Office at the helm".<sup>13</sup> The statutory basis of the *Code*<sup>14</sup> meant that police forces in England and Wales were under a duty to have regard to its provisions. Further, the *Manual of Guidance* expressly provided that "only less lethal weapons that have been approved by the Secretary of State may be used by UK police services".<sup>15</sup> I have no doubt that by 2007 the essential requirements of the *Code of Practice* and the *Manual of Guidance* that I have just summarised were widely known to and understood by chief officers of police. Equally, there can be no doubt that those requirements applied to the CSDC, as any competent chief officer must have realised.
- 7.10** Inspector Holmes told the Inquiry that, in 2007, he understood the *Code* to permit local forces to undertake some "initial groundwork"<sup>16</sup> to identify a "capability gap".<sup>17</sup> As a matter of common sense, the obligation on chief officers of police to monitor "emerging operational requirements" in their forces and the "availability of new weapon systems"<sup>18</sup> must necessarily entail some such groundwork. There is, however, nothing in the *Code* to support Inspector Holmes's contention that it allowed latitude to local forces to conduct "research and development"<sup>19</sup> of their own without Home Office approval, nor was he able to point to any such provision in the *Code*. In any case, as Inspector Holmes admitted during his oral evidence, he was well aware that the correct procedure did not permit authorisation by an officer of ACPO rank, but required central co-ordination through the ACPO Police Use of Firearms ("PUOF") group.<sup>20</sup>

<sup>13</sup> Arundale, TS/6967:2–5.

<sup>14</sup> Home Office (2003) *Code of Practice on Police use of Firearms and Less Lethal Weapons*, §1.2.

<sup>15</sup> ACPO, ACPOS and NPIA (2011) *Manual of Guidance on the Management, Command and Deployment of Armed Officers*, third edition, §2.13.

<sup>16</sup> Andrew Holmes, TS/6333:11–13.

<sup>17</sup> Holmes, TS/6334:3–13.

<sup>18</sup> Home Office (2003) *Code of Practice on Police use of Firearms and Less Lethal Weapons*, §4.3.1.

<sup>19</sup> Holmes, TS/6334:3–13.

<sup>20</sup> Holmes, TS/6321:18–6324:16.

## B. GMP's acquisition and use of CSDCs

- 7.11** Although commonly referred to as a “gas”, CS is in fact a white crystalline solid named after the two British chemists, Corson and Stoughton, who first produced it in 1928. Exposure to CS at low concentrations produces irritation of the eyes, mouth and throat, but causes no permanent damage.<sup>21</sup> Its usefulness to law enforcement agencies as a means of temporarily incapacitating violent subjects is obvious.
- 7.12** The conventional method of delivering CS into a vehicle is by firing a Round Irritant Projectile (“RIP round”) from a shotgun. The CSDC is designed to perform the same task without the use of any form of pyrotechnic combustion or explosive discharge. The operator removes a pin from the device, thereby activating a fuse, and throws it into the vehicle’s passenger compartment. After a short delay, the fuse triggers an internal CO<sub>2</sub> canister which in turn expels the CS payload through one or more emission ports.<sup>22</sup>
- 7.13** By the time the *Code of Practice* came into effect on 3 December 2003, the RIP round had already received technical approval for use by UK police forces.<sup>23</sup> It was not, therefore, a “new weapon system” within paragraphs 4.3.2–4.3.4 of the *Code*, and was treated as enjoying what Mr Arundale called “grandparent rights”<sup>24</sup> without the review and evaluation process specified by the *Code*. The same cannot be said of the CSDC.
- 7.14** The history of GMP’s acquisition of CSDCs provides an object lesson in the problems and dangers that are liable to arise when a police force acts unilaterally in this field. Indeed, it reflects the very concerns that had first led the authorities to set up the 2003 *Code of Practice*. As Mr Arundale put it in his *Supplementary Report*, the *Code* “was specifically implemented to prevent the type of approach that Greater Manchester Police (GMP) took in relation to the approval and introduction of CSDC in 2007”.<sup>25</sup>
- 7.15** The initiative came from Inspector Holmes, now retired but at the material time an Inspector in GMP. Inspector Holmes was an authorised firearms officer (“AFO”) and tactical adviser, qualified in the Mobile Armed Support to Surveillance (“MASTS”) platform. In March 2003, some nine months before the *Code of Practice* came into effect, he was given responsibility for the TFU Resource Planning and Tactical Team with the task of researching and developing tactics and equipment. He still held that position in 2007. Although he had received some health and safety training, he was not specifically qualified in the research or development of equipment.<sup>26</sup>
- 7.16** Inspector Holmes confirmed that, in 2007, he had understood the importance of centrally co-ordinating the development of police weapon systems in accordance with Part 4 of the *Code*. He was aware that ACPO, through its PUOF group, had to be involved in the assessment and evaluation of new weapon systems, and that any “needs analysis” and determination of operational requirement, together with any evaluation of the system’s capabilities and effectiveness (including, in the case of a chemical munition, any medical assessment or toxicity analysis), would need to be conducted at a national, not merely local, level. Although he claimed that he had

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<sup>21</sup> Police Scientific Development Branch (“PSDB”) Publication No. 9/94, Bundle V/Documents/6.

<sup>22</sup> Specification, Model 5430 CS Flameless Expulsion Canister Grenade.

<sup>23</sup> Arundale, TS/6978:12–13.

<sup>24</sup> Arundale, TS/7236:23–25.

<sup>25</sup> *Supplementary (2nd) Report of Ian Arundale QPM*, 5 April 2017, §13.

<sup>26</sup> Holmes, TS/6316:25–6317:2.

understood the *Code* to permit local forces a degree of “latitude”,<sup>27</sup> he was unable to identify any provision in the *Code* that was capable of being interpreted in such a way.

- 7.17** According to his last witness statement, dated 22 December 2016,<sup>28</sup> Inspector Holmes tasked officers in his team with researching the internet in the hope of identifying a means of delivering CS to subjects inside a vehicle without the fragmentation and penetration risks associated with the RIP round. In his oral evidence to the Inquiry, Inspector Holmes said he had not restricted his team to internet research, adding that they also made enquiries of other agencies, including HOSDB and various ACPO groups.
- 7.18** I have seen no documentary evidence of any “research” into different methods of delivering CS. What actually happened is that two GMP firearms officers were shown some CSDCs in 2004 during a routine visit to a supplier of police munitions, a company called Beechwood Equipment Ltd. One of the visitors was the officer known as “G1”, and his companion was Police Constable (“PC”) Craig Worthington, who has since retired from the Force. According to a statement by G1 dated 16 December 2016,<sup>29</sup> they had gone to Beechwood’s premises on behalf of the TFU in order to collect some shotguns. While they were there, a representative of the company showed them some flameless CS dispersal canisters and asked whether GMP would be interested in acquiring such items. After receiving an explanation as to their use, the two officers agreed to take a sample back to Manchester.
- 7.19** On 10 September 2004, PC Worthington sent an email (apparently via Beechwood Equipment) to the American manufacturers of the CSDC, Combined Systems Inc, seeking information about the canister. It is worth quoting the full text of the message:
- Dear Sir/Madam, I am currently researching a delivery system for CS irritant into a vehicle. I have noticed that you supply the “Flamless [*sic*] Expulsion Hand Grenade”. Under current guidelines and regulation by our Police Science Development Branch we are restricted to a deliverance of 5 grams net irritant per device. Your grenade has 12 grams. Would it be possible to reduce the irritant to the level of 5 grams or less for the UK Police market. Regards, Craig.<sup>30</sup>
- 7.20** Pausing there, this early message already reveals one of the dangers of this frankly amateurish approach. The device in which PC Worthington was expressing interest clearly did not comply with existing Home Office requirements. It ought to have been obvious that any modification to the specification would require careful oversight by scientific and medical experts. The appropriate concentration of the CS payload, and its size in grams, might be subject to a variety of technical considerations, including the size of the particles and the purpose for which the device had originally been designed (it might, for example, have been intended for use in operational conditions which differed significantly from those envisaged by Inspector Holmes and his team).
- 7.21** In response to PC Worthington’s message, the American manufacturers provided some technical information, including a product specification, diagrams and a safety data sheet. On 18 January 2005, Police Constable John Harte, another AFO from Inspector Holmes’s team, faxed the information to the Police Scientific Development Branch

<sup>27</sup> Holmes, TS/6334:5–24.

<sup>28</sup> Bundle V/Statements/25, §8.

<sup>29</sup> Bundle V/Statements/41.

<sup>30</sup> Bundle V/Documents/88.

(“PSDB”), inviting that body’s views. The PSDB replied by email later the same day. The message came from Graham Smith, a physicist, and is an important document:

John,

Thanks for sending the grenade data sheets – unfortunately they don’t give me enough information to enable me to comment on their suitability for your application. Hopefully the following will give you an idea of what we would need to do to assess these for you. The main things we would look for in any evaluation is compliance with the Operational Requirement. I assume the main aspect of your requirement would be to minimise unintended injury and ensure effectiveness. The effectiveness could be measured by simply finding out the concentration of CS in the air following deployment – a concentration of 10mg/m<sup>3</sup> is normally sufficient to produce an effect but you may need higher concentrations to maximise the incapacitation effect. On the unintended injury side there could be problems caused by excessively high concentrations of CS or problems with the particle size or purity of the CS – these would need to be assessed medically, probably by DSTL Porton Down. Other injury mechanisms could be via excessive noise or fragmentation of the grenade, these could be assessed by PSDB but may need some medical input. There may also be other aspects in use that we could measure to ensure that any grenade meets your needs by [*sic*] the key ones will be injury potential and effectiveness.

Before we could start any work on this we would need a clear requirement and request from ACPO and would need to fit the project in with our other work, which may require some re-prioritization of our existing projects. The first steps would be to raise the issue at ACPO (PuoF or WEF) and get their support to pursue it – Martyn Perks would be the best contact to do this (I’ve copied him in). There may also be policy issues associated with the use of this type of weapon that would need to be addressed via ACPO or Home Office Policy Unit – we would check this prior to starting any work.

I hope this helps.

Regards ...<sup>31</sup>

**7.22** That email should not have come as any surprise to PC Harte or to his superiors. It pointed out that a request for evaluation of a new weapon system had to come from ACPO, not individual forces, in accordance with paragraph 4.3.2 of the *Code of Practice*. The first step in that process would be for ACPO to submit a formal operational requirement. The Home Office would have to be consulted. Even then, any evaluation by the PSDB would have to be fitted within that body’s existing research commitments. In short, Mr Smith’s email was a polite but firm reminder to GMP that the Force could not expect to bypass the *Code of Practice* and that the only way of progressing the CSDC would be at a national level, through ACPO.

**7.23** Inspector Holmes told me that he could not recall having seen Mr Smith’s message of 18 January 2005, nor did he remember being informed of “all” its contents.<sup>32</sup> Given that he did not take up his position as head of the TFU until July 2006, he would certainly not have seen the message at that time. It may be that he did not see the message itself until after Anthony Grainger’s death. However, as the officer with responsibility for researching tactics and equipment and as leader of the team to which PCs Worthington and Harte belonged, I find it inconceivable that Inspector Holmes was kept in the dark about the essential thrust of the PSDB’s response. His line manager, CI Davies, was certainly aware of it, because he told the Inquiry that he had understood from Inspector Holmes that HOSDB<sup>33</sup> had been consulted, but “there was a capacity issue in terms of when it could be programmed into their work, so it could be a long way off”.<sup>34</sup> That is a reference, albeit an inaccurate one, to Mr Smith’s

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<sup>31</sup> Bundle V/Documents/98.

<sup>32</sup> Holmes, TS/6355:2–5.

<sup>33</sup> It appears that, by 2007, the PSDB had been renamed HOSDB, and we use that term hereafter.

<sup>34</sup> Brian Davies, TS/6533:14–6534:11.

indication that “we ... would need to fit the project in with our other work, which may require some re-prioritization of our existing projects”. I regard it as significant that Inspector Holmes shared exactly the same misinterpretation of Mr Smith’s words:

Question: Why were [the trials] conducted in-house and not in the way suggested by the PSDB?

**Answer: To have conducted some trials in the way that [the PSDB] are suggesting there [i.e. in Mr Smith’s email] would have obviously needed the involvement of HOSDB, or whatever title it may have had at that time. I think too – and they do allude to it in the letter there – that although there is a process there to go down, there are some issues in terms of workload and availability. And I think, frankly, the – that would probably not have been a priority for them, and the capability of actually giving us some support to do that would probably not have been available. There were conversations with HOSDB over – telephone conversations, which I haven’t documented. And the outcome of those were that they wouldn’t be able to really offer any support for years, really.<sup>35</sup>**

I have no doubt that Inspector Holmes was fully aware of the PSDB’s insistence on following correct procedure, even if he found it frustrating.

- 7.24** It appears that Inspector Holmes and CI Davies must have discussed the contents of Mr Smith’s email at some stage. Certainly, by June 2007 both men were well aware of HOSDB’s response to PC Harte. Faced with that response, they could have attempted to persuade their superiors within GMP to obtain ACPO’s agreement for the submission of a formal operational requirement pursuant to the *Code*. Failing that, they had no proper option but to drop the CSDC project altogether.
- 7.25** They did neither. Instead, the TFU went ahead and conducted its own “trials”. As we have seen, the reason Inspector Holmes gave to the Inquiry for taking that course of action was that he had understood from (undocumented) telephone discussions with HOSDB that even with ACPO’s backing HOSDB would be unable to support the project for a period of “years”.<sup>36</sup> He seems to have persuaded himself that in those circumstances GMP could proceed with it unilaterally without contravening the *Code*. CI Davies took a similar view.<sup>37</sup>
- 7.26** Inspector Holmes was anxious to make the point that nothing was done in secret and that he had kept his superiors informed. That, while doubtless true, is not the point. Even if GMP had enjoyed access to the technical and medical expertise that would have been required to replicate the ACPO process, together with the necessary resources, the Force would still have been acting outside the *Code*. As it was, the TFU was in no position to conduct any meaningful evaluation of the CSDC. To take a few examples, it possessed neither the means nor the expertise to analyse the chemical constitution of the device’s payload, to conduct a technical appraisal of its discharge rate, pressure and pattern, to measure its flammability and resistance to temperature extremes, or to carry out methodical drop or crush tests. In any event, there was no UK standard specification against which to measure such characteristics;<sup>38</sup> GMP’s “trials”, such as they were, consisted of officers from the TFU “deploying the unit and seeing how it performed”.<sup>39</sup>

<sup>35</sup> Holmes, TS/6360:7–24.

<sup>36</sup> *Ibid.*

<sup>37</sup> Davies, TS/6535:8–12.

<sup>38</sup> See, for example, the Home Office standard specification for chemical irritant sprays: CSDC Late Disclosure Bundle/827.

<sup>39</sup> Holmes, TS/6360:4–6.

- 7.27** On 12 May 2006, Combined Systems Inc wrote to its UK suppliers, thanking them for “feedback on the trials conducted by Greater Manchester Police”.<sup>40</sup> The purpose of the letter was to provide written confirmation that the fuse time and CS payloads of any dispersal canisters supplied to GMP would be adjusted to the Force’s requirements. Inspector Holmes confirmed in his oral evidence that the “trials” had been conducted within his unit.
- 7.28** On 27 June 2006, Inspector Holmes completed a Control of Substances Hazardous to Health Assessment (COSHH).<sup>41</sup>
- 7.29** On the morning of 2 November 2006, a conversation took place between Inspector Holmes and Mr Smith, the scientist who had written the email dated 18 January 2005. No contemporaneous note or record of their discussion has been produced, but it is mentioned in a follow-up email from Inspector Holmes to Mr Smith of the same date:

Graham,

Thanks for the call this morning, to clarify the current position and what I am trying to achieve:-

GMP Firearms Unit regularly carry RIP rounds as a contingency when carrying out covert operations which may involve the interception of individuals in vehicles.

RIP rounds are deployed into the vehicle where either the occupants are non-compliant or the threat level dictates that a more pre-emptive intervention is required.

The deployment of CS has been very effective and to date has always been proportionate and justified.

However, the rounds are delivered via the “C” pillar of the vehicle in order to minimise the inherent risks involved with discharging rounds into a vehicle.

Where there are occupants in the rear of the vehicle this normally precludes the use of the RIP round due to the close proximity of the rounds being discharged.

We continually review our operating procedures and seek to minimise the risks where possible whilst still remaining effective in achieving our objectives.

Some time ago a member of staff identified the Flameless expulsion grenade as a viable alternative for delivering CS quickly and effectively into a small area without the need to discharge any form of firearm. The grenade would be delivered into a vehicle by breaking a window and dropping the grenade/canister into the vehicle. There is no delay on the grenade, once the fly off lever is released, the CS is delivered immediately. In view of the fact that the grenade is delivered via an already broken window and that other doors and windows will be opened immediately the CS will be dispelled from the vehicle fairly swiftly and the occupants will not be subject to a sustained exposure.

Currently the grenade is manufactured to contain 12 gms of CS irritant although this can be adapted to meet our needs (i.e. reduced to 4.5 gm) if necessary.

The delivery and use of this grenade considerably reduces the potential risks of delivering CS with RIP rounds and is therefore a favoured option for our firearms unit.

However, the grenade is manufactured in the United States and therefore the constitution, particle size, concentration levels and purity of the CS are not presented in the data sheets in a format we (the UK) are familiar with.

Before we consider deploying the equipment we need to establish the facts underlined above.

I would be obliged if you could assist our Force in progressing this. The specialist knowledge required to determine the above is not available within Force.

Unfortunately I cannot confer with other Forces regarding the matter as no other Forces have sought to progress the matter, however, a number of other Forces and military units are

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<sup>40</sup> Bundle V/Documents/102.

<sup>41</sup> Bundle V/Documents/104.

interested in our progress and will undoubtedly utilise the equipment should we determine it is suitable for use.

I have attached the material Safety Data sheet and information sheet for your information.

I look forward to hearing from you and appreciate your interest in the matter.

Regards, etc.<sup>42</sup>

**7.30** It is clear from the tone of that message that Inspector Holmes was utterly convinced of the supposed merits of the CSDC and – subject to obtaining the important information which he had underlined – took the view that it should be authorised for deployment. There is no evidence to support the claim that “a number of other Forces and military units are interested in our progress and will undoubtedly utilise the equipment should we determine it is suitable for use”. As recently as February 2018, Kevin Nicholson (firearms lead within the specialist operations faculty at the College of Policing) and Simon Chesterman (Mr Arundale’s successor as ACPO/National Police Chiefs’ Council firearms lead) told the Inquiry that they knew of no suggestion by any police force – including even GMP itself – that there might be an operational requirement for the CSDC.<sup>43</sup> Whether, despite that lack of interest from other agencies, there existed any objective justification for Inspector Holmes’s enthusiasm is a matter discussed elsewhere in this chapter.

**7.31** Inspector Holmes received no response to his email of 2 November.

**7.32** On 13 January 2007, a risk assessment document<sup>44</sup> was prepared. The person who carried out the assessment is named as Police Constable Tim Weightman, an officer in the TFU, and CI Davies, head of the TFU, is named as counter-signatory, but Inspector Holmes told me that he himself also had a role in creating it. The risk assessment is notable for the curious fact that it dealt exclusively with potential risks to police officers, and contains no reference to the subjects against whom CSDCs were to be deployed, or, indeed, any other category of person. When pressed by Jason Beer QC, Leading Counsel to the Inquiry, as to why the document had not identified any risks to persons other than police officers, Inspector Holmes was unable to provide an explanation.

**7.33** At some point in the early part of 2007, Inspector Holmes asked the US manufacturers of the dispersal canister to provide him with some documentary evidence of the CS particle size. In reply, Jack Hananya, of Combined Systems Inc, wrote a short letter dated 5 March 2007 and addressed “To Whom It May Concern”:

This is to confirm that the particle size for the powder in 5400, 5430 and 5440 Flameless Expulsion Grenade is 20–50 microns.

If you need any additional information please do not hesitate to contact me.

Best regards, etc.<sup>45</sup>

**7.34** Inspector Holmes told the Inquiry<sup>46</sup> that, at the time, he had regarded that bald assertion by the manufacturers as having resolved HOSDB’s concern<sup>47</sup> that “there could be problems ... with the particle size ... of the CS” which “would need to be assessed medically, probably by DSTL Porton Down”. As Mr Arundale was later to

<sup>42</sup> Bundle V/Documents/157.

<sup>43</sup> Kevin Nicholson, 16 February 2018, 45:4–12; Simon Chesterman, 16 February 2018, 126:19–127:3.

<sup>44</sup> Bundle V/Documents/115.

<sup>45</sup> Bundle V/Documents/120.

<sup>46</sup> Holmes, TS/6374:16–24.

<sup>47</sup> Bundle V/Documents/98.

point out in his evidence,<sup>48</sup> “past experience has shown that it is unwise to rely on manufacturers’ claims and specifications”, which is precisely why the *Code* requires independent technical and medical assessment by Home Office-approved experts.

**7.35** On 20 April 2007, Inspector Holmes took up Mr Hananya’s offer to contact him again, this time sending an email in which he requested help in producing a safety data sheet:

Dear sir, I am seeking to implement use of the CS expulsion grenade to our firearms tactics as it provides the perfect solution for one of our most widely used tactics. I have almost managed to complete this but I am having difficulties in finaliing [sic] some health and safety issues. One matter was recently resolved in a letter from Jack Hananya regarding the particle size of the CS.

However, the only matter preventing me from introducing the grenade is a safety data sheet compliant with EU regulations. I have been dealing with Carl Smith, Beechwood, UK. Are you able to assist in any way to move this along. Although I write as an individual UK Force I know that at least 5 other UK Forces are seeking to implement use of the grenade but are awaiting the outcome of my work to do so.

Regards, etc.<sup>49</sup>

**7.36** The phrase “EU regulations” is an apparent reference to Commission Directive 2001/58/EC<sup>50</sup> of 27 July 2001. I have seen no evidence to support Inspector Holmes’s assertion that “at least 5 other UK Forces” were “seeking to implement use of the grenade”. The Armed Policing Secretariat has no record of any UK police force expressing a professional interest in testing or deploying the CSDC.<sup>51</sup> Mr Arundale, who was Chairman of the National PUOF from 2002 until 2008, was not aware of any such interest. Neither was his successor, Mr Chesterman.<sup>52</sup>

**7.37** Inspector Holmes’s zeal led him to overstate the position in his email of 20 April. His assertion that the absence of a safety data sheet was the only matter preventing GMP from introducing the CSDC was plainly incorrect; there had been no attempt at central co-ordination, no application to ACPO to authorise the project, no reference to or consultation of the Secretary of State, and no independent technical or medical evaluations. Inspector Holmes’s explanation for making the claim was that he had been “trying to generate a response”.<sup>53</sup> Further, although he insisted (without naming any of them) that other police forces were interested in the use of CSDCs, that is not the same thing as saying that such forces were “seeking to implement use” of the CSDC, which was how he had put it in the email. As to that, he told the Inquiry that “trying to implement something like this generated a workload that perhaps other forces ... didn’t want to undertake”.<sup>54</sup> That, no doubt, is one of the reasons why the *Code of Practice* requires such matters to be centrally co-ordinated at a national level through ACPO, rather than by local police forces acting on their own initiative.

**7.38** Following the request for a safety data sheet, some discussion<sup>55</sup> between the US manufacturers and the UK distributors appears to have taken place, as a result of which the latter produced a data sheet<sup>56</sup> bearing the revision date “05–2007”.

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<sup>48</sup> Arundale, TS/6954:8–16.

<sup>49</sup> Bundle V/Documents/124.

<sup>50</sup> Bundle V/Documents/8.

<sup>51</sup> Chesterman, email message, Late Disclosure Bundle/505.

<sup>52</sup> *Ibid.*

<sup>53</sup> Holmes, TS/6374:4–5.

<sup>54</sup> Holmes, TS/6374:10–13.

<sup>55</sup> Bundle V/Documents/124.

<sup>56</sup> Bundle V/Documents/127.

**7.39** On 3 May 2007, having still received no reply from HOSDB to his email of 2 November, Inspector Holmes sent a “chasing” email<sup>57</sup> to Mr Smith, this time attaching copies of the “To Whom It May Concern” letter<sup>58</sup> from the US manufacturers and the safety data sheet<sup>59</sup> provided by the UK suppliers. It is clear that his faith in the CSDC project had not diminished:

I do not wish to seem too pushy but we are keen to implement the equipment at the earliest opportunity.<sup>60</sup>

**7.40** By this time, it was expected that a meeting of GMP’s Firearms Policy Group (“FPG”) would take place on 12 June 2007. On 25 May, in anticipation of the meeting, CI Davies (head of the TFU) sent an email headed “FPG 12 June 07 Agenda & Backing Papers” to Chief Inspector Alan Wood, who was at the time GMP’s Chief Firearms Instructor. It included the following passage:

Andy is going to do a briefing paper for the CS canister. I intend to film the deployment of this device to highlight its benefits and how it fits in the (revised) SOP [Standard Operating Procedure] which will need your sign off etc. This could then be shown at the next FUG [Firearms User Group] likely to be at the end of July (DTBC [date to be confirmed]).<sup>61</sup>

**7.41** As its name suggests, the FPG was the body within GMP that determined Force strategic policy with regard to firearms. Inspector Holmes told me<sup>62</sup> that, at the time, he assumed that it had power to authorise procurement of the CSDC. Had the CSDC already been approved at a national level pursuant to the 2003 *Code*, that assumption may have been justified, but Inspector Holmes and his superiors ought to have realised that the FPG had no power to circumvent the *Code* itself.

**7.42** Inspector Holmes completed his briefing paper<sup>63</sup> on 11 June, the day before the FPG meeting. The document is headed with a list of five references as follows:

References:

- A. Codes [*sic*] of Practice on the Police Use of Firearms.<sup>64</sup>
- B. Material Data Safety Sheet.<sup>65</sup>
- C. CTS [Combined Tactical Systems] canister information sheet.<sup>66</sup>
- D. COSHH assessment.<sup>67</sup>
- E. Manufacturer Letter regarding Micron size.<sup>68</sup>

**7.43** Inspector Holmes told me that all those items were distributed with the paper, apart from the first, which he said would have been available at the meeting in any event.<sup>69</sup> His head of department, CI Davies, did not believe that any of them had been sent electronically and could not remember whether he had hard copies with him at the

<sup>57</sup> Bundle V/Documents/157.

<sup>58</sup> Bundle V/Documents/120.

<sup>59</sup> Bundle V/Documents/127.

<sup>60</sup> Bundle V/Documents/157.

<sup>61</sup> Bundle V/Documents/132.

<sup>62</sup> Holmes, TS/6378:1–3.

<sup>63</sup> Bundle V/Documents/137–139.

<sup>64</sup> Policy and Procedure Bundle/529.

<sup>65</sup> Bundle V/Documents/127.

<sup>66</sup> Bundle V/Documents/110.

<sup>67</sup> Bundle V/Documents/104.

<sup>68</sup> Bundle V/Documents/120.

<sup>69</sup> Holmes, TS/6378–6379.

meeting.<sup>70</sup> ACC Thompson did not recall seeing any of the items and did not believe that they would have been attached to the paper itself.<sup>71</sup>

**7.44** Items that were not attached to the paper included the risk assessment of January 2007<sup>72</sup> (which Inspector Holmes said<sup>73</sup> would not have become relevant until a later stage) and the email exchanges with HOSDB. The latter, indeed, were not even referred to in the body of the briefing paper, although HOSDB was included in the list<sup>74</sup> of bodies said to have been consulted. The other consultees in that list were GMP's Health and Safety Unit, the National Policing Improvement Agency ("NPIA") and Beechwood Equipment. The list did not, of course, include ACPO.

**7.45** The briefing paper did not disclose what HOSDB had said in the email exchanges that had taken place. Pressed on that topic by Mr Beer QC, Inspector Holmes accepted that to have revealed the views of HOSDB might have brought the project to an end, but he denied having deliberately hidden those views.<sup>75</sup> He was, however, unable to give any explanation for his decision not to reveal them. For my part, I have no doubt that the omission was deliberate.

**7.46** The rest of the paper presented an overwhelmingly positive picture of the CSDC, describing it as "the only viable delivery system".<sup>76</sup> It stated that "the research for this has taken some 18 months".<sup>77</sup> That assertion gave a highly misleading impression of the position. I have already set out the comparatively meagre steps that Inspector Holmes and his team had taken in their investigation of the CSDC as a delivery method. The fact that those few steps had taken more than 18 months to complete was less an indication of the comprehensiveness of the "research" than of the extraordinarily slow pace at which it had proceeded.

**7.47** The briefing paper concluded with two recommendations. The first was that the deployment of CSDCs should be approved.<sup>78</sup> The second was that there should be no further research.<sup>79</sup>

**7.48** The list of reasons which Inspector Holmes provided in support of his first recommendation included this specious assertion:

*It complies with requirements of the Codes of Practice. (Par. 4.3.1 – To monitor emerging operational requirements in their forces, and the availability of new weapon systems, which might improve the safety of operations involving weapons requiring special authorisation.)<sup>80</sup>*

**7.49** That was a very carefully worded claim. It does not state that the recommendation complied with the *Code of Practice*, merely that it complied with "requirements" of the *Code*. The single passage cited from the *Code* was a highly selective quotation from paragraph 4.3.1 which entirely omitted the central thrust of the paragraph, namely that the continuing development of weapon systems, including their related operating

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<sup>70</sup> Davies, TS/6531:8–14.

<sup>71</sup> David Thompson, TS/6456:4–16.

<sup>72</sup> Bundle V/Documents/115.

<sup>73</sup> Holmes, TS/6379:21–25.

<sup>74</sup> Bundle V/Documents/137, §3.

<sup>75</sup> Holmes, TS/6381:10–6383:20.

<sup>76</sup> Bundle V/Documents/137, §8.

<sup>77</sup> Bundle V/Documents/138, §19.

<sup>78</sup> Bundle V/Documents/139, §21.

<sup>79</sup> Bundle V/Documents/139, §22.

<sup>80</sup> *Ibid.*

procedures, should be centrally co-ordinated. Wrenched, as it was, from its proper context, it could hardly have been more misleading.

**7.50** Inspector Holmes knew what he was doing. Elsewhere in his paper, he made this assertion:

This review and research is within the spirit of the Code of Practice on the Police use of Firearms. (Para 4.3.1).<sup>81</sup>

**7.51** That, too, was a carefully worded claim. Inspector Holmes denied that he had known at the time that his actions had not complied with the *Code*. I do not accept his evidence on that point. His choice of the phrase “spirit of the Code of Practice”, with its unspoken but clearly implied opposition to the “letter” of the *Code*, was not accidental. He was, I am sure, fully aware that the entire CSDC project contravened the *Code*.

**7.52** In support of the second recommendation, that there should be no further research, Inspector Holmes’s paper went on to state, *inter alia*, that “all available options” had been “explored on an international basis” and that “there are no alternatives suggested or recognised by other Forces”. The first of those impressive-sounding claims is not reflected in any oral or documentary evidence produced to this Inquiry. I have neither seen nor heard anything to suggest that other methods of delivering CS had been identified, let alone “explored”. The only possibilities considered were the existing RIP round and the CSDC. True as the second claim was, it merely served to underline the fact that GMP’s unilateral approach was in clear breach of the 2003 *Code of Practice*.

**7.53** In combination, the paper’s silence about the failure to consult ACPO, its suppression of HOSDB’s warning that GMP could not proceed with the CSDC project unilaterally, its studied implication that the project was nevertheless founded on a research and assessment process which had complied with the 2003 *Code*, and its superficial and one-sided presentation of the supposed advantages of the dispersal canister were all calculated to create the misleading impression that the FPG both could and should immediately and unilaterally authorise the adoption by GMP of the CSDC. Whether those who read the paper should have been misled by it is another matter. For any careful reader with an understanding of the 2003 *Code*, there were, as I have pointed out, plenty of clues within the paper itself to suggest that all was not as it should be.

**7.54** The FPG meeting on 12 June 2007 was chaired by ACC Thompson, who was then in the process of assuming responsibility for firearms operations within GMP. He was familiar with the 2003 *Code of Practice*,<sup>82</sup> having overseen its implementation in his former role as Chief Superintendent in charge of specialist operations.<sup>83</sup> It is, however, right to record that he had not yet formally taken up his new role and was covering the meeting for a colleague; to that extent, he was, perhaps, at something of a disadvantage.

**7.55** CI Davies kept the meeting’s minutes and presented the briefing paper. He told the Inquiry<sup>84</sup> he thought he had read the *Code* beforehand. Inspector Holmes did not personally attend the meeting. Among others present was CI Wood, head of GMP’s Firearms Training Unit. The CSDC project was item 8 on the meeting’s agenda.

<sup>81</sup> Bundle V/Documents/138, §13.

<sup>82</sup> Thompson, TS/6417:13.

<sup>83</sup> Thompson, TS/6444:2–5. See also Bundle V/Statements/60, §31.

<sup>84</sup> Davies, TS/6515:9–11.

**7.56** The minute of the discussion of CSDC is brief, but its precise terms are, in my view, of some importance:

Ch. Insp. DAVIES presented a briefing paper to support the use of a new development of CS Canister as an alternative to RIP rounds in MAST tactics. ACC THOMPSON approved the use with the following provisos:

- a. A detailed risk assessment is conducted and documented;
- b. HOSDB have been consulted and that this is documented in terms of their written response;
- c. Gold and Silver Commanders have a briefing sheet for their information regarding the canisters use.

Ch. Insp. DAVIES stated that before the canister is brought into service, in addition to the above a presentation would be given at the next Firearms User Group.<sup>85</sup>

**7.57** On the face of it, the second of ACC Thompson's three provisos is somewhat obscurely phrased, and not just because of the use of the perfect tense in its first clause. In his witness statement, ACC Thompson explained that he added it because he believed that the briefing paper "needed some clarity around the HOSDB consultation",<sup>86</sup> an explanation he repeated in his oral evidence.<sup>87</sup> CI Davies said<sup>88</sup> he thought the proviso meant that HOSDB was to be asked to provide a written response to the FPG's decision to authorise the use by GMP of the CSDC. Since nobody from the TFU ever did seek such a response from HOSDB, I cannot accept CI Davies's suggested interpretation. I think a more likely explanation is to be found in the fact that, at the date of this meeting, Inspector Holmes's email to HOSDB of 2 November 2016 asking about "the constitution, particle size, concentration levels and purity of the CS",<sup>89</sup> remained unanswered. In other words, the proviso, while documenting the fact that HOSDB had already been consulted (hence the use of the past tense), imposed a requirement that its awaited response to that consultation should be obtained and properly evidenced as a precondition to adopting the CSDC.

**7.58** ACC Thompson told the Inquiry that he was sure he would have asked questions at the meeting about HOSDB's involvement.<sup>90</sup> As he had relinquished his former post as Chief Superintendent in charge of specialist operations by September 2004, he would not have seen the email chains that had passed between the TFU, Combined Systems Inc and HOSDB, and was unlikely to have known that GMP had been conducting its own "trials" of the CSDC. Inspector Holmes, in line with the approach he had taken in his paper, probably did not make it clear that HOSDB had insisted upon receiving a formal operational requirement and request from ACPO; if he did, he conveyed his own view that, provided HOSDB made the necessary enquiries (which he had himself instigated in his unanswered email of 2 November) and the adoption of the CSDC was authorised by an officer of ACPO rank, the "spirit" of the *Code* would have been complied with.

**7.59** Such an approach, as ACC Thompson ought to have realised, was wholly inconsistent with both the letter and spirit of the 2003 *Code of Practice*. ACC Thompson conceded<sup>91</sup> that he "should have read more than paragraph 4.3.1", but in his former role as Chief

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<sup>85</sup> Bundle V/Documents/151.

<sup>86</sup> Bundle V/Statements/63, §49.

<sup>87</sup> Thompson, TS/6459:15–6460:7.

<sup>88</sup> Davies, TS/6551:18–21.

<sup>89</sup> Bundle V/Documents/158.

<sup>90</sup> Thompson, TS/6473:19–24.

<sup>91</sup> Thompson, TS/6467:13–15.

Superintendent with responsibility for specialist operations between 2003 and 2004 he had personally overseen the implementation of the *Code* within GMP.<sup>92</sup> At that time, he was, as he admitted, “familiar with the *Code*”.<sup>93</sup> It would, of course, be unreasonable to expect him to recall its provisions in minute detail four years later, but he still “had some understanding”<sup>94</sup> of it in 2007 and undoubtedly remained aware of its central thrust and purpose, namely to ensure that the introduction of new weapon systems should be centrally co-ordinated at a national level through ACPO, and not by local forces acting on their own initiative. Indeed, he himself provided the example of the development of the Taser device.<sup>95</sup>

**7.60** ACC Thompson’s explanation for what he acknowledged was a “lack of due diligence”<sup>96</sup> on his part was that he “didn’t feel that [the canister] was a new weapon system that was being implemented outside the *Code*”.<sup>97</sup> He added: “I thought the item that was coming forward was an item that was in the inventory, and actually what I was being asked to do was authorise it for a different purpose, which was its use against vehicles”.<sup>98</sup> Pressed by Mr Beer QC as to whether that meant that he thought the weapon had already been authorised by the Secretary of State, ACC Thompson ultimately said: “I must have assumed that. I was not told it was not approved.”<sup>99</sup>

**7.61** The evidence of CI Davies was not wholly consistent with that assertion. In a witness statement dated 29 December 2016, he said this:

I recall that although the paper does state that HOSDB had been consulted I made it clear that HOSDB had not directly tested the device nor had they approved it however based on our testing, evaluation and consultation permission to introduce it was to be sought at this meeting.<sup>100</sup>

CI Davies was there referring to HOSDB testing, rather than approval by the Secretary of State. In the absence of such testing, however, it is inconceivable that the Secretary of State would have authorised the use of a weapon such as the CSDC.

**7.62** ACC Thompson did not recall being told that HOSDB had not tested the device.<sup>101</sup> If he was not told, it was probably because he did not ask; I do not believe that CI Davies would have answered a direct question from his superior officer with a deliberate lie. However, CI Davies certainly did not make it clear to ACC Thompson that HOSDB had expressed reservations about the CSDC or, indeed, about the manner in which GMP was seeking to introduce it. CI Davies told the Inquiry that he had not believed HOSDB’s views about the device were “negative”.<sup>102</sup> Whether or not that is an entirely accurate summary of the state of his knowledge at the time, it probably reflects the way in which he presented the position to ACC Thompson. Inspector Holmes’s report had evaded the issue by simply listing HOSDB as a consultee, thereby implying – without actually saying so – that HOSDB had raised no objections to the CSDC. I doubt whether CI Davies would have volunteered anything to undermine that

<sup>92</sup> Thompson, TS/6444:2–5. See also Bundle V/Statements/60, §31.

<sup>93</sup> Thompson, TS/6437:1–5.

<sup>94</sup> *Ibid.*

<sup>95</sup> Thompson, TS/6419:13–19; TS/6422:19–21; TS/6441:9–15.

<sup>96</sup> Thompson, TS/6444:19–6445:9.

<sup>97</sup> Thompson, TS/6428:11–13.

<sup>98</sup> Thompson, TS/6429:11–14.

<sup>99</sup> Thompson, TS/6431:8–9. See also TS/6462:3–9.

<sup>100</sup> Bundle V/Statements/32, §32. CI Davies confirmed his version of events in his oral evidence: TS/6535:13–15; TS/6546:12–20.

<sup>101</sup> Thompson, TS/6461:12–15; TS/6462:2–8.

<sup>102</sup> Davies, TS/6546:21–6547:10.

implication. The combination of Inspector Holmes's one-sided paper and CI Davies's uncritical endorsement of it is likely to have persuaded ACC Thompson that the proper procedures were being followed.

**7.63** Had ACC Thompson been more vigilant, he would soon have realised that all was not as it seemed. For example, it might well have occurred to him that if, as he assumed, the CSDC was already part of GMP's weapons inventory, there would have been no reason for the briefing paper to omit that fact, or to detail (as it did) the commercial source and price of the item. In short, it should have been plain to him that the paper was advocating the addition to GMP's armoury of an entirely new weapon as opposed to the adaptation of an existing one to a new purpose.

**7.64** In his witness statement dated 12 January 2017, ACC Thompson said this:

I believed that because GMP had consulted with the HOSDB; and because of the 18 months or so research into the CS Dispersal Canister by GMP officers, that our pathway leading to my decision to accept these munitions as an option was appropriate – on the basis that the motivation to have the CS Dispersal Canister option was a more proportionate and safer method of delivery into subject vehicles during MASTS tactics.

In hindsight, I think I also assumed that because GMP physically had possession of the CS Dispersal Canister as at 12th June 2007, that these munitions were already Home Office approved for use by UK police forces in high threat circumstances.<sup>103</sup>

**7.65** Upon closer reflection, ACC Thompson might have detected a lack of consistency between those two propositions. If the CSDC had already been approved by the Secretary of State "for use by UK police forces in high threat circumstances", it is not easy to understand why there should be any further need for GMP to consult HOSDB or to undertake its own research; all the necessary work would have been completed prior to any Home Office approval. As it happens, there was no basis for his assumption that the CSDC was already "Home Office approved" or that it was already being used in buildings. Inspector Holmes's paper does not say so, and neither did Inspector Holmes or CI Davies suggest anything of the sort at the FPG meeting on 12 June 2007. Indeed, CI Davies told the Inquiry<sup>104</sup> that GMP had not used the CSDC in buildings, or at all, before the meeting on 12 June. The earliest documentary reference to a dispersal canister being used inside a building is to be found in the minutes of the next meeting of the FPG on 12 October 2007, exactly four months after ACC Thompson's purported authorisation of the device.

**7.66** Albeit for a different reason, CI Davies, too, said that he had not regarded the CSDC as a "new weapon system". He maintained that in 2007 he believed that, since RIP rounds containing CS irritant were already permitted, there was no need to seek authorisation for the use of dispersal canisters containing the same chemical ingredients. Leaving aside the unexplored question of whether the chemical payload of a RIP round is, as he assumed, indistinguishable from that of the dispersal canister (which later<sup>105</sup> turned out to include a substance unknown to Mr Smith), the principal and most obvious flaw in CI Davies's reasoning is that it restricts a "weapon system" to its contents. As Mr Beer QC pointed out,<sup>106</sup> it is rather like arguing that because the Home Secretary has authorised the use by police forces of the MP5 carbine, which contains bullets, the use of other firearms containing bullets must also be taken to have been authorised.

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<sup>103</sup> Bundle V/Statements/54, §§53–54.

<sup>104</sup> Davies, TS/6520:13–15.

<sup>105</sup> Bundle V/Documents/156.

<sup>106</sup> Davies, TS/6511:17–20.

**7.67** An email exchange between CI Davies and a colleague, Liam Preston, reveals something of CI Davies’s mindset and approach. The particular value of the correspondence derives from the fact that it took place in 2009, just two years after the FPG meeting and long before Mr Arundale had submitted either of his reports to this Inquiry.

**7.68** On 18 August 2009, Mr Preston sent CI Davies an email in which, writing in the context of the death in June 2008 of Police Constable Ian Terry during a GMP firearms training exercise, he referred to the minutes of the FPG meeting:

Just when you thought it was safe to put your head above the parapet Oh no it’s me again.

In the minutes for the FPG on 12/6/07 item 8 refers to the CS canister. We need to see the documentation re the risk assessment What the HOSDB had to say about it What risks were identified with the RIPS What was on the briefing sheets for the Gold and Silver commanders etc etc etc.

as usual any Q’s give me a bell

ta

Liam<sup>107</sup>

**7.69** To that message, two separate replies by CI Davies have come to light. In the first, which he sent later the same day, he said this:

Liam

I will dig these out but in the discussion paper I clearly mention that the canister is NOT HOSDB approved. However, ACC Thompson agreed for it to be adopted as it is safer and less risk to the occupants of a vehicle than a RIP round ...<sup>108</sup>

**7.70** There are two factual errors in that passage (which from the context clearly refers to Inspector Holmes’s briefing paper).<sup>109</sup> The first is that CI Davies was not the author of the paper, although it was he who had presented it at the meeting and he may have made some indirect contribution to its contents through discussions with Inspector Holmes. Of greater significance is CI Davies’s mistaken assertion that the discussion paper had disclosed the absence of HOSDB approval. There is nothing to that effect anywhere in the paper, which was, on the contrary, carefully worded so as not to reveal the true position.

**7.71** On 19 August, CI Davies sent a second email to Mr Preston, attaching the documents he had earlier promised to “dig out”. In the body of the message, he added this observation:

Remember that forces do not necessarily need HOSDB approval to introduce weaponry/ equipment provided there is an audit trail and rationale etc. The canister delivers CS which is approved by HOSDB for police use all we have is a different (safer) means of delivering it.<sup>110</sup>

**7.72** Again, the factual premise is incorrect; there is nothing in the *Code* to justify a view that the centralised procedure for approving new weapon systems is optional, allowing officers of ACPO rank to grant such approval at local level. CI Davies’s personal opinion that because other methods of delivering CS irritant had already been approved by

<sup>107</sup> Bundle V/Documents/528.

<sup>108</sup> *Ibid.*

<sup>109</sup> Bundle V/Documents/137.

<sup>110</sup> The attachments included an unsigned, undated draft risk assessment covering the operational use of CSDC, which recorded that “Inspector M. Williams” had conducted the assessment on 25 May 2009: see Bundle V/Documents/520.

the Secretary of State, the dispersal canister therefore did not count as a new weapon system does not bear scrutiny, nor when pressed was he able to offer a satisfactory rationale for it.<sup>111</sup> There is an obvious gulf between the RIP round (which, in any event, pre-dated the *Code*) and the CSDC.

**7.73** CI Davies's emails to Mr Preston could be taken to imply that those present at the FPG meeting, despite knowing that the proposals in Inspector Holmes's paper involved a radical departure from the 2003 *Code*, nevertheless chose to adopt them in the greater interests of public safety. I think, however, that the emails are more a reflection of their author's personal opinion than of what happened at the FPG meeting. CI Davies and Inspector Holmes probably persuaded themselves that, because CS sprays and RIP rounds had already been authorised, the introduction of the CSDC would involve a relatively trivial departure from the 2003 *Code*, one that could be justified in the noble cause of improved safety. They thought that since HOSDB had been consulted and steps had been taken to adjust the CS payload to accord with UK requirements, enough had been done to enable GMP to represent the decision as one which, even if it did not comply with the letter of the *Code*, nevertheless fell within its supposed "spirit" in circumstances where strict compliance would have taken months if not years. Their misplaced enthusiasm for the CSDC project unfortunately led them to ignore the potential objections that HOSDB had identified and to withhold them from the FPG meeting. The end desired by CI Davies and Inspector Holmes may have been understandable, even honourable, but the means they chose to adopt were unjustifiable.

**7.74** The result was that neither Inspector Holmes's unbalanced paper nor CI Davies's uncritical presentation of it revealed the true position to ACC Thompson, who in turn failed to subject what he was being told to the degree of close scrutiny it merited. Towards the end of ACC Thompson's evidence to the Inquiry, this revealing exchange with Leading Counsel for GMP, Anne Whyte QC, took place:

**Ms Whyte QC:** Looking back now, and leaving aside assertions of whether you were misled or not, do you think that there is any sense that, because this munition was a CS munition, there was consciously or unconsciously some sort of feeling, or sense, collectively or individually, that [the CSDC] didn't require the same level of scrutiny because CS was being used as a front line incapacitant or as a RIP round? Do you think there may have been an element of that, either with yourself or with anyone else?

**Mr Thompson:** I have to accept that as part of my own approach to this particular issue. As I have indicated, I thought the debate was of adaptation to use. I thought the CS was similar to – as described, to what was being used in the RIP round; and, also, CS was commonly available and used by officers. From my perspective, I thought we were simply making the decision to apply something that was readily available and already authorised.<sup>112</sup>

**7.75** Against that background, I think ACC Thompson probably hoped that his three provisos<sup>113</sup> would provide a sufficient "audit trail" to protect GMP from future criticism. The first and second of the provisos do, however, seem to me to imply some concern on his part that the CSDC might amount to a new weapon system that fell within the relevant provisions of the 2003 *Code*, as does his failure to notify either Mr Arundale<sup>114</sup> (then the ACPO national armed policing lead) or Mr Arundale's successor, Mr Chesterman,<sup>115</sup> of GMP's decision to adopt the CSDC.

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<sup>111</sup> Davies, TS/6512:9–14.

<sup>112</sup> Thompson, TS/6501:9–6502:2.

<sup>113</sup> Bundle V/Documents/151.

<sup>114</sup> Bundle V/Statements/64, §52.

<sup>115</sup> Bundle V/Statements/66, §64; Chesterman, 16 February 2018, TS/124:22–125:8.

- 7.76** In his witness statement, ACC Thompson had claimed “that the research work undertaken by GMP, culminating in the presentation and report given to me by CI Davies during the 12 June 2007 FPG, and complemented by the provisos that I put in place, demonstrated due diligence on the part of GMP (due diligence regarding the research, the evaluation process and the decision to have the CS dispersal canister as a MASTS tactics option).<sup>116</sup> Regrettably, as ACC Thompson was later to concede, the process undertaken by GMP demonstrated nothing of the kind. Indeed, in bringing about the very thing the 2003 *Code* had been designed to prevent, namely the unilateral acquisition by a local force of a new weapon system, it subverted the central policy and purpose of the *Code*. I therefore accept the conclusion of Mr Arundale that “GMP did not exercise appropriate ‘due diligence’ in relation to their original ‘approval’ of CSDC which also did not comply with the 2003 Code of Practice”.<sup>117</sup>
- 7.77** Shortly after the FPG meeting of 12 June 2007, at 17:37 the same day, CI Davies sent Inspector Holmes an email in which he updated him as to the outcome of the FPG meeting’s discussion concerning CSDC. As Inspector Holmes’s line manager, it was CI Davies’s responsibility to monitor and secure compliance with ACC Thompson’s three provisos. This Inquiry has been unable to find any evidence to indicate that further steps were ever taken pursuant to those provisos. The CSDC was simply added to GMP’s armoury of specialist munitions and remained in use until this Inquiry, through the researches of Mr Arundale, uncovered the true position.
- 7.78** The FPG had purported to authorise the use by GMP of the CSDC before anyone knew what HOSDB might have to say in response to Inspector Holmes’s email of 2 November 2006<sup>118</sup> and the “chasing” message of 3 May 2007.<sup>119</sup> It was, as it happens, the day after the FPG meeting that Mr Smith finally replied to those messages in an email copied to two other HOSDB officials.<sup>120</sup> In the absence of any evidence on the point, I cannot say whether the timing of Mr Smith’s response was coincidental or whether, as I am strongly inclined to suspect, it was the result of a “chasing” telephone call made by Inspector Holmes or CI Davies in the light of the FPG meeting’s decision. Be that as it may, Mr Smith began his reply by repeating, in even more forthright terms, what he had already told Inspector Holmes in his message of 18 January 2005:
- Andy,
- As I said at the outset HOSDB cannot support or sanction the use of less lethal weapons that do not have the support of central Home Office or ACPO (I’ve attached a copy of the Home Office Codes of Practice that outlines the full procedure). Ultimately it is the responsibility of the Chief Constable to ensure that sufficient information is available to conduct a comprehensive risk assessment.<sup>121</sup>
- 7.79** Mr Smith explained that the main parameters that HOSDB would examine would be the particle size, purity and concentration of the CS, together with the other components of the payload mixture. He went on to express guarded approval of the data provided by the US manufacturers in relation to particle size and purity, but in each case added that he would want to verify the manufacturers’ claims by experiment or the use of an independent test laboratory. He said that the manufacturers would have to modify the product in order to ensure that the quantity of CS in a device did not exceed 5 grams, again adding that he would recommend obtaining independent verification.

<sup>116</sup> Bundle V/Statements/63, §51.

<sup>117</sup> *Supplementary (2nd) Report of Ian Arundale QPM*, 5 April 2017, §96.

<sup>118</sup> Bundle V/Documents/157.

<sup>119</sup> *Ibid.*

<sup>120</sup> Bundle V/Documents/156.

<sup>121</sup> Bundle V/Documents/98.

**7.80** With regard to the third parameter, namely other components of the mixture, Mr Smith noted that one of the components listed by the manufacturers was a chemical, “dimethldichlorol” [*sic*], of which he had never heard and which he had been unable to identify. Again, he recommended that independent analysis should be carried out. He concluded his advice in the following terms:

If independent verification supports the data provided by the manufacturers, and the other components of the mixture are inert, most of the toxicology issues will have been covered. As a safeguard I would recommend getting an independent medical viewpoint on this – HOSDB has no medical expertise and we rely on external independent experts.

There would be additional tests we would carry out on sound levels and reliability but the key ones would be surrounding the chemical makeup of the powder fill and how it disperses.<sup>122</sup>

**7.81** Whatever mild incidental encouragement that message may be said to have contained with regard to the chemical contents of the CSDC as disclosed by its manufacturers, Mr Smith’s message of 13 June 2007 very clearly pointed out that: (i) those and other characteristics of the device would all have to be independently established, and independent medical advice obtained, before its use could be authorised; and (ii) in order to comply with the 2003 *Code*, the CSDC project would need support from ACPO and the Home Office. By no stretch of interpretation could the message be taken as lending approval to the project and, therefore, fulfilling the second of ACC Thompson’s provisos.

**7.82** What steps did Inspector Holmes take on receiving this message, just one day after the FPG meeting had (subject to ACC Thompson’s three provisos) purported to approve the very device to which the message related? Despite all evidence to the contrary, Inspector Holmes insisted<sup>123</sup> that the message from Mr Smith did not alter his personal belief that the CSDC project was “in the spirit of the codes of practice”. He told me he would have reported the email “in its entirety” to CI Davies, with whom he said he worked very closely, and would have discussed it with him.<sup>124</sup> Although he had no documentary evidence that he had done so, he believed he had forwarded it to CI Davies.

**7.83** In response to a specific request from the Inquiry team, GMP stated that no further email exchanges relevant to this issue had been traced.<sup>125</sup> CI Davies said that to the best of his knowledge he had not seen the HOSDB email of 13 June before the present proceedings,<sup>126</sup> adding that when he did see it he was “surprised” and “shocked” by its contents.<sup>127</sup> It may well be that CI Davies, speaking as he did with the advantage of having read at least part of the transcript of Inspector Holmes’s evidence, now finds the contents of the HOSDB email both surprising and shocking. Without the advantages of hindsight that he now enjoys, however, it does not follow that the contents of that message would have surprised or shocked him in 2007. At that time, despite what he was to say in his oral evidence to the Inquiry,<sup>128</sup> CI Davies clearly knew that the CSDC was a “new weapon system” requiring the approval of

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<sup>122</sup> *Ibid.*

<sup>123</sup> Holmes, TS/6398:15–6399:15.

<sup>124</sup> Holmes, TS/6412:6–25.

<sup>125</sup> That assurance proved to be inaccurate, as GMP later disclosed further emails bearing on this issue. None, however, was contemporaneous with the events under discussion.

<sup>126</sup> Davies, TS/6552:17–18.

<sup>127</sup> Davies, TS/6554:19–6555:1.

<sup>128</sup> Davies, TS/6510:4–6511:8.

the Home Secretary, for he told an Operation Idris<sup>129</sup> interviewer that, although he had considered whether to consult HOSDB and “Health and Safety” in 2007, he had instead decided to seek approval from GMP’s FPG “without going down the national ACPO and HOSDB testing route”.<sup>130</sup> His claim in evidence that he thought the CSDC was not a “new weapon system” to which the 2003 *Code* applied was in my view a retrospective rationalisation by which he hoped to escape the unpalatable reality that he had knowingly circumvented the provisions of the *Code*.

- 7.84** I have no doubt that Inspector Holmes, who worked closely with CI Davies, did inform him of the contents of the HOSDB email of 13 June. Almost certainly he forwarded it to him at the time. That would have been the obvious course to take.<sup>131</sup> CI Davies maintained that as far as he could recall there was no discussion about the email. He said that he was “away from the office for a week”<sup>132</sup> after the FPG meeting. So he may have been, but the fact remains that he was Inspector Holmes’s line manager. His temporary absence might have delayed any face-to-face discussion, but it would not have inhibited Inspector Holmes from forwarding the HOSDB message to CI Davies to await his attention on his return to work. I find it inconceivable that the two men did not discuss its contents at the earliest opportunity.
- 7.85** Did ACC Thompson see the HOSDB email of 13 June 2007? Given the disappearance of important contemporaneous records (including the minutes of the Chief Officers’ Policy Group (“COPG”) meeting that took place on 26 July 2007), and in the absence of any surviving contemporaneous email exchanges, it is impossible to be certain. ACC Thompson told the Inquiry that he had no recollection of having seen the message.<sup>133</sup> In an email dated 3 January 2017, CI Davies expressed his opinion that the HOSDB message of 13 June 2007 would have been “for the attention of ACC Thompson, as he gave the caveats”.<sup>134</sup> That is all very well, but CI Davies made that observation just a fortnight before this Inquiry began taking oral evidence and in the context of his own denial – a denial I have rejected – that he himself had known about the message at the time.
- 7.86** I have concluded that ACC Thompson probably did not see the HOSDB email and may not have been aware of its contents. He was not the direct line manager of either Inspector Holmes or CI Davies.<sup>135</sup> At the same time, I do not share his “suspicion”<sup>136</sup> that before the COPG meeting of 26 July he received a positive assurance that his first two provisos had been satisfied. Nobody could possibly have given such an assurance without deliberately deceiving him, for the simple reason that absolutely nothing was ever done to comply with either of the provisos. ACC Thompson’s subordinates may well have decided to keep him in the dark, leaving him free to say, “I really do not see the signal.”<sup>137</sup> The problem, however, was not that ACC Thompson turned a blind eye to the telescope, but that he neglected to look through it at all.

<sup>129</sup> Operation Idris prepared GMP’s defence in response to the prosecution of Sir Peter Fahy, in his capacity as Chief Constable, for an alleged offence contrary to the Health and Safety at Work etc. Act 1974, arising out of the events leading to Anthony Grainger’s death; it is also the team that prepared for the Inquest/Inquiry on behalf of GMP.

<sup>130</sup> CSDC Late Disclosure Bundle/455; CI Davies’s email message of 12 December 2016: CSDC Late Disclosure Bundle/485–486.

<sup>131</sup> Davies, TS/6602:25–6603:19.

<sup>132</sup> Davies, TS/6556:6–15.

<sup>133</sup> Thompson, TS/6475:12–14.

<sup>134</sup> CSDC Late Disclosure Bundle/734.

<sup>135</sup> CSDC Late Disclosure Bundle/743.

<sup>136</sup> Thompson, TS/6479:3–7.

<sup>137</sup> Vice Admiral Horatio Nelson, at the Battle of Copenhagen.

**7.87** In the event, no further risk assessment,<sup>138</sup> detailed or otherwise, was ever conducted or documented. Not only was there no additional consultation of HOSDB, but the misgivings expressed in Mr Smith's email of 13 June 2007, just one day after the FPG meeting, were simply ignored. No GMP officer – including ACC Thompson – bothered to check whether any steps had been taken to satisfy the provisos. Instead, on 9 July 2007, GMP placed the first of many orders for CSDCs. On 26 July, the use of the canister appears to have been signed off by the COPG, although – inexplicably – the minutes of that important meeting seem not to have survived. During the next few years, dozens of the canisters were bought and used<sup>139</sup> without anything being done within GMP to address any of the concerns that Mr Smith had raised in his email<sup>140</sup> of 13 June 2007.

**7.88** All these things took place with no medical assessment of the canister, no submission to DSTL (or to any other specialist scientific body, whether Home Office approved or otherwise), no reference to ACPO, the Home Office or (other than in the emails to which I have referred) HOSDB, after only the most perfunctory efforts by GMP to satisfy itself that the device was suitable or even safe, and without the approval of the Secretary of State. The consequence was that GMP, in flagrant breach of the 2003 *Code of Practice*, became the only police force in the UK to adopt and use CSDCs.

**7.89** Although GMP did not actively conceal its acquisition of the CSDC, it refrained from advertising the fact to other agencies. The inclusion in periodic returns to the HOSDB police weaponry database of details of GMP's stock of CS canisters is of little significance in this context. The database was infrequently accessed and, in any event, was not used for purposes of governance or oversight. It was maintained primarily in order to demonstrate to other jurisdictions what weaponry was available to law enforcement agencies within the UK.

**7.90** The Force Firearms Threat and Risk Assessment was amended to incorporate a brief reference to the CS canister:

The Tactical Firearms Unit have evaluated and tested a CS dispersal canister as an alternative delivery method for CS irritant. A discussion paper was submitted to the Chief Officers' Policy Group who approved its implementation from 26 July 2007.<sup>141</sup>

Inspector Holmes's briefing paper was attached to the document as an appendix. Subsequent iterations, up to and including the period March 2009 to November 2009, continued to refer to the CSDC.<sup>142</sup> The Inquiry has seen what appears to be an unsigned and undated draft risk assessment covering the operational use of CSDC which records the date of assessment as 25 May 2009 and the next review date as May 2010.<sup>143</sup> From April 2010, the annual Firearms Strategic Threat and Risk Assessments, while listing conventional weapons (including Taser devices) and ammunition, do not mention the CSDC.<sup>144</sup>

**7.91** The sorry state of affairs I have described was not the fault of the then Chief Constable, Sir Peter Fahy. He was entitled to rely on his subordinates, including in particular

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<sup>138</sup> Bundle V/Documents/151.

<sup>139</sup> Bundle V/Documents/160–165.

<sup>140</sup> Bundle V/Documents/156.

<sup>141</sup> Bundle V/Documents/219.

<sup>142</sup> Bundle V/401.

<sup>143</sup> Bundle V/520.

<sup>144</sup> CSDC Late Disclosure Bundle/93. There is no doubt that the CSDC remained part of GMP's armoury after the death of Anthony Grainger.

ACC Thompson's assurance that his decision to approve the acquisition by GMP of CSDCs was "auditable".<sup>145</sup> CI Davies and Inspector Holmes were both to blame in the respects I have indicated in this chapter. However, the ultimate responsibility lies with ACC Thompson as the senior officer with oversight of specialist firearms operations and Chairman of the FPG. Making every allowance for the seriously misleading way in which his subordinates had briefed him, ACC Thompson ought to have been more alert to the flaws in the approach they were advocating and, in any event, should have made it his business to find out whether his provisos had been complied with. He did not, however, knowingly participate in the circumvention of the 2003 *Code* described in the preceding paragraphs of this chapter. By his own candid admission, ACC Thompson's lapse amounted to a "lack of due diligence",<sup>146</sup> but no more than that.

- 7.92** Another meeting of the FPG took place on 12 October 2007. The minutes reveal that the CSDC was already in use and record the first known problem. A canister which had been used inside a dwelling turned out to have contained an excessive quantity of CS irritant. In the absence of a nationally enforced standard specification, it was only to be expected that such mistakes would occur and that they might well pass unnoticed. The surviving documentary record is incomplete, but according to an internal GMP review, the US manufacturers did not supply canisters with the "correct" payload of 4.5 grams of CS irritant until February 2009.<sup>147</sup> Email correspondence suggests that as late as 2013 the US manufacturers supplied GMP with a batch of 74 canisters, each of which contained three times the "correct" CS payload.<sup>148</sup> That disturbing information, originally withheld from the Inquiry on the basis that it was "irrelevant", only came to light because GMP, as part of its preparation for the Inquiry hearing, had asked the manufacturers for details of the canisters it had purchased.<sup>149</sup>
- 7.93** Also among the material that GMP disclosed after the hearing was email correspondence dated February 2017 revealing that the UK suppliers, now known as EPC Logistics, had been holding stocks of CS grenades substantially in excess of the maximum number permitted by its Home Office licence.<sup>150</sup> It seems that the relevant limit for any article falling within section 5(1)(b) of the Firearms Act 1968 – that is to say, "any weapon of whatever description designed or adapted for the discharge of any noxious liquid, gas or other thing" – was 20.<sup>151</sup> In my view, section 5(1)(b) clearly covers the CS flameless grenade. That, indeed, was the initial view of the suppliers.<sup>152</sup> Contrary to their later suggestion,<sup>153</sup> the grenade does not fall within section 5(1)(c),<sup>154</sup> because that provision applies to a grenade only if it is "capable of being used with a firearm". The CS hand grenade is not designed to be fired from a weapon.<sup>155</sup>
- 7.94** In June 2008, PC Terry suffered fatal injuries during a GMP firearms training exercise after being struck in the chest by a RIP round fired by a colleague. It was against that

<sup>145</sup> Bundle V/Documents/380.

<sup>146</sup> Thompson, TS/6444:21. See also TS/6467:6–6468:13; TS/6471:25–6472:24.

<sup>147</sup> CSDC Late Disclosure Bundle/813.

<sup>148</sup> Bundle V/Documents/979. Although the email states that 74 canisters were supplied, a purchase order dated 27 September 2013 suggests that 72 were ordered: see CSDC Late Disclosure Bundle/111.

<sup>149</sup> Bundle V/Documents/979.

<sup>150</sup> CSDC Late Disclosure Bundle/817–820.

<sup>151</sup> CSDC Late Disclosure Bundle/818.

<sup>152</sup> *Ibid.*

<sup>153</sup> CSDC Late Disclosure Bundle/817–818.

<sup>154</sup> "... any ammunition containing or designed or adapted to contain any such noxious thing as is mentioned in section 5(1)(b) and, if capable of being used with a firearm of any description, any grenade..."

<sup>155</sup> CSDC Late Disclosure Bundle/945.

background that the email exchange between Mr Preston and CI Davies, to which I have already referred,<sup>156</sup> took place. The same incident also prompted GMP to invite the NPIA to conduct a review of the Force's firearms training.

**7.95** The review, which began in July 2008, was carried out by John Alder, of the NPIA, and Inspector Michael Lawler, a GMP officer who had been seconded at that time to the NPIA.<sup>157</sup> In February 2009, the NPIA considered the MASTS *Standard Operating Procedure* ("SOP"). On 5 February, ACC Thompson emailed the Chief Constable, Sir Peter Fahy, with reference to the review, expressing disquiet about the SOP:

I have a concern that the deployment of special munitions is written into the SOP in a way which reads like they are a core part of the tactic. We have clarified the proportionality of the position extensively with all golds, cadre members and tacs. I believe our staff's request for special munitions has been too frequent. The SOP must reflect this.

There is a key difference in one area of our work from a national position. We use a CS canister if it is assessed as a proportionate pre-emptive option or a contingency to immobilise occupants. This is delivered by smashing a window and deployment of the canister by hand into the car. This munition was adopted by GMP at an FPG in 2007 after a request to look for options rather than firing a CS round (RIP) into a car with its attendant risks. The decision is auditable. The RIP in essence is the very type of round that killed Ian Terry and is not what we want to fire into a car, though research in 2004 says we can. This is why the canister is a GMP option.<sup>158</sup>

**7.96** As he agreed when he gave evidence to the Inquiry, ACC Thompson was clearly aware when he wrote the message that GMP was the only police force in the UK that used the CSDC. His explanation for saying that the decision to adopt the canister was "auditable" was that since the decision had been taken at a meeting of the FPG following the circulation of Inspector Holmes's briefing paper, and had subsequently been taken to the COPG, he thought there would be some documentation to evidence the process; at the time he wrote his message to Sir Peter Fahy he was unaware that neither of his first two provisos had been satisfied.<sup>159</sup>

**7.97** The following day, 6 February 2009, Mr Alder sent a long and trenchant email<sup>160</sup> to CI Wood, who was GMP's Chief Firearms Instructor. The message was highly critical of the Force's MASTS rationale document and SOP in more than one respect. In it Mr Alder described the MASTS SOP as "poor" and "most definitely ... not fit for purpose". About the use of the CSDC he had the following to say:

You will be only too aware of the audit trail required to use Special Munitions in a MASTS operation – there needs to be deployment and resolution data to support the extreme circumstances where it might have to be authorised – to me the SOP is written in a way that the use of these extreme tactics is quite acceptable – this is one of the reasons why the whole document needs to be re-written. I am advised that the other forces within your region do not train the tactic. Evidence must be contained in the Strategic Threat and Risk Assessment.

A MASTS operation has not been authorised in your force since October 2008, that data does nothing to justify the case of inserting a CS canister into a subject vehicle. My personal recommendation is to stop this tactic – no other force does it and to be honest it does nothing to enhance the reputation of GMP. I know I need to be careful with personal

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<sup>156</sup> Bundle V/Documents/528.

<sup>157</sup> Bundle V/Documents/337–338. Inspector Lawler was subsequently promoted to Chief Inspector and is referred to by that rank throughout the rest of this Report.

<sup>158</sup> Bundle V/Documents/380.

<sup>159</sup> Thompson, TS/6487:15–6488:6.

<sup>160</sup> Bundle V/Documents/381. See also the individual criticisms added by Mr Alder to the draft SOP: CSDC Late Disclosure Bundle/678–679.

recommendations, this is a tactic used by your force and as such my role is to assist you but unless you get the audit, SOPs and particularly the risk assessments and control measures in place the possibility of another accident is high ...

I have looked at the tactic purely from an audit point of view. To be quite honest it looks dangerous. It is simply too rigid and does not allow any flexibility ... The officer armed with the shotgun will be advancing with other AFOs with a view to deflating the tyres – if the threat is that high why are you choosing a MASTS – everyone needs to be wearing hearing protection and because of the CS, respirators as well ...<sup>161</sup>

**7.98** On 8 February, ACC Thompson emailed his senior staff to say that he agreed with Mr Alder’s observations, adding:

Despite frequent observations from me over the last few months that Special munitions are not a core part of this tactic I am less than impressed over the way they are written in as core ...

Re the canister. Please can I have a position on any CS agent. Who else in the region has a vehicle option. Check with Met and West Mids please. If the threat is justified we will have this option, but special munitions are exceptional ...<sup>162</sup>

**7.99** There is no doubt that ACC Thompson had been expressing concern about what he rightly saw as a needlessly frequent recourse to special munitions in GMP MASTS operations. His concern was about the approach taken by commanders:

My view, generally, is that the firearms officers, who are the people who go to confront threats, generally speaking will seek a wide range of means of countering it. The responsibility of the tactical adviser and the command structure is to balance off proportionality and necessity. I think within Firearms Unit there was a level of comfort with utilisation of special munitions. The challenge, I think, on occasions the command structure, is whether or not it was assertive enough in justifying there was a necessity of proportionality.<sup>163</sup>

**7.100** He clearly communicated those thoughts at the time to Superintendent (“Supt”) Leor Giladi, because on 9 February 2009 the latter emailed<sup>164</sup> his staff in the Specialist Operations Branch, reminding them “to expect the appropriate level of scrutiny from Silvers when dealing with potential use of this aggressive tactic, particularly surrounding the use of special munitions and proportionality of the same”, adding that “all Gold Commanders are aware of the issue and will require robust rationale”.

**7.101** In my view, ACC Thompson’s misgivings were entirely justified. There was indeed a tendency within the TFU to regard the CSDC almost as an integral element in MASTS operations. It was an inevitable consequence of the widespread misconception (discussed elsewhere in this Report: see section E of Chapter 4) that MASTS is not so much a platform that might lead to any one of many potential outcomes as a “tactic” for arresting armed suspects. If the default assumption of firearms commanders is that the primary purpose of a MASTS deployment is decisive intervention, it is but a short step to the routine authorisation of special munitions “just in case”. Signs that the attitude persisted even after the death of PC Terry can be detected in an email which CI Davies sent to an officer known as “X9” in which he outlined points to be included in a proposed new firearms commanders’ guide to special munitions and the use of pre-emptive actions:

<sup>161</sup> Bundle V/Documents/381–382.

<sup>162</sup> Bundle V/Documents/384.

<sup>163</sup> Thompson, TS/6485:15–6486:1.

<sup>164</sup> Bundle V/Documents/387.

Include references to proportionality, necessity and in particular to MASTS we need to include the distinction that if intelligence supports it the vehicle can be considered a lethal weapon and contingencies must be available to stop it.

Include that whilst contingencies must be part of the planning considerations it does not necessarily mean they will be used – but not carried and available they can't be!<sup>165</sup>

**7.102** When the guide eventually appeared, there was nothing in its tone or content to discourage the habitual authorisation of special munitions. On the contrary:

The **use** [my emphasis] of special munitions and pre-emptive tactical interventions should be considered at an early stage of the planning process (i.e. during the threat assessment process) and continually reviewed throughout the operation. The early adoption of such may reduce the necessity for the police to make use of lethal force.<sup>166</sup>

**7.103** Although the guide recommends constant review of the “use” of special munitions, the underlying assumption seems to be that the authorisation of such munitions (including the CSDC) will be frequent, if not routine.

**7.104** Some months after Mr Grainger’s death, at the request of Supt Giladi, Inspector Andrew Fitton wrote an internal report in which he argued that official guidance as to the deployment of CSDCs needed updating.<sup>167</sup> Somewhat confusingly, he supported his case by reference to a version of the *Manual of Guidance* which was no longer current. Obsolete as it was, the passage he relied upon had the merit of highlighting the common-sense point that the delivery of CS, by whatever means, into a confined space is liable to “produce an almost uncontrollable desire to get out of the contaminated area, which may in some cases induce panic, causing the person not to respond to instructions”.<sup>168</sup> On the strength of that quotation, Inspector Fitton proposed that GMP’s *Authorisation Protocol* should be amended:

Thus it can be seen that the use of CS is appropriate as a tactical option to reduce the risk to officers by inducing people to leave a vehicle. I feel that the SOP for MASTS may need amendment to better reflect the objective of “inducement to leave” as opposed to “rapid incapacitation”.<sup>169</sup>

**7.105** Inspector Fitton, who at that time was working within the Policy and Compliance Unit,<sup>170</sup> did not look into whether the Home Office had authorised the use of the CSDC by UK police forces; knowing that it had been available to GMP for five years, he simply assumed that the relevant provisions of the 2003 *Code of Practice* had been complied with.<sup>171</sup> Nevertheless, his report expressly asserts that “CSDC was authorised for use in 2007”.<sup>172</sup> It also contains the unsubstantiated, indeed false, claim that, following the death in 2008 of PC Terry, an NPIA review had “concluded that the use of the canister was good practice”.<sup>173</sup> Inspector Fitton told the Inquiry that an unnamed colleague

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<sup>165</sup> Bundle V/Documents/352.

<sup>166</sup> Bundle V/Documents/376–378.

<sup>167</sup> Andrew Fitton, TS/2622:11–2623:10.

<sup>168</sup> Bundle V/Documents/1000.

<sup>169</sup> *Ibid.*

<sup>170</sup> Fitton, TS/2628:1–5.

<sup>171</sup> Fitton, TS/2628:23–2629:7.

<sup>172</sup> Bundle V/998.

<sup>173</sup> *Ibid.*

had given him that information, but he had not troubled to confirm it.<sup>174</sup> He claimed to have no knowledge of the highly critical email that Mr Alder of the NPIA had sent to CI Wood in 2009, recommending that GMP should stop using CSDCs because the tactic was dangerous.<sup>175</sup> Supt Giladi, however, should have known the NPIA's true position following the death of PC Terry, if only because he was among the senior officers whom ACC Thompson had copied into the internal correspondence that followed the receipt of Mr Alder's email.<sup>176</sup>

**7.106** It is obvious, even after reviewing the bundle of material which GMP belatedly disclosed after the Inquiry's main hearing, that much email traffic and other documentation relating to the Force's use of the CSDC after Inspector Fitton's report has vanished. Nevertheless, from what survives, it is possible to glean an outline – necessarily incomplete – of the relevant history.

**7.107** There is no doubt that the TFU continued to authorise the use of CS canisters in MASTS operations after the death of Mr Grainger. On 28 June 2013, Inspector Mark Nutter sent an email timed at 16:53 to all members of the Firearms Operations Team:

All,

Following a recent review of the use of CS Gas [*sic*] in MASTS operations, the force has thought it prudent to adopt the following stance in relation to the issue, deployment and use of CS on such operations –

**CS Dispersal Canisters (CSDC) will no longer be utilised as a standard specialist munition on MASTS operations.** The basic position on CSDC is that it will not be considered unless a specific extreme threat identifies it as absolutely necessary for that operation. It is difficult to be prescriptive but an example of the level of threat that may prove sufficient for the authorisation of CSDC could be a CT [Counter-Terrorism] operation where we face ideologically motivated subjects with high levels of capability. Each operation will be judged on its own merits where a special case is made to consider use of CSDC.

SFCs [strategic firearms commanders] and TFCs [tactical firearms commanders] are being made aware of this position and will be reflecting the force's view on this in their strategic and tactical roles during the planning and authorisation phases of an operation.

I am aware that we utilise CSDC in a variety of other tactics including direct contact and loft clearance. I am also aware that for these reasons we carry CSDC on the FST as part of our standing authority. This position will not change and the use of CSDC in other tactics will remain under the same protocols, assessment and authorisation process i.e. authorisation by ACPO like any other special munition.

I know that you are all professional and I request that you refrain from widespread discussion within the broader TFU. I will be able to give more clarity on this position soon. In the meantime please feel free to speak with me directly on the matter but also accept that I wish to be discreet concerning the subject and its wider provenance.

Thanks,

Mark Nutter<sup>177</sup>

<sup>174</sup> Fitton, TS/2631:25–2632:24. Extensive enquiries by GMP failed to identify the source of the “good practice” claim: CSDC Late Disclosure Bundle/654–659. In an interview with Detective Inspector Iain Foulkes, CI Lawler speculated that he might have been the person who relayed it to Inspector Fitton, having heard it from Inspector Nutter: CSDC Late Disclosure Bundle/616–617. Inspector Nutter, who was not involved in the preparation of Inspector Fitton's report, told investigators that he did not recall using the expression “good practice”: CSDC Late Disclosure Bundle/655.

<sup>175</sup> Bundle V/Documents/382.

<sup>176</sup> Bundle V/Documents/384.

<sup>177</sup> CSDC Late Disclosure Bundle/968 (bold in the original).

**7.108** The reason for the change of “stance” is not clear. Neither is it clear what “review” Inspector Nutter had in mind or why he felt it necessary to conceal the change from other members of the TFU. One minute after Inspector Nutter sent his message to the Operations Team, Chief Superintendent (“C Supt”) John O’Hare wrote to a number of named recipients, including Superintendent Mark Granby, Superintendent Stuart Ellison, CI Davies and Supt Giladi:

With immediate effect the deployment of CS Incapacitant (in Canister or Projectile form) must not be used as part of the MASTS tactic.

I cannot go into much detail at this time.

We are going to deliver a number of inputs to refresh the knowledge and understanding of the MASTS tactic and will provide you with the dates as soon as possible.<sup>178</sup>

**7.109** The papers disclosed to this Inquiry do not reveal why C Supt O’Hare made the prohibition absolute or why he extended its scope to cover the RIP round (“projectile”) as well as the CSDC. It was presumably his email of 28 June that misled the College of Policing’s 2017 review of GMP firearms training and practice into making its erroneous Key Finding 1<sup>179</sup> that GMP, having “suspended all use of the device in June 2013”,<sup>180</sup> had thereby anticipated by a few years Mr Arundale’s 2016 recommendation<sup>181</sup> that the CSDC should be removed from operational deployment unless or until it should be approved by the Secretary of State.

**7.110** That was not so. Barely three months after C Supt O’Hare’s email, GMP placed an order for no fewer than 72 additional canisters.<sup>182</sup> The consignment, ordered in September, was delivered on 12 November 2013.<sup>183</sup> There is some evidence to suggest that, during the next three years, 48 of those canisters were used. On 21 October 2016, Police Constable Drew Ashcroft reported to the Force armourer that 24 canisters remained available.<sup>184</sup> At that rate of consumption, the existing stock would be likely to have run out some time during 2018; that, as it happens, was the Force armourer’s stated expectation in February 2016.<sup>185</sup>

**7.111** In or about 2014, the Force armourer, “A6”, prepared a draft witness statement for the purpose of criminal proceedings relating to the prosecution of Sir Peter Fahy, in which he included some general observations about the CSDC.<sup>186</sup> Following a defence team request for further information, A6 sent an email dated 2 October 2014 to CI Davies, asking him for a copy of the briefing paper which had been presented to the Firearms User Group (“FUG”) on 12 June 2007 and quoting the relevant passage from the draft statement:

Special Munitions

GMP uses CS Dispersal Canisters (CSDC). Prior to approximately 2009 shotgun rounds containing CS were used. In 2005 GMP Tactical Firearms Unit (TFU) staff became aware of an alternative means of introducing CS into a vehicle which was more effective and would negate discharging a potentially lethal projectile into a vehicle. CSDC were not in use in any police force in the UK at that time. After consultation with Home Office Scientific

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<sup>178</sup> CSDC Late Disclosure Bundle/1015.

<sup>179</sup> Bundle Z2/644, §8.2.6

<sup>180</sup> Bundle Z2/643, §8.2.3.

<sup>181</sup> *Report of Ian Arundale QPM*, 4 November 2016, §714.

<sup>182</sup> Purchase Order, CSDC Late Disclosure Bundle/111.

<sup>183</sup> Delivery Note, CSDC Late Disclosure Bundle/120.

<sup>184</sup> CSDC Late Disclosure Bundle/989.

<sup>185</sup> CSDC Late Disclosure Bundle/975.

<sup>186</sup> CSDC Late Disclosure Bundle/970.

Development Branch (HOSDB), GMP TFU staff alone\*\*\* (we need more details re this on how we exactly progressed its implementation)\*\*\* progressed the implementation of CSDC use. It is still the preferred method in operations subject to authorisation.<sup>187</sup>

For reasons already explained in this chapter, the statement's implied assertion that the device had Home Office approval was incorrect.

**7.112** In his reply of the same date, CI Davies agreed to obtain a copy of the briefing paper, adding:

I thought the "canister" had been suspended? Or is this more about the negative aspects of using CS via RIP?<sup>188</sup>

It seems that confusion reigned in the TFU as to the status of the CSDC. Although CI Davies was under the impression that it had been "suspended" in 2013, the Force had gone on to acquire – and had continued to use – fresh stock.

**7.113** At some point during the early part of 2016,<sup>189</sup> GMP's UK suppliers offered to sell the Force a new variant of the CSDC which contained CS in "vapour" form instead of the usual powder. After some email exchanges, GMP's Force armourer told the suppliers on 24 March 2016 that "we are definitely interested".<sup>190</sup> Further email correspondence ensued, culminating in an offer by the suppliers to "swap out up to 10 of your CS Powder grenades for 10 of the new CS Vapour grenades at no additional cost to GMP".<sup>191</sup> The documents I have seen do not include any reply to that message. What I find particularly disquieting is that it seems not to have occurred to anyone in GMP's firearms department that the proposed replacement "vapour grenade" might itself constitute a new weapon system requiring the approval of the Secretary of State.

**7.114** That the suppliers' offer was taken seriously, and may even have been accepted, appears from an email message timed at 12:20 on 21 October 2016 from Inspector David Murtagh to Supt Giladi:

Boss,

Can I just clarify something, I mentioned the CSDC to you at the debrief of Op Rocky. Is this available for use or not? Should we be taking this out or is there a block on it at the moment?

I ask because the suppliers are changing the canister from a cloud/smoke device to a clear vapour.

Regards,

Dave<sup>192</sup>

That message arrived as GMP was preparing anonymity applications in advance of this Inquiry's main hearing, and a fortnight before Mr Arundale produced the first of his two expert reports.

**7.115** The frantic exchange of emails that ensued is illuminating. Less than half an hour after Inspector Murtagh's innocent query arrived in Supt Giladi's inbox, the latter replied

<sup>187</sup> *Ibid.* I have reproduced the extract exactly as it appears in A6's email message to CI Davies.

<sup>188</sup> CSDC Late Disclosure Bundle/970.

<sup>189</sup> Whether because the email trail is incomplete or because the offer was made orally, it is not possible to identify the exact date.

<sup>190</sup> CSDC Late Disclosure Bundle/973.

<sup>191</sup> CSDC Late Disclosure Bundle/972.

<sup>192</sup> CSDC Late Disclosure Bundle/988.

laconically, “Block at the minute”.<sup>193</sup> Eight minutes later, at 12:54, Inspector Murtagh sent an email message to the Force armourer, copied to four other officers:

Stuart,

Please remove all CSDC canisters from grab bags.

Gents, not to be issued until further notice.

Dave<sup>194</sup>

It was in response to that order that PC Ashcroft reported the presence of 24 remaining canisters; he had personally removed them from the “grab bags” and secured them “behind the shutters”.<sup>195</sup> And so the narrative section of this chapter reaches its sorry conclusion. Less than three months before this Inquiry began taking oral evidence, GMP finally took its illicitly acquired stock of CS grenades out of service.

## C. The suitability of the CSDC in Operation Shire

**7.116** I have concluded that GMP acquired its stock of CSDCs illicitly, in the sense that it did so in breach of the provisions of the 2003 *Code* and without the approval of the Secretary of State. In those circumstances, I find it disturbing that GMP’s defence statement in the criminal proceedings brought against Sir Peter Fahy after Mr Grainger’s death included an assertion that the CSDC had been “approved by the Home Office”.<sup>196</sup> That was a very serious misrepresentation, and there were senior officers within GMP who must have known or at least suspected the true position (those officers did not, of course, include ACC Thompson, who by this time had left the Force and played no part in the proceedings in question). It is no part of this Inquiry’s function to investigate how such a gravely misleading document came to be placed before the court in those criminal proceedings. The matter should not, however, rest there. It is something which may have serious implications and ought to be thoroughly investigated by the appropriate authorities.

**7.117** The same applies to the broader issues raised by this chapter. There should be an investigation by the proper authorities to determine whether any organisation or individual has committed any criminal offence in connection with the importation, acquisition, purported authorisation or use of the CSDC.

**7.118** It follows from my conclusion that GMP’s acquisition of the CSDC was illicit that it should not have been authorised, let alone used, in the operation I am investigating, or in any other operation for that matter. Without access to detailed technical and medical expertise of the kind required by the 2003 *Code*, it would be as futile for this Inquiry as I have found it was for GMP to attempt a comprehensive judgement on the overall safety and effectiveness of the CSDC. Nevertheless, my Terms of Reference<sup>197</sup> require me to investigate the “suitability or otherwise of the ... munitions deployed in the operation”. I can and should, therefore, examine these matters in the particular context of the events which led to Mr Grainger’s death on 3 March 2012.

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<sup>193</sup> CSDC Late Disclosure Bundle/988.

<sup>194</sup> CSDC Late Disclosure Bundle/985.

<sup>195</sup> CSDC Late Disclosure Bundle/989.

<sup>196</sup> Amended Defence Case Statement, 11 November 2014, Bundle I/1125, §41.2. The proceedings against Sir Peter Fahy were in his capacity as Chief Constable of GMP for an alleged offence contrary to the Health and Safety at Work etc. Act 1974, arising out of the Force’s planning and conduct of the armed operation on 3 March 2012.

<sup>197</sup> See Appendix A.

**7.119** Throughout the evidence, I encountered much confusion of thought among members of the TFU as to the purpose of using CSDCs against the occupants of a vehicle. Some considered such use would be likely to induce the occupants to leave the vehicle, but the prevailing view among those officers who gave evidence on this point was that, in general, it is better to contain subjects inside a vehicle, in case they scatter on foot and endanger members of the public. In so far as any agreement can be said to have emerged, it was limited to the less than illuminating proposition that the purpose of using CS was to render non-compliant subjects compliant by incapacitating them. In this context, I take “non-compliant” to refer to persons who are either refusing to obey instructions or are evincing an intention, with or without weapons, to put up physical resistance. There was, however, no consensus as to the response such incapacitation was designed to induce, i.e. whether the idea was to contain subjects inside a vehicle or to cause them to get out of it.

**7.120** GMP’s *Authorisation Protocol*<sup>198</sup> gave very little help, merely describing the CSDC and stating that its “primary use” is for “the rapid incapacitation of subject(s)”.<sup>199</sup> CI Lawler, who had reviewed the *Protocol* in 2011 and again in 2012, less than a month before the death of Mr Grainger, was conspicuously vague when Counsel to the Inquiry asked him about the device:

Question: Is the purpose of throwing the CS grenade or canister into the vehicle to incapacitate the subjects in the vehicle so they stay there or to force them to get out?

**Answer: It is to make them more compliant with what they are told to do and that could either be to stay in or to come out, to respond to the officers’ commands.**

Question: Of itself it is neutral, the throwing in of the grenade, as to what it is expected the subjects to do. They must react to the CS by reference to what the officers are shouting at them?

**Answer: I must say, sir, at the point in relation to the CS, I would have expected and have had tactical advice at the time in relation to the advantages and disadvantage. With the passage of time I am not too clear about what the advantages and disadvantages are now. I have not revisited what they are, sir.**<sup>200</sup>

**7.121** Although the Inquiry had no means of knowing it at the time, the final two sentences of that answer were untrue. Not only had CI Lawler “revisited” the “advantages and disadvantages” of the CSDC, but he had done so as recently as December 2016,<sup>201</sup> less than three months before giving his evidence. What is more, far from being “not too clear” about the advantages and disadvantages, CI Lawler held very trenchant views about them, views which, I am sorry to say, he withheld from the Inquiry.

**7.122** Among the documents disclosed to the Inquiry team after the main evidential hearings had concluded<sup>202</sup> was a note of an interview with CI Lawler, signed by him, which had taken place just three months before he gave oral evidence to me. While not verbatim, the note is sufficiently detailed to leave no doubt as to CI Lawler’s true opinion of the CSDC:

[Inspector Lawler] stated that he thinks that using the CS is a bad option as it makes people get out of the car and is sceptical of using it. All the people getting out of the car at the same

<sup>198</sup> *Standard Operating Procedure 28 for the Protocol for the Authorisation of Special Munitions, v4*, 8 February 2012, Bundle K/599–609.

<sup>199</sup> Bundle K/602.

<sup>200</sup> Michael Lawler, TS/3062:14–3063:4.

<sup>201</sup> Fitton, TS/2624:1–2625:8.

<sup>202</sup> This material was part of the CSDC “unused” material which was only provided to the Inquiry on 4 May 2017 after the evidence stage of the Inquiry had concluded.

time loses a lot of control. And [he] was [surprised] that it was used in the Grainger job as he did a risk assessment for the Grainger incident the evening before and cannot remember authorising CS tactics before passing it over to another officer the next day.<sup>203</sup>

**7.123** CI Lawler need not have been “surprised” that CS was used on 3 March 2012. Despite the fact that the authorisation of special munitions is a matter for the SFC and not a TFC such as himself, CI Lawler had indeed purported to authorise it for the previous day’s MASTS deployment.<sup>204</sup>

**7.124** CI Lawler’s view that the CSDC “makes people get out of the car” reflects common sense, as he himself was ultimately to recognise.<sup>205</sup> It is only to be expected that a person suffering the effects of CS inside a car is likely to experience an overwhelming urge to leave the vehicle as quickly as possible. Remarkably, however, X9 – the officer who actually deployed the device on 3 March – believed the whole point of the tactic was to confine the subjects within the vehicle:

The purpose was to incapacitate [the subjects] and they would have been – they would have remained in the vehicle until we were in a position to remove them from it. Our surrounding of the vehicle and being directly against the doors would keep them in the vehicle until we were at a point when we were ready to remove them, extract them from the vehicle.<sup>206</sup>

**7.125** The SFC who authorised specialist munitions on 3 March was Assistant Chief Constable Terry Sweeney. His expectations were not noticeably less sanguine (or, for that matter, less confused) than those of X9:

Question: What was your understanding of the purpose of the injection of CSDC into a vehicle? To keep the people in it or to get them out?

**Answer: The purpose, I would suggest, is to incapacitate them and then compliantly remove them from the vehicle and arrest them. That is my understanding, so I guess you are getting them out.**<sup>207</sup>

**7.126** Some might suppose that introducing CS into a vehicle would make the subjects less rather than more likely to comply with AFOs’ commands, particularly the standard instruction to show their hands. ACC Sweeney did not agree:

Question: Did it occur to you that you might be asking subjects to do something, or the AFOs might be asking subjects to do something, and simultaneously apply a chemical munition to them that made it much harder for them to do the thing that you were asking?

**Answer: I didn’t perceive it that way.**

Question: No. Just explain why?

**Answer: Because they would be incapacitated by the CS, because that is the purpose of entering it into the vehicle.**

Question: Incapacitated in what way?

**Answer: In that they would be in a distressed state from choking, they would bring their hands to their face to try and protect their face and they would then become more compliant to the directions of the officers.**<sup>208</sup>

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<sup>203</sup> Bundle Y/2235; the handwritten version signed by CI Lawler, at Y/2237, reads as follows: “Using CS is a bad option as it makes people get out of the car, am sceptical of using it hence why in actual job surprised CS was done.”

<sup>204</sup> Bundle C/397 and 400; Bundle G1/3609–3611 and 3625. See also Lawler, TS/2947:19–2948:3; TS/3062:24–3063:2.

<sup>205</sup> Lawler, TS/3064:3–8.

<sup>206</sup> X9, TS/3928:23–3929:4.

<sup>207</sup> Terry Sweeney, TS/3383:15–21.

<sup>208</sup> Sweeney, TS/3385:17–3386:5.

**7.127** The extraordinary divergence of views among AFOs and commanders only serves to confirm my impression that those who devised and trained this incoherent tactic had not thought it through, with the startling consequence that nobody – not even those officers who authorised the use of CSDC or were tasked with physically deploying it – had any clear idea why they were doing so or what they were hoping to achieve.

## D. Conclusions

**7.128** In the context of a MASTS “strike”, deployment of the CSDC entails an officer approaching within arm’s length of a vehicle the occupants of which, *ex hypothesi*, must be assumed to be armed, or highly dangerous, or both. The officer in question has a hammer in one hand (with which he is expected to smash one of the windows of the vehicle) and the canister in the other. Before throwing the canister into the vehicle, he must pull a pin from the canister so as to activate its fuse. From those circumstances alone, it is obvious that the officer charged with deploying the CSDC is in a highly vulnerable position, with no practical means of defending himself apart from the canister itself.

**7.129** That vulnerability is bound to be especially acute where non-compliance takes the form of physical resistance. It seems wholly unreasonable to require an otherwise unarmed officer to advance within touching distance of a vehicle containing violent criminals who may have firearms or other lethal weapons and who have evinced an intention to fight.

**7.130** Where the non-compliance takes the form of refusing to obey instructions, much depends on the nature of the instructions. In the case of subjects who do not show their hands when commanded to do so, it is difficult to see how the use of CS (whether delivered by RIP round or dispersal canister) will improve the situation. If the CS fails to bring about complete incapacitation, it may even provoke violent retaliation. Similarly, if the object of the exercise is to contain the subjects within the vehicle, the use of CS will almost certainly bring about the opposite result, since it is likely to induce an almost uncontrollable urge in those affected to get out of the contaminated area (i.e. the vehicle) as fast as they can.

**7.131** For those reasons, I find it extremely difficult to envisage a situation in which the use of CSDCs will offer any practical benefit to AFOs attempting to arrest the occupants of a stationary and effectively blocked or immobilised vehicle. There are, in any event, serious drawbacks to their use in the context of a MASTS deployment. They were well summarised by Mr Arundale in his main report<sup>209</sup> and have not been seriously challenged by any other witness. Without listing them all, they include the following, all of which are relevant to the present case:

- the more or less instantaneous, albeit temporary, “fogging” of the interior of the vehicle: until the CS disperses, AFOs attempting to cover the occupants will have a seriously impaired view of the vehicle’s interior;
- the vulnerability of the officer deploying the canister;
- the risk of inducing panic in subjects so that they are unable to follow commands;
- the risk of subjects disorientated by CS irritant making involuntary movements which could be misinterpreted by AFOs as threats;

<sup>209</sup> *Report of Ian Arundale QPM*, 4 November 2016, §558.

- the necessity for officers to wear respirators to protect themselves against the effects of CS irritant (thereby reducing their own range of vision as well as the audibility and intelligibility of any instructions they give to the subjects); and
- the contamination of the interior of the vehicle and its contents, potentially compromising subsequent scientific investigations.

**7.132** Those deficiencies are so obvious that they hardly need to be pointed out. As it happens, however, Mr Alder had articulated them in the most vigorous terms during his review of GMP's draft MASTS SOP in 2009.<sup>210</sup> In the face of such pointed criticism from an official of the NPIA, any responsibly led police firearms department would have immediately halted the use of these illicitly acquired chemical munitions. GMP's obstinate refusal to do so represented a cavalier disregard for public safety.

**7.133** The circumstances in which deploying CS irritant inside a subject vehicle during a MASTS "strike" (whether by means of a grenade or otherwise) will confer any significant practical advantage are vanishingly rare, if not non-existent. There are, in any case, so many countervailing objections that it is practically impossible to justify its use in a MASTS operation. In the words of CI Lawler, it is "a bad option". That is not to exclude the possible utility of such devices in a different context, for example armed counter-terrorism or other highly specialised operations. Given the illicit process by which GMP had added dispersal canisters to its armoury, however, the CSDC was, on any view, an entirely unsuitable munition which should not have been authorised for use in this or any other operation.

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<sup>210</sup> CSDC Late Disclosure Bundle/678–679.

# Chapter 8: Training

## A. Introduction

**8.1** An authorised firearms officer (“AFO”) is “a police officer who has been selected, trained, accredited and authorised by their chief officer to carry a firearm operationally”.<sup>1</sup> For obvious reasons, the processes of selection, training, accreditation and authorisation are rigorous.<sup>2</sup> The same principle applies to firearms commanders and advisers.<sup>3</sup> To be authorised to take part in firearms operations, whether as commanders, advisers or AFOs, police officers must be competent both occupationally and operationally.<sup>4</sup>

**8.2** Occupational and operational competence are defined in the *Manual of Guidance*:

5.2 When an officer has attended and satisfactorily completed a course of instruction based on a command or tactical advice module in the National Police Firearms Training Curriculum, they will be assessed to be occupationally competent to perform that role.

5.3 Chief Officers are responsible for ensuring that individuals who have been assessed as occupationally competent are professionally developed to ensure that they can be classed as operationally competent. A commander or tactical advisor must remain operationally competent by regularly performing the roles for which they have been trained. Forces should consider implementing an auditable period of shadowing, mentoring and performance review as a means of achieving operational competence.<sup>5</sup>

The *Manual* further requires that firearms commanders and advisers “must” undergo annual refresher training, on completion of which their occupational competence “should” be formally approved by the lead chief officer (or his nominee) for the management, command and deployment of armed officers.<sup>6</sup>

**8.3** With four exceptions, the firearms commanders and AFOs (including “Q9”) who took part in the Operation Shire Mobile Armed Support to Surveillance (“MASTS”) deployments were competent both operationally and occupationally, and possessed the training necessary to perform the functions assigned to them. After meeting the Armed Response Vehicle (“ARV”) training requirements, all had progressed to the MASTS standard, and most to the higher standard of counter-terrorist specialist firearms officer (“CTSFO”).<sup>7</sup>

## B. Superintendent Granby

**8.4** Superintendent (“Supt”) Mark Granby (who was not himself a firearms practitioner<sup>8</sup>) was the tactical firearms commander (“TFC”) for the MASTS deployment of 3 March

<sup>1</sup> ACPO, ACPOS and NPIA (2011) *Manual of Guidance on the Management, Command and Deployment of Armed Officers*, third edition, §4.0.

<sup>2</sup> *Report of Ian Arundale QPM*, 4 November 2016, §§144–145.

<sup>3</sup> ACPO, ACPOS and NPIA (2011) *Manual of Guidance on the Management, Command and Deployment of Armed Officers*, third edition, §5.0.

<sup>4</sup> *Report of Ian Arundale QPM*, 4 November 2016, §93.

<sup>5</sup> ACPO, ACPOS and NPIA (2011) *Manual of Guidance on the Management, Command and Deployment of Armed Officers*, third edition, §§5.2–5.3.

<sup>6</sup> *Ibid.*, §§5.4–5.5. In the *Manual of Guidance*, the use of the word “must”, as opposed to “should”, indicates a mandatory requirement: see §0.9.

<sup>7</sup> *Report of Ian Arundale QPM*, 4 November 2016, §§134–135.

<sup>8</sup> Mark Granby, TS/3483:10–12.

2012 during which Q9 shot and killed Anthony Grainger. It was Supt Granby who directly authorised the attempt at arresting the occupants of the stolen Audi.

**8.5** Elsewhere in this report I have criticised Supt Granby for serious failings in the discharge of his responsibilities as TFC (see Chapter 4). In summary, instead of applying the National Decision Model (formerly the Conflict Management Model), he adopted an uncritical “authorise first, think later” approach; he failed to conduct his own independent threat assessment, preferring to adopt a colleague’s earlier risk assessment and tactical plan on the strength of untested assumptions as to the basis of that risk assessment and tactical plan; in so doing, he failed to recognise the distinctive characteristics of the proposed armed deployment of 3 March and its intelligence background, treating it as a mere re-run of its predecessor. In all those respects, as well as in failing to maintain contemporaneous records of his own thought processes and decisions, he disregarded fundamental requirements of the *Manual of Guidance*. In short, he was out of his depth.

**8.6** Those findings correspond closely to certain weaknesses which Ian Arundale QPM, the Inquiry’s expert witness, identified: namely, “[Supt Granby’s] lack of application of the Conflict Management Model/Decision Making Model throughout Operation Shire, his failure to proactively lead and influence the operation and the level of unchecked assumptions he made regarding key issues relevant to the deployment of armed officers during Operation Shire on the 3rd March 2012”.<sup>9</sup> Mr Arundale’s view<sup>10</sup> (with which I agree) is that those weaknesses reflect and resonate with characteristics that Supt Granby had exhibited during a Police Service of Northern Ireland (“PSNI”) Joint Services Course he attended less than a year before the death of Mr Grainger.

**8.7** The course in question formed part of the Joint Services Specialist Firearms Commander Development Programme (“JSSFCDP”) and was designed to equip operationally competent strategic firearms commanders (“SFCs”) and TFCs to command “specialist” firearms operations, a specialist operation being defined as one “conducted in relation to National Security, Counter Terrorism or where the nature of the circumstances surrounding the incident are deemed so serious by an accredited Strategic Firearms Commander that the incident should be commanded by an accredited Specialist Tactical Firearms Commander”.<sup>11</sup> Although the circular letter announcing the course stated baldly that the existing accreditation of a delegate who did not meet the required standard “will not be affected”,<sup>12</sup> the course literature provided a more nuanced approach (my emphasis):

**Generally** an overall assessment that a Delegate has not yet achieved competence in commanding Specialist Firearms Operations will not impact on their existing competence as a Strategic or Tactical Commander within Firearms Operations. **If a critical issue is identified that raises a concern in relation to safety or operational practice then this issue will be referred to the Chief Officer of the Force concerned.**<sup>13</sup>

**8.8** There is, as Mr Arundale pointed out,<sup>14</sup> a public interest in ensuring that firearms commanders who wish to develop more advanced professional skills are not deterred

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<sup>9</sup> *Supplementary (2nd) Report of Ian Arundale QPM*, 5 April 2017, §84.

<sup>10</sup> *Report of Ian Arundale QPM*, 4 November 2016, §§162 and 165; *Supplementary (2nd) Report of Ian Arundale QPM*, 5 April 2017, §16.

<sup>11</sup> ACPO circular letter, 31 March 2011, Bundle U/3–4.

<sup>12</sup> ACPO circular letter, 31 March 2011, Bundle U/4.

<sup>13</sup> JSSFCDP, 2011, Bundle F/1315; cf. the JSSFCDP Joining Instructions for the June 2015 programme, Bundle U/56 and 59.

<sup>14</sup> Ian Arundale, TS/7257:18–7258:17.

from doing so through fear that failure will automatically affect their standing roles. At the same time, some failures may reveal such fundamental weaknesses that a review of the officer's existing accreditations becomes an urgent necessity.

- 8.9** In fairness to Supt Granby, it is important to acknowledge that he committed himself fully to the course programme and, during the early stages, was able to demonstrate “competency in the command of basic pre-planned and spontaneous firearms incidents”.<sup>15</sup> It was when he came to handle more complex situations that problems emerged:

[Supt Granby] experienced difficulty in the management and coordination of multidisciplinary intelligence, firearms and investigative specialist assets.<sup>16</sup>

- 8.10** I pause to note that the ability to manage and co-ordinate “multidisciplinary intelligence, firearms and investigative specialist assets” effectively is not a skill confined to “specialist” firearms operations. It may be required in any pre-planned firearms deployment that is less than straightforward.

- 8.11** The cause of Supt Granby's difficulty was his inability to apply the Conflict Management Model/National Decision Model, and its consequence was chronic irresolution:

His use of the conflict management model throughout this exercise was inconsistent and at times elements were completely overlooked. This led to difficulties when it came to establishing the levels of threat, application of the working strategy and then implementing the appropriate operational action. This situation was highlighted during the executive action phase, where failure to exercise appropriately the elements of the conflict management model led to long periods of indecision.<sup>17</sup>

- 8.12** From the outset of the exercise, Supt Granby had “difficulty in demonstrating effective use of the conflict management model”:

This was a tiger kidnap exercise and he failed after several prompts from the assessors to identify the appropriate tactical parameters in relation to the hostage.<sup>18</sup>

- 8.13** Further, Supt Granby's substandard performance occurred in spite of the fact that he had access to tactical advice.<sup>19</sup>

- 8.14** Something akin to a “tiger kidnap”, namely a “lie-in-wait” robbery possibly involving the taking of hostages, was one possible outcome that planners in Operation Shire had anticipated on 1–2 March. It could not therefore be safely assumed that the MASTS deployment of 3 March 2012 would be a straightforward operation. What is more, Supt Granby did not see fit to obtain tactical advice before completing his threat assessment and working strategy on that occasion. In my view, he was not equipped with the necessary skills to command such a potentially complex and unpredictable deployment, and his failure to consult a tactical adviser less than a year after being told that his irresolution was a problem – even with the benefit of such advice – strongly suggests that he lacks insight into his own professional limitations.

- 8.15** I find myself in agreement with the views which Mr Arundale expressed on this topic when giving expert evidence to the Inquiry:

<sup>15</sup> JSSFCDP, achievement record, 2011, Bundle F/1313.

<sup>16</sup> *Ibid.*

<sup>17</sup> JSSFCDP, achievement record, 2011, Bundle F/1319.

<sup>18</sup> JSSFCDP, achievement record, 2011, Bundle F/1325.

<sup>19</sup> JSSFCDP, achievement record, 2011, Bundle F/1320.

Question: You appear to be drawing a link ... between what the Northern Ireland course providers had said about Superintendent Granby and what you saw or read about what he did in Operation Shire. Can you expand on that, please?

**Answer: Yes. First of all, Operation Shire was an event, an incident, a policing operation which involved advanced policing tactics. It involved the use of diverse intelligence sources and it involved the use of a range of policing assets. So there are comparabilities with the nature of the policing operations that take place during that course itself. The conflict management model: my suggestion is that was not used throughout the incident by Superintendent Granby, because if it was we would have seen some process of continuous review and decision making and assessment. I have made clear that I think the range of tactical options that were considered were insufficient ... particularly at Culcheth itself. And that the communication between the TFC and the OFC [operational firearms commander] could have been improved. The assessment of intelligence, which is something that we have already touched upon. I think there are parallels ...**

Question: You say at the end of paragraph 162<sup>20</sup> that: “The PSNI course is challenging and more serious criminal or terrorist scenarios are explored than Operation Shire presented, but I would not expect a failure as significant as Superintendent Granby’s from a commander as apparently highly regarded as he was by his force.” When you say “a failure as significant as Superintendent Granby’s”, is that a reference to the points that you have just made about the use of the conflict management model?

**Answer: Mainly to the conflict management model, because that is so fundamental. Effectively, it is like ‘mirror, signal, manoeuvre’ is to driving. The conflict management model is the absolute heart and core of decision making, and it is very unusual to see that applied to the extent, in terms of feedback, where there are “long periods of indecision”.<sup>21</sup>**

**8.16** So unusual, indeed, is such strongly worded negative feedback that Mr Arundale was unable to recall any other example.<sup>22</sup> In his view:

The conflict management model is the absolute core of decision making in relation to firearms incidents and firearms deployments for AFOs through to every single commander. [It] is something we expect every police officer to know, use and utilise within the workplace.<sup>23</sup>

**8.17** Mr Arundale considered that the shortcomings which led to Supt Granby failing to pass the PSNI course were:

[...] so fundamental to his role that his removal from firearms command issues should have been given serious consideration both on the basis of (a) public confidence in the event of the disclosure of the details of his “failure” on the course following a “critical incident” and (b) in order to properly assess, and make an evidenced decision regarding, his continued “operational competence” as a Tactical Firearms Commander.<sup>24</sup>

At the very least, Greater Manchester Police (“GMP”) should have given thought to whether he required retraining, reassessment or coaching.<sup>25</sup> This Inquiry has, however, been unable to find any evidence that Supt Granby’s substandard performance on the PSNI course received the considered attention of his superiors;<sup>26</sup> it does not even appear in his official *E-fire* training record.<sup>27</sup>

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<sup>20</sup> *Report of Ian Arundale QPM*, 4 November 2016, §162.

<sup>21</sup> Arundale, TS/6913:10–6915:6.

<sup>22</sup> Arundale, TS/6911:13–20.

<sup>23</sup> Arundale, TS/6910:22–6911:2.

<sup>24</sup> *Report of Ian Arundale QPM*, 4 November 2016, §163.

<sup>25</sup> Arundale, TS/6908:12–6909:5.

<sup>26</sup> Arundale, TS/6906:10–12.

<sup>27</sup> Bundle U/32–33.

- 8.18** It is not clear how, or even whether, the PSNI course organisers formally notified Supt Granby’s superiors in the Tactical Firearms Unit (“TFU”) of the reasons for his failure to attain the required standard.<sup>28</sup> The Inquiry has seen an email message dated 14 April 2011 (copied to Superintendent Leor Giladi) in which Supt Granby informed his colleague Chief Inspector (“CI”) Michael Lawler of the unsuccessful outcome of the course. There is, however, no indication that anybody within GMP did anything about it. It is true that Supt Granby appears to have successfully completed his TFC refresher course in January 2012, but that was many months later.<sup>29</sup> I agree with Mr Arundale’s opinion that “a failure on a course ... should be considered at the time it arises”.<sup>30</sup> That principle applies, in my view, just as much to an “elective” course, such as the PSNI one, as to a mandatory one, successful completion of which is necessary for the officer’s continued accreditation. It is deeply unsatisfactory, to put it mildly, that during the intervening period his superiors allowed him to continue performing the role of a TFC without taking any steps to reassess or retrain him, or even considering whether it might be appropriate to do so.
- 8.19** The complacency with which senior officers treated the training failures of Supt Granby and other officers must be set against the background of a National Policing Improvement Agency (“NPIA”) development plan to which the Force was subject as a result of the death in training of Police Constable (“PC”) Ian Terry.<sup>31</sup> The chief firearms instructor (“CFI”) had already been replaced after failing to take sufficient measures to comply with the NPIA development plan.<sup>32</sup>
- 8.20** Elsewhere in this Report, I have criticised Supt Granby’s lack of candour in relying on his attendance at the PSNI course to enhance his own credibility, without revealing that he had failed it (see Chapter 4). Police Sergeant (“PS”) David Whittle, GMP’s CFI between August 2011 and February 2012, sought to defend the Force’s inaction following Supt Granby’s failure to pass the course, on the grounds that Supt Granby’s successful completion of his refresher training in January 2012 somehow “trumped” it.<sup>33</sup> Even with the advantage of hindsight, PS Whittle was not prepared to concede that there had been any need for prompt action to remedy Supt Granby’s inability to apply the Conflict Management Model, or even to enquire into the reasons for his failure of the PSNI course.<sup>34</sup>
- 8.21** PS Whittle was not the only firearms officer to display complacency. In a revealing exchange with Jason Beer QC, Leading Counsel to the Inquiry, CI Lawler, having conceded that “there was not a great deal of consideration given to [Supt Granby’s] failure on the course”,<sup>35</sup> went on to maintain that such consideration would not have made any difference anyway:

Question: The reasons you give, that even if you had known about this, it would not have made any difference essentially, I think –

**Answer: It would have made no difference to Mr Granby’s role as a tactical firearms commander doing normal, day-to-day operations.**

<sup>28</sup> Michael Lawler, TS/2856:3–16; TS/2862:8–2863:4.

<sup>29</sup> Bundle U2/33.

<sup>30</sup> Arundale, TS/6919:20–23.

<sup>31</sup> David Whittle, TS/6281:17–6284:9; Marcus Williams, TS/6162:5–6164:15.

<sup>32</sup> Marcus Williams, TS/6168–6169; Bundle H/275.

<sup>33</sup> Whittle, TS/6287:25–6289:18.

<sup>34</sup> A17 (Whittle), witness statement, 7 December 2014, Bundle H/177; see also his further witness statement dated 5 December 2016, Bundle U/61.

<sup>35</sup> Lawler, TS/2862:22–2863:4.

Question: – the reasons you give are, firstly, he was very experienced?

**Answer: In my opinion, he was, sir, yes.**

Question: And, secondly, this was about extension learning, and didn't tell you anything about his competence for everyday activity? Is that a fair way of describing it?

**Answer: Yes, sir.**

Question: Would you not agree that the things that are mentioned here do tell you something about his ability to handle, for example, intelligence coming from a variety of sources, managing a complex or potentially complex deployment?

**Answer: It tells me during that assessment, that is how he performed, sir. And I understand that assessment, sir, can be very different – very different places in the operational environment.**

Question: What do you mean by that, that assessment and training are one thing, but the real job is another?

**Answer: It can be, sir, yes.**

Question: The difficulty of, I think, leaving it to work out whether somebody is competent or not when they are on an actual job, is that if they fail, something bad may happen?

**Answer: It does, but also we had a process in Greater Manchester Police about mentoring, so you wouldn't go straight away from finishing the course, straight into a live job. You would be mentored and making sure that another commander saw that you could do the job live and then recommendations would be made to the ACPO [Association of Chief Police Officers] firearms lead, and that is how the process worked.<sup>36</sup>**

That may have been how the process was meant to work, but it is not how it operated on this occasion. I have seen no evidence to suggest that the ACPO firearms lead within GMP at that time, Assistant Chief Constable ("ACC") Ian Hopkins, was even told about Supt Granby's failure to pass the PSNI course.

**8.22** There is, in any case, more to gauging the impact of a course failure on an officer's continuing accreditation than simply assessing any temporary implications for his professional capability. As Mr Arundale explained, there are wider considerations, including the home force's disclosure obligations in legal proceedings:

One of the responsibilities of a firearms leader in a police force is to assess any issue which could impact upon the effectiveness or the credibility of not just AFOs but of commanders. It is a fairly regular issue to have to assess somebody's failure on a course, their medical condition, their welfare circumstances or any issue which might affect their capability as an individual. Or, perhaps just as importantly, the appropriateness of the force continuing to allow that person to operate if there is something known in their background which would be disclosed in subsequent proceedings if they were to command a critical incident or be an AFO during a critical incident.

...

As a force, you have to carefully consider the appropriateness of that person returning to work on the basis that all of that will be disclosed in the public arena. It could be just a failure on a course, it could be a negative issue which has been said, it could be a breach of discipline. Effectively, it could be anything at all which actually affects a person, be it an AFO or a commander at that point in time, or could affect the reputation of the force, the credibility of the force or public confidence in the force's maintenance of effective commanders or firearms officers.

It is not just the tactical issue, it is a much wider strategic thing, and that would be something which would crop up many times during a year and firearms officers appointed under the code to lead firearms matters within forces should be taking those decisions as and when

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<sup>36</sup> Lawler, TS/2859:4–2860:17.

they arise, and they would be brought to you normally by the chief firearms instructor and/or the head of operations.<sup>37</sup>

- 8.23** If the experiences of this Inquiry and the Independent Police Complaints Commission (“IPCC”) investigation are anything to go by, the disclosure of course failures to official bodies was not a high priority for GMP.
- 8.24** In the light of the basic weaknesses which Supt Granby had evidenced during the 2011 PSNI course, GMP should have suspended his TFC accreditation until he had demonstrated an ability to apply the Conflict Management Model consistently. It would not have been an adequate response to suspend him until he had undertaken a refresher course of the kind he successfully completed in January 2012. The shortcomings he demonstrated during the PSNI course revealed a need for retraining. In failing to require Supt Granby to retrain in the application of the Conflict Management Model, GMP did not adequately discharge its duty to protect the public.

## C. X7

- 8.25** “X7” was the operational firearms commander (“OFC”) for the MASTS deployment of 3 March 2012. X7, as OFC commanding that deployment, shares responsibility for inadequacies in its planning, particularly the failure to brief AFOs about the extent to which the stolen Audi’s tinted windows would restrict approaching officers’ view of the vehicle’s interior and occupants.
- 8.26** Although he was an experienced AFO and OFC, X7 was not occupationally competent at the time of that deployment. The reason was that he had not completed his annual refresher training. As he himself recognised,<sup>38</sup> such training is mandatory, not merely advisory, for commanders and advisers (my emphasis):

5.4 Commanders at all levels and tactical advisors **must** undergo annual commander/tactical advisor refresher training. This process **must** consist of the relevant NPJA approved annual command or tactical advisor refresher package, supplemented by additional local training which supports force and regional issues identified in the force’s Strategic Firearms Threat and Risk Assessment.<sup>39</sup>

Since the content specified in the second sentence of that paragraph is also mandatory, compliance with the *Manual’s* requirement necessarily entails completion of the relevant training.

- 8.27** Unfortunately, in 2011, X7 did not manage to complete his refresher training, which was due to last a full day.<sup>40</sup> The course took place on 20 October 2011.<sup>41</sup> Although he attended in the morning, he had to leave early in order to attend a risk assessment meeting at noon for a MASTS operation which fully occupied him for the rest of the day.<sup>42</sup> This Inquiry has been unable to find any written record of X7’s participation in the course. According to Inspector Marcus Williams, GMP’s CFI from February 2012, it was due to last six hours from 08:30.<sup>43</sup> On any view, therefore, despite Inspector

<sup>37</sup> Arundale, TS/6855:11–23; TS/6856:10–6857:3.

<sup>38</sup> X7, TS/5401:17–25.

<sup>39</sup> ACPO, ACPOS and NPJA (2011) *Manual of Guidance on the Management, Command and Deployment of Armed Officers*, third edition, §5.4.

<sup>40</sup> X7, TS/5400:10–5401:14.

<sup>41</sup> X7, witness statement, 14 January 2015, Bundle H/285; see also *Supplementary (2nd) Report of Ian Arundale QPM*, 5 April 2017, §78.

<sup>42</sup> X7, witness statement, 14 January 2015, Bundle H/285.

<sup>43</sup> Marcus Williams, TS/6203:25–6204:23.

Williams's claim to the contrary,<sup>44</sup> X7 must have missed a significant portion of it. He did not make up the lost training by attending another command refresher course during the same 12-month period.

**8.28** Because X7 was already an experienced firearms officer, the absence of any critical changes in training or guidance since his previous command course meant that the 2011 refresher would primarily have served to reinforce his existing knowledge and understanding.<sup>45</sup> Furthermore, he had attended other firearms training courses during the preceding 18 months or so.<sup>46</sup> Had it stood alone, therefore, X7's failure to complete his refresher training in 2011 would be unlikely to have any great practical bearing on the effectiveness with which he performed his OFC duties on 3 March 2012. Late in the Inquiry's proceedings, however, GMP disclosed the fact that X7 was one of two AFOs who had failed a Metropolitan Police Specialist Firearms Officer course at the beginning of 2012; the other was "Z15", who also participated in the deployment of 3 March.

**8.29** The course in question was just over eight weeks in duration, running from 16 January to 16 March 2012. It formed part of a training programme which the Metropolitan Police Service ("MPS") had devised "to address security-planning matters" in advance of the forthcoming London Olympic Games:

Prior to the London 2012 Olympics, an armed policing interoperability project to address security-planning matters was commenced. This project generated a new National Standard of capability for police firearms officers described as Counter Terrorist Specialist Firearms officer (CTSFO), and this is now an official national role profile. A number of UK police forces form a National CTSFO network, with each member force being required to train officers to this level. Greater Manchester Police are members of this network.

From 2010, the MPS delivered additional skills training to existing Specialist Firearms Officers (SFOs) from network forces. These additional skills were to bridge the gap between the SFO and CTSFO standard. The MPS only train its specialist armed officers in the CTSFO standard. Therefore, an officer attending an MPS SFO foundation course would achieve full CTSFO status. A number of places on these courses were offered to participating forces, providing an opportunity for their officers to achieve this qualification. Officers attending the MPS course were already qualified as Armed Response Vehicle (ARV) and Mobile Armed Support to Surveillance (MASTS) officers.<sup>47</sup>

**8.30** As the MPS course was not mandatory, but voluntary (or "developmental"<sup>48</sup>), a failure to pass would not automatically affect a participant's existing firearms accreditation:

Failure of developmental training does not necessarily disbar an officer from continuing to carry firearms. Much would depend upon the reasons for failure, and it would be for the CFI to provide advice considering [the] officer's AFO status. For example, on course 1/2012 two MPS officers failed training. However, they were permitted to remain on ARV duties for which they remained qualified. Decisions around the status of visiting officers are not the responsibility of the MPS, and would be remitted to home force CFI for appropriate action.<sup>49</sup>

**8.31** That is common sense. Failure to achieve the advanced level of performance demanded by the CTSFO course would not of itself mean that a student was unfit to continue in his existing role as an ARV or MASTS officer. There must be a wide

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<sup>44</sup> *Ibid.*

<sup>45</sup> Arundale, TS/6917:21–6918:4.

<sup>46</sup> Arundale, TS/6919:2–10.

<sup>47</sup> Trevor Clark, witness statement, 20 March 2017 (the original statement is erroneously dated 2015), Bundle X/273.

<sup>48</sup> Clark, witness statement, 20 March 2017, Bundle X/274.

<sup>49</sup> *Ibid.*

range of possible unsuccessful outcomes, from the officer at one extreme, who fails by the smallest of margins such that he might have passed under slightly different conditions, to an officer at the other extreme, who displays a degree of incompetence so gross that he cannot safely be allowed to handle a firearm again.

- 8.32** In certain defined circumstances, students were liable to be removed from the course before completing it. They might be removed: (i) if they failed to demonstrate competence in an existing skill; (ii) if they “adversely affected other students” (which could include failing to develop at the pace of others); or (iii) for safety reasons.<sup>50</sup> Any early termination of training, unless it resulted from illness or injury, counted as a “course fail”.<sup>51</sup> X7 was removed from the course after just two weeks because his failure to develop skills in close quarters combat (“CQC”) (hostage rescue tactics) was “adversely affecting other students”.<sup>52</sup> Had he been able to keep up with his colleagues, he might still have failed, but his attendance would have continued until the course finished on 16 March. Paradoxically, therefore, it was only X7’s early removal from the MPS course that made it possible for him to take part in the MASTS deployment of 3 March that led to Mr Grainger’s death.
- 8.33** X7’s superiors, who had been expecting him to be away on the course, must have known perfectly well what had happened. His sudden reappearance, earlier than anticipated, cannot have failed to excite comment, yet there is no indication of any prompt enquiry into the reasons for his premature return. X7 simply returned to his former duties as if nothing had happened, even resuming his command role as an OFC. Remarkably, it was not until after Mr Grainger’s death that GMP’s CFI, Inspector Williams,<sup>53</sup> saw X7’s course report and reviewed his failure to pass the CQC training.<sup>54</sup>
- 8.34** In a written statement to the Inquiry, the MPS CFI, Chief Inspector Trevor Clark, described the standard procedure by which the MPS notifies a visiting officer’s home force of the outcome of a training course:
- At the conclusion of a training course all results are notified to line managers. In the case of early termination of course, line managers are notified immediately. For non-MPS officers the course director (Inspector) notifies the visiting officer’s CFI of the result. Student officers are provided with a printout of their full training record to take away prior to departure, and a copy of the reasons for failure report would be sent or emailed to the home force.<sup>55</sup>
- 8.35** According to CI Clark, no documentary evidence to support the notification process has survived because the relevant MPS staff have retired and their email accounts have been deleted.<sup>56</sup> Nevertheless, he comments that “it is inconceivable [that] a student officer would be returned to their home force, less than halfway through an 8 week training course, without any notification being made”.<sup>57</sup> I see no reason to doubt that assertion.
- 8.36** The probable sequence of events, as far as it can be reconstructed from course records and a few surviving email messages, is as follows. The CTSFO course began on 16 January 2012. Twelve students participated, of whom two (X7 and Z15)

<sup>50</sup> Clark, witness statement, 20 March 2017, Bundle X/273.

<sup>51</sup> Clark, witness statement, 20 March 2017, Bundle X/274.

<sup>52</sup> Clark, witness statement, 20 March 2017, Bundle X/273.

<sup>53</sup> Marcus Williams, TS/6164:16–18.

<sup>54</sup> Marcus Williams, TS/6218:16–20.

<sup>55</sup> Clark, witness statement, 20 March 2017, Bundle X/274.

<sup>56</sup> *Ibid.* It may be that some records might have been retrieved had GMP made prompt disclosure of X7’s course failure.

<sup>57</sup> *Ibid.*

were GMP officers.<sup>58</sup> X7 told the Inquiry that he was intending to complete the CQC module, not the entire course.<sup>59</sup> By 8 February, however, the course instructors were expressing concern about his performance in that module.<sup>60</sup> On 10 February, they gave him two days to “demonstrate competency in the CQC skill areas”.<sup>61</sup> On 14 February, after X7 had failed the CQC module, the course director removed him from further participation.<sup>62</sup> Although CI Clark states that X7’s removal took place after only two weeks, the course record suggests that it was actually at the beginning of the fifth week. In any event it is clear that X7 finally left on or about 14 February.<sup>63</sup>

**8.37** The Inquiry has seen an email exchange between GMP’s Inspector Mark Nutter, the TFU operation team’s inspector,<sup>64</sup> and an officer from CO19 (as the Specialist Firearms Command of MPS was then known). The first message is from Inspector Nutter. Its subject heading is “[X7] Course Report”. It is timed and dated at 11:44 on 27 February 2012:

Thanks for allowing [X7] to train on part of the SFO course.

We will now be holding a case conference on [X7’s] future in relation to further CQC and associated live fire training.

Can you send on any course reports that you can directly to the CFI Insp Marcus Williams (copied in to this email) to enable this process to take place as soon as possible. Please copy me in to the correspondence.

Many thanks,

Mark Nutter<sup>65</sup>

**8.38** Although Inspector Nutter could not recall by what precise route he had found out about X7’s removal from the CTSFO course, he acknowledged that he had known about it “within a short time of X7 returning ... on or after 14 February 2012”.<sup>66</sup> Realistically, it is likely to have become common knowledge among officers belonging to GMP’s firearms department within a matter of days.<sup>67</sup>

**8.39** Strictly speaking, it should have been Inspector Williams, GMP’s CFI, and not Inspector Nutter, who was conducting this correspondence with the MPS, for it was the CFI’s responsibility to oversee the training of AFOs.<sup>68</sup> In breach of protocol, however, the TFU had taken it upon itself to arrange for X7 and Z15 to attend the MPS CTSFO course.<sup>69</sup> That was not merely discourteous; it amounted to a significant and, in the experience of Mr Arundale, unprecedented irregularity.<sup>70</sup> It produced the regrettable practical consequence that it was not until he received Inspector Nutter’s emails of 27 and 28 February, nearly a fortnight after the event, that Inspector Williams found out about X7’s failure to pass the course.<sup>71</sup> By the time he received X7’s course

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<sup>58</sup> Clark, witness statement, 20 March 2017, Bundle X/273.

<sup>59</sup> X7, TS/5402:15–5403:7.

<sup>60</sup> CQC training record, Bundle X/169.

<sup>61</sup> CQC training record, Bundle X/179.

<sup>62</sup> CQC training record, Bundle X/122.

<sup>63</sup> *Ibid.*

<sup>64</sup> Z15, TS/4479:7–18.

<sup>65</sup> Email exchange, Bundle Y/297.

<sup>66</sup> Mark Nutter, witness statement, 23 March 2017, Bundle Y/205, §25.

<sup>67</sup> Marcus Williams, TS/6244:17–25.

<sup>68</sup> Marcus Williams, TS/6214:11–6215:7.

<sup>69</sup> Marcus Williams, TS/6213:17–6214:10.

<sup>70</sup> *Supplementary (2nd) Report of Ian Arundale QPM*, 5 April 2017, §71.

<sup>71</sup> Marcus Williams, TS/6213:12–16.

report, probably on or shortly after 7 March,<sup>72</sup> the MASTS deployment of 3 March had already taken place.<sup>73</sup> That inevitably meant that Inspector Williams conducted his review of the course report in the light of his own knowledge that the officer concerned – for whose training and accreditation he himself was responsible – had, since failing the course, commanded a MASTS operation which had resulted in the fatal shooting of a member of the public.

- 8.40** Inspector Williams’s broad conclusion was that, during the CTSFO course, X7 had allowed himself to “become ‘overloaded’ when under pressure”,<sup>74</sup> by which he meant that X7 had constantly overcorrected in response to criticism without managing to achieve a satisfactory balance.<sup>75</sup> In my view, that summary fairly reflects the contents of the MPS report. It was not so much that X7 kept repeating the same mistakes as that he reacted to criticism by making different ones. The result was the same: he was unable to achieve the “progress of development”<sup>76</sup> for which his instructors were looking. Because it was his second failure to pass the same course, X7 could receive no further training in that particular tactical area.<sup>77</sup>
- 8.41** It is important to recognise the unusually exacting nature of the CTSFO course, which sought to train experienced AFOs in the most advanced skills.<sup>78</sup> However disappointing to the unsuccessful student, failure involved no ignominy. The feedback recorded in X7’s course report shows that he applied himself diligently throughout and, in some areas, earned the praise of his instructors. Whether an analysis of his performance should have resulted in the suspension or termination of his accreditation as an AFO or OFC is not for this Inquiry to say. On any view, however, such an analysis ought to have taken place long before it did, and pending its outcome X7 should not have been allowed to return to firearms duties.
- 8.42** The delay was not primarily the fault of Inspector Williams. Given that he was “out of force” between 28 February and 5 March, I think it would be harsh to condemn him for not obtaining the course reports relating to X7 and Z15 more swiftly than he did.<sup>79</sup> Thereafter, as CI Lawler acknowledged at the time,<sup>80</sup> Inspector Williams acted promptly enough, especially against the background of administrative turmoil that must have beset GMP’s firearms department in the immediate aftermath of Mr Grainger’s death. The primary cause of the delay was Inspector Nutter’s failure to notify Inspector Williams of X7’s removal from the course until the end of February, nearly two weeks after it had occurred. While it is true that it would ordinarily have been the MPS firearms department’s job to communicate the outcome of a visiting officer’s course to his home force’s CFI,<sup>81</sup> GMP’s TFU had chosen to bypass convention by liaising directly with the MPS. In those circumstances, it was scarcely surprising that CO19 should continue to deal directly with Inspector Nutter, rather than with Inspector Williams.<sup>82</sup> The fact remains, however, that Inspector Nutter, who by his own admission<sup>83</sup> learned of X7’s removal from the MPS course very soon after it happened, did not get around

<sup>72</sup> Marcus Williams, TS/6224:6–21.

<sup>73</sup> Marcus Williams, TS/6215:23–6216:2.

<sup>74</sup> Email, 15 March 2012, Bundle X/16.

<sup>75</sup> Marcus Williams, TS/6217:11–6218:15.

<sup>76</sup> CQC training record, Bundle X/174.

<sup>77</sup> Email, 15 March 2012, Bundle X/16.

<sup>78</sup> Nutter, witness statement, 23 March 2017, Bundle Y/205, §30.

<sup>79</sup> Marcus Williams, TS/6224:12–21.

<sup>80</sup> Email, 15 March 2012, Bundle X/15.

<sup>81</sup> Clark, witness statement, 20 March 2017, Bundle X/274.

<sup>82</sup> Nutter, TS/6578:14–6579:11.

<sup>83</sup> Nutter, witness statement, 23 March 2017, Bundle Y/205, §25.

to telling Inspector Williams or requesting a copy of X7's course report until his emails of 27 and 28 February.<sup>84</sup>

**8.43** Inspector Nutter's explanation for that delay betrayed an alarming degree of complacency, illuminating in the process the poor state of relations between the TFU and Firearms Training Unit ("FTU") in 2012.<sup>85</sup> It is not possible to convey its flavour without quoting his exchange with Mr Beer QC at some length:

Question: So it had been a fortnight on from his failure and you were asking for the course reports then?

**Answer: Yes.**

Question: Wouldn't you have wanted to know before then, to be able to hold a case conference on X7's future, exactly what the Met were saying about his reasons for failure?

**Answer: I was comfortable with the fact that there were no critical issues in relation to X7 and, therefore, I didn't see that there was a requirement for anything more urgent than what is detailed in that email<sup>86</sup> there, sir.**

Question: Why were you comfortable?

**Answer: Well, there are two factors: (1) X7, as I said before, did tell me about his failure on the course and gave some rationale why. And, also, I've –**

Question: What did he tell you?

**Answer: He told me that he had failed on a CQC element of that course, that he had not shown competency in that area of the course.**

Question: Sorry, you were moving to a second reason for your comfortable position?

**Answer: Yes, also because, when you send a student on an external course, to an external provider, if there were safety-critical issues, then they would contact you urgently and immediately, and that did not take place.**

Question: So you, I think, were asking in this email<sup>87</sup> for the reports to be sent to Marcus Williams, and why was that?

**Answer: Because Mr Williams was the CFI and he was in charge of training.**

Question: Therefore it fell to him to convene the case conference, is that right, in relation to X7?

**Answer: Yes, he would make an initial assessment of X7's future in relation to training, in particular things like his ability to take – become – a CTSFO, so it was important that Mr Williams got the reports.<sup>88</sup>**

**8.44** That was all very well, but when Inspector Williams finally received X7's course report, he got it not from the MPS but from Inspector Nutter in hard copy form,<sup>89</sup> from which it seems to follow that Inspector Nutter had effectively intercepted it:

Question: Between 28 February and about a fortnight later, did you possess X7's course reports?

**Answer: I can't remember, sir.**

Question: If you had been in possession of them, why were you in possession of them, from what you had said about them needing to go to Inspector Williams?

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<sup>84</sup> Bundle Y/297.

<sup>85</sup> As to the strained working relationship between Inspector Nutter and Inspector Williams, see section E of this chapter.

<sup>86</sup> Bundle Y/297.

<sup>87</sup> *Ibid.*

<sup>88</sup> Nutter, TS/6595:11–6596:20.

<sup>89</sup> Marcus Williams, TS/6219:7–16.

**Answer: If I had been in possession of them? Are you asking me why?**

Question: Yes, why would you be holding on to them?

**Answer: Well, I wasn't aware that I was holding on to them, sir, so ... I would have no reason to hold on to them, sir.**

Question: No. What we have is ... an email from a Met officer saying, "Z15 tomorrow, on the 28<sup>th</sup>, is going to come back with X7's course reports". We have that officer, Z15, saying, "Yes, I came back with some documents on the 28<sup>th</sup>". Then, a fortnight after that, we have a note in Inspector Williams's day book saying he obtained X7's course reports from you.

**Answer: Yes, sir.**

Question: You cannot remember whether you had them from the 28<sup>th</sup> for a fortnight?

**Answer: No, I don't recollect that.**

Question: If you had had them for that fortnight, what would be the good purpose for having them?

**Answer: The only good purpose would be to read them myself before I gave them to Inspector Williams.**

Question: Why would you be doing that?

**Answer: Just from my professional interest in one of the members of my team, and to assist me in understanding how he had done on the course.**

Question: Now you haven't any recollection, I think, over whether or not that is what occurred?

**Answer: No, sir, I can't remember whether that is what occurred or not.**

Question: Given you say in this email<sup>90</sup> that a case conference needed to be held, why was that not held proximately to the failure of X7 on the course, on 14 February?

**Answer: I don't know, sir.**

Question: Did you give any active consideration as to whether or not, in the light of the reasons for X7's failure on the course, on the 14<sup>th</sup>, that impacted in any way his ability to continue to perform the role of an AFO or, indeed, as an OFC?

**Answer: I considered that it didn't have an impact on his ability to carry out those roles.**

Question: Was that your job or was that the job of Inspector Williams?

**Answer: Ultimately, that would be the job of Inspector Williams.**

Question: We know he was not put in possession of the information to do that until after the death of Mr Grainger. Why was that?

**Answer: I don't remember, sir. I can't really answer that because I can't recollect.<sup>91</sup>**

**8.45** The likeliest explanation for Inspector Nutter's possession of X7's course report before it reached the CFI is that Z15 handed it to him, along with his own, upon his return to Manchester on 28 February following his removal from the CTSFO course.<sup>92</sup> Although Inspector Nutter had a legitimate interest in seeing course feedback relating to a member of his team of officers, he should have spoken to Inspector Williams first. What he was certainly not entitled to do was to delay Inspector Williams's access to information and material relating to training and accreditation:

Question: The decision actually fell, did it not, to the CFI, not to you?

**Answer: Yes.**

<sup>90</sup> Bundle Y/297.

<sup>91</sup> Nutter, TS/6597:12–6599:16.

<sup>92</sup> Nutter, TS/6613:4–12; Z15, TS/4475:24–4477:25.

Question: But by not being provided with the course notes, the CFI couldn't take the decision before 3 March, could he?

**Answer: No, sir.**<sup>93</sup>

**8.46** Inspector Nutter was unable to explain why the CFI had not been provided with the course notes before 3 March.<sup>94</sup>

**8.47** As the department responsible for training and accreditation, it was the job of the FTU, not the TFU, to decide how, if at all, X7's underperformance on the CTSFO course should affect his career.<sup>95</sup> Again, however, the TFU interfered in the process, this time insisting that it, rather than the FTU, should handle the question of X7's future as a firearms officer. Less than an hour after receiving Inspector Williams's email containing his review of X7's course report,<sup>96</sup> CI Lawler replied:

Myself and [Inspector Nutter] will deal with this matter as there are a number of different issues in relation to [X7] which need to be dealt with.<sup>97</sup>

**8.48** Despite having no idea what those "issues" might be, let alone why they should require the TFU to assume what would ordinarily have been his own responsibility, Inspector Williams tamely complied.<sup>98</sup>

**8.49** According to Inspector Nutter, the "issues" in question related to X7's career and welfare. X7's second failure of the CTSFO course meant that he no longer had a viable future in the operations team, and his involvement as a Principal Officer in the MASTS deployment that had led to Mr Grainger's death compounded the situation from the point of view of his own welfare.<sup>99</sup> At Inspector Nutter's suggestion, therefore, X7 left the operations team and returned to ARV duties. It does not appear that anybody consulted the CFI.

**8.50** Inspector Nutter made little attempt to conceal his conviction that he was uniquely well placed to decide such matters, by which he really meant that he, and not the CFI, should decide them. In a written statement which he made in response to Mr Arundale's supplementary report to the Inquiry,<sup>100</sup> he said that "failure to achieve the standard required for this [CTSFO] training would not automatically cause me to assume that an officer's ability to carry out MASTS operations would be compromised", adding the following comments:

24. [I]n 2012 I had a unique position of knowledge and experience which I would argue gives my assessment more credibility.

25. This is because, unlike any other Inspector or above within GMP at this time, I was a MASTS trained officer and had also attended and passed the CTSFO training provided by the MPS.

26. I was able to understand the differences between the levels required to be a fully competent MASTS officer compared with the higher level required to be a CTSFO and to pass the live fire training within that course.

27. I believe this gave me further insight and knowledge not available to others.

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<sup>93</sup> Nutter, TS/6612:20–25.

<sup>94</sup> Nutter, TS/6613:1–3.

<sup>95</sup> Marcus Williams, TS/6220:16–23.

<sup>96</sup> Email, 15 March 2012, Bundle X/16.

<sup>97</sup> Email, 15 March 2012, Bundle X/15.

<sup>98</sup> Marcus Williams, TS/6220:8–6221:1.

<sup>99</sup> Nutter, TS/6607:25–19.

<sup>100</sup> *Supplementary (2nd) Report of Ian Arundale QPM*, 5 April 2017.

28. It gave me clarity of understanding when it came to both X7 and Z15's position on their return from the MPS which enabled me to take a balanced and accurate view of the situation as a whole.<sup>101</sup>

**8.51** In that statement, Inspector Nutter did not name the “others” whose knowledge and experience he was contrasting with his own, and he displayed some reluctance to identify them during his oral evidence when Leading Counsel to the Inquiry tried to find out whom he meant. Eventually, however, Inspector Nutter agreed that the “others” he had in mind were those, including the CFI, who had the job of deciding the future of officers who failed the CTSFO course.<sup>102</sup>

**8.52** Given that Inspector Nutter made his statement of 17 April 2017 in response to the views expressed by Mr Arundale in his supplementary report of 5 April,<sup>103</sup> it is possible that he misunderstood Mr Arundale to be suggesting that any failure to pass CTSFO training necessarily implies that an officer's ability to conduct MASTS operations is compromised. In fact, neither of Mr Arundale's reports contains any such suggestion. Mr Arundale's point was that a course failure of the kind experienced by X7 and Z15 should lead to “a fast time review of the situation and a fully documented and detailed assessment of the officer's AFO status”.<sup>104</sup> Further, as he emphasised to Anne Whyte QC, Leading Counsel for GMP, such a review should be conducted by those charged with responsibility for training and accreditation:

Question: Do you agree with Mr Nutter that failure to achieve a pass for the extreme threat which is trained within the Met live fire CQC module doesn't automatically cause an officer's ability to carry out MASTS operations to be compromised?

**Answer: I would, ma'am, but what I would say is that that statement doesn't at all affect the opinion that I have given that the nature of some of these failures means that they should be assessed by the force itself formally, and not rely on the opinion of one individual outside of the training arena.**<sup>105</sup>

**8.53** There was no reason why Inspector Nutter should not have made representations to the CFI, but he should have left the final decision to those whose job it was to take it.

**8.54** I agree with the view of Mr Arundale that X7's removal from the CTSFO course should have led to an immediate assessment by the CFI of his continued status as an AFO.<sup>106</sup> Whether such a failure should ordinarily lead to the suspension or termination of an officer's AFO or (where relevant) command accreditation is not for this Inquiry to determine, although the circumstances of X7's removal from the MPS course tend to suggest that his basic competence as an AFO might have been easier to defend than his fitness to participate in MASTS operations. In this particular case, however, it is possible to conclude with some confidence that X7's removal from the CTSFO course had rendered his position as an OFC wholly untenable. That is because it was his second (and therefore final) unsuccessful attempt at completing the CQC module. As he himself told the Inquiry, he could not realistically expect to remain part of the operations team without the CTSFO qualification, which was a criterion for continued membership.<sup>107</sup> The resulting loss of an ability to participate in MASTS operations would in turn extinguish, or at the very least drastically reduce, his usefulness as a qualified OFC. For that reason, I cannot agree with Inspector Williams's assertion that

<sup>101</sup> Nutter, witness statement, 17 April 2017, Bundle Y/1124–1127, §§24–28.

<sup>102</sup> Nutter, TS/6599:24–6603:2.

<sup>103</sup> *Supplementary (2nd) Report of Ian Arundale QPM*, 5 April 2017.

<sup>104</sup> *Ibid.*, §76.

<sup>105</sup> Arundale, TS/7255:10–20.

<sup>106</sup> *Supplementary (2nd) Report of Ian Arundale QPM*, 5 April 2017, §§75–76.

<sup>107</sup> X7, TS/5405:16–5406:7.

X7's failure "made no difference to his participation in the operation on the 03.03.12 and would not have removed his accreditation to participate in a MASTS [deployment]".<sup>108</sup>

**8.55** On any view, X7 should not have been permitted to continue in any firearms role unless and until he had been formally assessed as being capable of doing so without danger to the public. As it was, nobody did anything until after he had commanded the Operation Shire MASTS deployment that resulted in the death of Mr Grainger. Although Inspector Nutter claimed that X7's own welfare was a factor in the eventual decision that he should leave the operations team, the reality is that the decision was all but inevitable on practical grounds alone. Having failed the CQC module twice, X7 no longer had a viable future as a member of the team. His return to ARV duties was consequently the best outcome for which he could realistically hope. Had X7's future operational status been considered promptly, as it should have been, he would not have taken part in the MASTS deployment of 3 March, let alone commanded it. As it was, it was not until some weeks later that he finally returned to ARV duties, his *E-fire* training record untarnished by any reference to either of his CTSFO failures.<sup>109</sup>

## D. Z15

**8.56** Although his actions did not contribute to the death of Mr Grainger, Z15 was another Principal Officer in the IPCC investigation following the fatal MASTS deployment of 3 March 2012. He tried to disable the stolen Audi by discharging RAM rounds into its tyres. According to his *E-fire* training record, he was an occupationally and operationally competent AFO on 3 March 2012, but that record did not disclose the fact that he had failed the same CTSFO training course as X7, the MPS instructors having removed him on 27 February 2012 for safety reasons.<sup>110</sup> The significance of the reason for Z15's early departure lies in the fact that his "breaches of safety protocol"<sup>111</sup> involved failures to demonstrate "AFO existing skill competencies"<sup>112</sup> rather than any advanced new skills covered by the CQC module, suggesting that his instructors would have been entitled to remove him from the course on the additional grounds that he had "failed to demonstrate competence in an existing skill".<sup>113</sup> In the view of Mr Arundale, Z15's safety breaches were "so fundamental and inherently dangerous" that he should have been immediately suspended from all AFO duties pending a full assessment of the situation.<sup>114</sup>

**8.57** Z15's removal from the course followed "breaches of weapon safety during cover and movement training".<sup>115</sup> It is important to point out that, like his GMP colleague X7, Z15 showed commendable commitment to the course and achieved impressive results in many aspects of the training. Further, during the first week of the course, before embarking on the CQC module, he had managed to achieve "the required standards of safety and weapon handling".<sup>116</sup>

**8.58** On 27 February, the students practised advanced CQC interception drills using live ammunition. It was Z15's performance during that exercise which led to his early

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<sup>108</sup> Marcus Williams, witness statement, 18 April 2017, Bundle Y/1128, §24.

<sup>109</sup> *Supplementary (2nd) Report of Ian Arundale QPM*, 5 April 2017, §72.

<sup>110</sup> Clark, witness statement, 20 March 2017, Bundle X/273.

<sup>111</sup> CQC training record, Bundle X/189.

<sup>112</sup> CQC training record, Bundle X/187.

<sup>113</sup> Clark, witness statement, 20 March 2017, Bundle X/273.

<sup>114</sup> *Supplementary (2nd) Report of Ian Arundale QPM*, 5 April 2017, §75.

<sup>115</sup> Clark, witness statement, Bundle X/273.

<sup>116</sup> CQC training record, Bundle X/193.

removal from the course. His instructors' feedback indicates that there were several occasions during the day when his actions were "unsafe and outside of the range orders".<sup>117</sup> There is no need to go through each of them in detail. Instead, I adopt the useful summary set out in an email message which GMP's CFI, Inspector Williams, was later to send to senior officers in the TFU:

**Safety Breaches.**

1. Moving with the weapon in the 'off aim' position and not the low port or high ready. Straight safety breach.
2. Repeat of the above on another run through. (Failure to adhere to range commands/ failure to follow drills).
3. Ran out in front of a colleague who was engaging a threat.
4. After being stopped and told about this, he has then immediately repeated the action and had to be physically stopped.
5. Whilst on the withdrawal phase [Z15] has brought his weapon up to aim at a target in front of him and has completely failed to see he was pointing his weapon at another student and instructor in a **high vis bib**. This instructor has had to shout "No!" several times and wave his hand to attract [Z15]'s attention. Again, [Z15] was physically moved by the instructor with him.
6. When at the front of the range [Z15] has engaged edged targets with numerous rounds despite being shouted at by an Instructor not to do so. This is a straight failure to comply with range orders as [Z15] has clearly fired when there was no threat present to engage.<sup>118</sup>

**8.59** In essence, therefore, Z15 committed a number of basic safety mistakes, in some cases repeating them after instructors had drawn them to his attention. His MPS instructors concluded his course assessment in these terms:

The above points are fundamental errors and are not acceptable at this stage of a course. Today was a dangerous environment for you as you were unable to process the task in hand, leaving it to the instructors around you to maintain the safe environment. This shouldn't have been the case as this was the last chance on the course to be in a live fire exercise and for you to show you were competent.

You failed to do this as evidenced above and for this reason you are being asked to leave the course.<sup>119</sup>

**8.60** It is right to record that Z15's lack of success did not prevent the MPS from offering him a second opportunity to take the course. When Z15 did so, in 2014, he passed the training and qualified as a CTSFO.<sup>120</sup> Nevertheless, I agree with the conclusion of Mr Arundale that Z15's safety breaches on the 2012 course were "so fundamental and inherently dangerous that I cannot envisage any force taking action other than immediate suspension from all AFO duties whilst the situation was fully assessed".<sup>121</sup>

**8.61** Inspector Nutter learned of Z15's removal from the course within 24 hours. As we have seen, at 11:44 on 27 February – the morning of the very day on which Z15 committed the safety breaches that led to it – Inspector Nutter sent an email message to a colleague from the MPS's CO19 branch, asking him to forward X7's course report

<sup>117</sup> CQC training record, Bundle X/271.

<sup>118</sup> Email, 15 March 2012, Bundle X/20 (bold in the original).

<sup>119</sup> Bundle X/272.

<sup>120</sup> Z15, witness statement, 20 March 2017, Bundle Y/120, §27.

<sup>121</sup> *Supplementary (2nd) Report of Ian Arundale QPM*, 5 April 2017, §75.

to GMP's CFI, Inspector Williams.<sup>122</sup> The officer from CO19 replied at 20:13 the same day, by which time Z15 had been told that he was being removed from the course:

Mark,

Unfortunately I have more developments for you on the GMP student front.

Today we had to ask [Z15] to leave the course for safety issues during cover and movement.

He has been fully de-briefed on these issues.

I will ask him to bring all of his feedback reports and [X7]'s when he returns to you tomorrow.

If we are in a position to, I will offer Z15 a second course which will be in November of this year.

Sorry to pass on more bad news.

Any questions re this please contact me.

Regards, etc.<sup>123</sup>

- 8.62** Although Z15 did not specifically recall bringing his own and X7's feedback reports with him when he returned north on 28 February, he accepted in his evidence to the Inquiry that he must have done so.<sup>124</sup> On his arrival in Manchester, he went to the TFU office, not the FTU, which was based elsewhere.<sup>125</sup> As he correctly acknowledged, the reports should have gone to the FTU rather than to his own superiors.<sup>126</sup> However, it was not strictly Z15's job to deliver them to their final destination. I think he was probably just asked to carry them back to Manchester, and that is what he did. It was for those to whom he handed the reports to ensure that they found their way straight to the FTU.
- 8.63** It would, of course, have been far better if Inspector Nutter's colleague at CO19 had complied with Inspector Nutter's entirely proper request that the reports be forwarded direct to GMP's CFI by email. That is almost certainly what would have happened had Z15 not unexpectedly failed the course within hours of CO19 receiving Inspector Nutter's email. The probability is that someone from CO19, realising that Z15 would be returning to Manchester the following day, decided instead to ask him to take hard copies of the reports with him. That was a misjudgement, as well as a departure from established procedure.<sup>127</sup> I agree with Inspector Williams's view that it represented "incredibly bad practice, to send an officer back to force with his own training records, especially when they relate to a fail".<sup>128</sup> It was one thing to provide the officer concerned with a copy of his own feedback, quite another to expect him to undertake the responsibility of delivering his own and another officer's course reports to his force's CFI.
- 8.64** Thus it was that Z15's report, along with X7's, came into the possession of Inspector Nutter, who retained them for the better part of two weeks. The result was that GMP's CFI, for whose attention they were actually destined, did not receive a copy of either report until 7 March. On 5 March, two days after the fatal deployment in Operation Shire, Inspector Williams sent an email message to his opposite number in the MPS, requesting copies of reports relating to the attendance at MPS training by Q9 and

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<sup>122</sup> Bundle Y/297.

<sup>123</sup> Bundle Y/296–297.

<sup>124</sup> Z15, witness statement, 21 March 2017, Bundle Y/138–140; Z15, TS/4473:17–4477:25.

<sup>125</sup> Z15, TS/4475:24–4476:15.

<sup>126</sup> Z15, TS/4477:3–25.

<sup>127</sup> Clark, witness statement, 20 March 2017, Bundle X/274.

<sup>128</sup> Marcus Williams, TS/6225:11–20.

other GMP officers.<sup>129</sup> The same day, he also sent a message (copied to Inspector Nutter) to the operations team's three sergeants, asking for copies of training records relating to those firearms officers whom the IPCC had designated as Principals.<sup>130</sup> It was probably in response to that email, and another message he sent the following day,<sup>131</sup> that Inspector Nutter finally surrendered<sup>132</sup> the course reports relating to X7 and Z15. By that time, not only had the MASTS deployment of 3 March already taken place, but Z15 had received a further safety warning while shooting on the GMP range.<sup>133</sup>

**8.65** On 15 March, after seeing Z15's course feedback, Inspector Williams set out his reaction in an email message of the same date to which I have already referred.<sup>134</sup> He expressed "grave concerns over [Z15]'s suitability to remain an AFO if this is an example of how he responds under pressure in normal training conditions",<sup>135</sup> adding that if Z15 had committed the same safety breaches on a GMP course, he would have been removed from the range at an earlier stage, thereby avoiding further errors:

... I believe that by not removing him, the MPS have allowed him to enter 'the effective state of mind' and his actions have deteriorated significantly as a result and have led to the extreme safety issues.

As such I would suggest we convene a panel to discuss this training report, as if we apply the GMP procedures then I have no choice but to NFT [No Further Training] [Z15] and effectively end his firearms career. Had this been a GMP course then [Z15] would not have been allowed to reach this position so we would not be facing this situation. (If you push hard enough then anyone will break).

For the time being, independent of the Op Shire restrictions, [Z15]'s authority to carry is suspended pending further discussion around this subject. It may be worth approaching this from a welfare angle to identify if there are other, external pressures on him which may be affecting his ability?<sup>136</sup>

**8.66** I do not share the criticism of the MPS implicit in those remarks. Public safety is an imperative that should override individual career interests. Arguably, it is only by testing a candidate to breaking point that trainers can discover whether the person concerned possesses the necessary resilience to undertake the most demanding firearms operations. There were, after all, other students on the same course who did not succumb to the pressure. In making those observations, I recognise that such brutal realism comes easily to a desk-bound critic with no personal expertise in the sphere of firearms operations, yet possessing all the privileges of hindsight. If (which I doubt) Inspector Williams meant that the MPS instructors should have protected Z15 from the more extreme rigours of training by "going easy" on him, I cannot agree. If (as I prefer to think) Inspector Williams meant only that Z15's performance on an uncharacteristically bad day did not fairly reflect the true level of his ability, that is a judgement which Z15's subsequent success as a firearms officer was to justify.

**8.67** That, however, truly is hindsight. At the time, nobody knew that Z15 would, within a couple of years, successfully complete a second MPS course and qualify as a CTSFO. Nobody knew that his actions during the Operation Shire deployment of 3 March

<sup>129</sup> Email, 5 March 2012, Bundle Y/302; Marcus Williams, TS/6228:25–6230:14.

<sup>130</sup> Email, 5 March 2012, Bundle Y/304; Marcus Williams, TS/6230:15–6231:22.

<sup>131</sup> Email, 6 March 2012, Bundle Y/309.

<sup>132</sup> Marcus Williams, TS/6219:7–16.

<sup>133</sup> Email, 15 March 2012, Bundle X/20; Z15, TS/4482:18–4483:14.

<sup>134</sup> Email, 15 March 2012, Bundle X/20.

<sup>135</sup> Email, 15 March 2012, Bundle X/20.

<sup>136</sup> Email, 15 March 2012, Bundle X/21.

2012 would ultimately prove not to have been instrumental in its fatal outcome, nor could anybody seriously claim that Z15 should be permitted to take part in operations team deployments pending a full investigation into the reasons for his failure of the MPS course. It is thus entirely fortuitous, and not the result of sound judgement on Inspector Nutter's part, that his culpable delay in forwarding Z15's course report to Inspector Williams did not produce more serious consequences.

**8.68** I have no doubt that Inspector Williams was right to suspend Z15's authority to carry firearms while his failure on the MPS course was examined. Even if he had been able to speak to Z15 after 3 March and hear his side of what had happened on the course,<sup>137</sup> he could not realistically have done otherwise. There was no alternative to "a fully documented and detailed assessment"<sup>138</sup> of Z15's AFO status. That such an assessment did not take place until after 3 March was, as in the case of X7, substantially Inspector Nutter's fault for delaying the delivery of Z15's course report to the FTU.

**8.69** In accordance with Inspector Williams's suggestion,<sup>139</sup> the FTU convened an Incident Review Panel, which duly met on 26 March 2012. Present, apart from Z15 himself, were Supt Giladi, CI Lawler, Chief Inspector Tinsley, Inspector Williams, Inspector Nutter and another officer who took notes.<sup>140</sup> At the meeting, Z15 gave his own view of what had happened on the course, accepting much of the criticism that his instructors had recorded but explaining that he had "had a bad day".<sup>141</sup> Inspector Williams moderated the assessment he had set out in his email of 15 March, expressing the view that the meeting should "note Z15's course report and not record as extreme safety".<sup>142</sup> After some discussion, the panel decided that Z15 should undergo "developmental" (i.e. remedial) training, after which he would be allowed to repeat the MPS advanced course.<sup>143</sup> Meanwhile, Supt Giladi directed: "no safety warning to be recorded".<sup>144</sup>

**8.70** I do not criticise the panel's decision to allow Z15 an opportunity to remedy the shortcomings – serious as they were – that he had displayed on the CTSFO course. What seems extraordinary is the refusal to record any safety warning. Z15 himself was at a loss to explain it:

Question: Do you know why, not even in the context of Inspector Williams's email saying that there were six safety warnings if this was a GMP course, they did not record a safety warning against your record?

**Answer: I don't know, sir.**<sup>145</sup>

**8.71** As I have already noted, subsequent events were ultimately to vindicate the panel's view that Z15 should receive another chance; he completed his remedial training on 12 April 2012,<sup>146</sup> and in March 2014 he finally qualified as a CTSFO.<sup>147</sup> However, I find it impossible to comprehend, let alone justify, what amounted to a decision to "doctor" Z15's record by pretending that nothing had gone wrong in the first place. It

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<sup>137</sup> Marcus Williams, TS/6242:17–18.

<sup>138</sup> *Supplementary (2nd) Report of Ian Arundale QPM*, 5 April 2017, §76.

<sup>139</sup> Email, 15 March 2012, Bundle X/21.

<sup>140</sup> Incident Review Panel notes, Bundle Y/130–133.

<sup>141</sup> Incident Review Panel notes, Bundle Y/130.

<sup>142</sup> Incident Review Panel notes, Bundle Y/132.

<sup>143</sup> Incident Review Panel notes, Bundle Y/132–133; see also Remedial Course Notes, Bundle Y/135.

<sup>144</sup> Incident Review Panel notes, Bundle Y/133.

<sup>145</sup> Z15, TS/4484:19–24.

<sup>146</sup> Remedial Course Notes, Bundle Y/135.

<sup>147</sup> Z15, witness statement, 20 March 2017, Bundle Y/120, §27.

raises a natural suspicion that GMP accorded higher priority to the career prospects of one of its officers than it was prepared to accord to the safety of members of the public (not to mention Z15's colleagues) or to a respect for the truth. The omission of any reference to X7's or Z15's CTSFO course failures from their *E-fire* records does nothing to dispel that suspicion.

**8.72** The *E-fire* database was a GMP computerised firearms recording system.<sup>148</sup> It seems to have been semi-automated, in the sense that, while it was supposed to update the training records of individual officers automatically, it nevertheless required an administrator to “input data manually on to a course module”.<sup>149</sup> Like any computerised system, *E-fire* was only as reliable as the data transferred (“inputted”) into it from paper records, which meant, of course, that it was not immune to human error.<sup>150</sup> The period between 2008 and 2012 was a turbulent one for GMP's firearms department because the Force had lost its full training licence following the death of PC Terry, and was subject to an NPIA development plan.<sup>151</sup> In effect, the NPIA had placed the Force's FTU in “special measures”.<sup>152</sup> As a result of budget reductions, the FTU was struggling to implement the development plan.<sup>153</sup>

**8.73** In September 2011, when Inspector Williams took over the management of GMP's FTU, he found what he called “problems around the running and updating of the electronic firearms training database, called *E-fire*”.<sup>154</sup> At about the same time, the system administrator, whose job it was to update the system, left the department.<sup>155</sup> To cover the vacancy left by his departure, Inspector Williams had to recruit temporary replacements:

In order to try and bridge the gap with the data inputting we utilised non firearms officers who were on restricted duties. There were difficulties with the use of these officers. The officers did not know how to submit the information required, nor what information was relevant and what was not. The officers did not have a firearms background and were not instructors. It became increasingly difficult to identify just how accurately they had input the data or indeed what information had been updated. I have no doubt at all there are gaps in the *E-fire* records from this period, or that some of the records are not as comprehensive as they would have been had an NFI [national firearms instructor] completed them.<sup>156</sup>

**8.74** By February 2012, Inspector Williams had managed to obtain the funding to recruit additional staff and was able to dedicate one of his constables to the task of updating *E-fire*:

... [W]ith this influx of new staff into the unit, I was now able to dedicate a Constable to the role of dealing with *E-fire*. As they became more familiar with the system, it was suspected that the *E-fire* system was no longer working as it was designed to operate. For example, *E-fire* no longer generated the automatic e-mails to the officers and supervisors. It was very difficult to identify who had missed training events. When we tried to have this problem fixed by approaching the Force IT section we discovered that Mr Judic had also been made redundant and there was no one in the Force with the knowledge of the system which would allow them to fix it.<sup>157</sup>

<sup>148</sup> Mark Judic, witness statement, 26 February 2015, Bundle H/253.

<sup>149</sup> *Ibid.*

<sup>150</sup> Simon Pemberton, witness statement, 23 December 2014, Bundle H/263.

<sup>151</sup> Marcus Williams, witness statement, 4 September 2015, Bundle H/275.

<sup>152</sup> Marcus Williams, TS/6164:4–5; Arundale, TS/6829:11–22.

<sup>153</sup> Marcus Williams, witness statement, 4 September 2015, Bundle H/276.

<sup>154</sup> *Ibid.*; Marcus Williams, TS/6169:6–19; TS/6202:1–7.

<sup>155</sup> Marcus Williams, witness statement, 4 September 2015, Bundle H/276.

<sup>156</sup> Marcus Williams, witness statement, 4 September 2015, Bundle H/277.

<sup>157</sup> *Ibid.*

- 8.75** Although Inspector Williams does not name the constable who was responsible for maintaining the *E-fire* database and who approached the Force IT section, Mark Judic's witness statement records "some support calls for *E-Fire* [sic] from officer Z15" during the period leading up to 6 June 2012.<sup>158</sup> In the same statement, Mr Judic says that, on 13 June 2011, he had been informed that "the main administrator for the *E-Fire* [sic] system had changed to officer Z15".<sup>159</sup> On the other hand, there is evidence to suggest that, by April 2012, PS Whittle, now Deputy CFI again (see paragraph 8.78), had assumed some degree of responsibility for updating training records.<sup>160</sup>
- 8.76** While it remains uncertain whether Z15 was the officer responsible for maintaining the *E-fire* training database during the first three months of 2012, there is no doubt that he was familiar with the system and continued to have access to it during the weeks following 3 March 2012.<sup>161</sup> In those circumstances, given that Z15 had been entrusted with the task of delivering his own and X7's course reports to GMP's firearms department, it would be natural to assume that he would update *E-fire* with both officers' course results at the same time. The fact that both records are missing from the database tends to support that assumption, as does Inspector Williams's explanation that a failure to bring training sheets back from a training venue (particularly, perhaps, an external one) might account for the absence of a record on the *E-fire* system.<sup>162</sup> However, it does not necessarily follow that the omissions of X7's and Z15's CTSFO course results were deliberate or, even if they were, that they were unauthorised. For one thing, failures were not the only training course outcomes that did not find their way onto the *E-fire* system. To take a particularly relevant example, the database contains no record of the external (West Midlands) specialist firearms officer ("SFO") training course that Z15 passed in 2013.<sup>163</sup>
- 8.77** Given the practical difficulties described by Inspector Williams (see paragraphs 8.73 and 8.74), there is more than one possible explanation for the absence from the *E-fire* record of any reference to the CTSFO course which X7 and Z15 had attended unsuccessfully. By far the likeliest is that Inspector Nutter's "interception" of the course reports meant that it was he, and not Z15, who eventually delivered them to the CFI.<sup>164</sup> It is therefore unlikely that Z15 ever had an opportunity to update *E-fire* while the reports were in his physical possession.<sup>165</sup> Their omission from the database was probably the result of oversight, and another unintended consequence of Inspector Nutter's interference in the training and accreditation process.

## E. Relations between GMP's TFU and FTU

- 8.78** By the time of the events with which this Inquiry is concerned, the TFU and FTU were not co-operating as harmoniously as they should have been. At a senior level, there was a degree of friction between the two branches. The heart of the problem lay in a failure by elements in the TFU's senior management to respect the FTU's legitimate prerogatives. It seems unlikely that the CTSFO course which X7 and Z15 attended

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<sup>158</sup> Judic, witness statement, 26 February 2015, Bundle H/256.

<sup>159</sup> Judic, witness statement, 26 February 2015, Bundle H/255.

<sup>160</sup> Email, 16 April 2012, Bundle Y/135.

<sup>161</sup> Judic, witness statement, 26 February 2015, Bundle H/256.

<sup>162</sup> Marcus Williams, TS/6201:1–7. The fact that Inspector Williams offered the explanation in the context of refresher training that X7 had not in fact completed does not undermine his underlying implication that hard copies of training course records form the foundation of *E-fire* entries.

<sup>163</sup> Z15, witness statement, 20 March 2017, Bundle Y/119, §§23–25.

<sup>164</sup> Marcus Williams, TS/6219:7–16.

<sup>165</sup> Z15, TS/4477:3–25.

during the first weeks of 2012 was the first occasion on which the TFU had bypassed the correct channels by organising training for its officers without consulting the FTU. PS Whittle was Inspector Williams's Deputy CFI. During the five-month interval between the removal in August 2011 of the previous CFI, Inspector Jonathan Clarke, and the appointment in February 2012 of Inspector Clarke's successor, Inspector Williams, it was PS Whittle who had carried out the CFI's functions.<sup>166</sup> He regarded the tension between the TFU and the FTU as a communication problem:

Question: Were you aware that there was an issue over the operations branch or department [i.e. the TFU] conducting, effectively, their own booking of training?

**Answer: I was aware, sir, yes.**

Question: What was the issue?

**Answer: The issue in relation to that was that the – it was more of a communication problem between the CFI and the Inspector for the CTSFOs.**

Question: Inspector Nutter, is that?

**Answer: Inspector Nutter, yes. His job was to book the courses, but there was a communication issue between us and Inspector Nutter in relation to who was going and when they were going.**

Question: A "communication issue" can cover a number of sins.

**Answer: We didn't know who was going and when.**

Question: Right. Was that quite a significant problem?

**Answer: Well, yes.**

Question: Your *raison d'être* in firearms training was either to provide training or get an external provider to provide it?

**Answer: Yes, yes.**<sup>167</sup>

**8.79** Where PS Whittle saw a "communication problem", I detected a clash of personalities between Inspector Nutter and Inspector Williams. Both are evidently capable and experienced officers. Inspector Williams had been selected to carry out the extremely challenging task of restoring the FTU's damaged reputation in accordance with the NPIA development plan and, in the process, regaining the Force's full training licence. Of the two men, he struck me as the more reflective. Inspector Nutter was so highly regarded that, by the time he came to give evidence to the Inquiry, he had been seconded as a member of the High Threat and Counter Terrorism Armed Policing Team at the National Counter Terrorism Policing Headquarters.<sup>168</sup> He was the more abrasive of the two men, at times displaying an impatience that might easily be mistaken for arrogance.

**8.80** A frosty exchange of email messages reveals something of the strained nature of their professional relationship. This took place a few days after Mr Grainger's death. The subject heading was "Training records". On the afternoon of Monday 5 March 2012, anticipating an approach from the IPCC investigators, Inspector Williams wrote to a number of officers within the TFU, copying his message to their inspector, Mark Nutter:

Dear All,

In light of the weekend's incidents it is likely I will be asked to provide training records for the principals, in particular records concerning MASTS. I don't have any records for the

<sup>166</sup> Whittle, TS/6281:11–25.

<sup>167</sup> Whittle, TS/6298:3–25.

<sup>168</sup> Nutter, TS/6568:19–24.

training which has taken place in the Met, although I believe [redacted] may have some on a memory stick.

Please would you check your records/memories and forward anything you have to me.

Thanks<sup>169</sup>

**8.81** That civil request provoked a decidedly brusque response from Inspector Nutter, who (it will be remembered) still had X7's and Z15's MPS training records in his personal possession. Late the next day, he sent the following reply to Inspector Williams:

Marcus,

In view of the nature of the incident, I suggest that you contact the MPS CFI directly whilst also checking with your NFI, [redacted], as to what records he holds.

I have also spoken to Tony Hughes, who was assistant PIM [Post Incident Manager] on the night, and we both agree that the principal officers should not be given this task and should not be trying to establish what they may have done "from memory". The correct channels would be GMP CFI to MPS CFI. I believe that given the circumstances ... CO19 will bend over backwards to help on this matter.

Thanks<sup>170</sup>

**8.82** To Inspector Williams, his colleague's reference to "the correct channels" must have seemed the height of impudence. Nevertheless, in an email message the same evening, addressed to Inspector Nutter but this time copied only to Inspector Tony Hughes, the Assistant Post Incident Manager, Inspector Williams reacted with considerable restraint:

Hi Mark,

Thanks for the reply I think. A tough time for all as I can see from your response.

I am aware of the correct channels and had these been followed in the first place I wouldn't be making the request now.

I have been told that various records have been sent back to Force with various people. There have been difficulties as these records are either too sensitive or too large to e-mail. I'm aware that some have been brought back on memory sticks but then our policy changed, creating further problems.

What I am trying to do is get whatever records we do have together to prevent additional difficult questions, such as why the training wasn't arranged through the CFI and the records sent back there in the first place.

My reference to 'memory' was in relation to when training has happened and who was given the records.

I would never dream of placing additional demands on principal officers. I'm sorry if that's the impression I gave.<sup>171</sup>

**8.83** It was not as if this was the first time Inspector Williams had raised the TFU's failure to go through "the correct channels":

Question: I think you probably knew the correct channels had not been followed at the time the course had been arranged, you just didn't raise an issue at the time. Is that right?

**Answer: I did raise issues.**

Question: Did you? What did you say?

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<sup>169</sup> Email, 5 March 2012, Bundle Y/304.

<sup>170</sup> Email, 6 March 2012, Bundle Y/306.

<sup>171</sup> Email, 5 March 2012, Bundle Y/309.

**Answer: I challenged Mark Nutter about it, on a number of occasions, the officer arranging the courses. That was unsuccessful, so I raised it with Mr Lawler.**

Question: So what was your challenge to Mr Nutter?

**Answer: It was just that it was causing me significant difficulties in terms of monitoring officers' training, knowing who was doing what, what they were being qualified in, being able to Q/A the training they were receiving, making sure it was in line with GMP training policies and practices. His argument, which I'm sure he'll tell you, was that he had a requirement to get GMP match-ready for the Olympics, to get enough staff qualified with the Metropolitan Police's operating systems, et cetera. So whilst he recognised the difficulty I was in, I think his exact words were, because they have stuck with me for quite a long time, are, "I don't take orders from Inspectors".**

Question: So you went to a Chief Inspector, to Mr Lawler?

**Answer: Yes, sir.**

Question: Did you get any joy with the Chief Inspector?

**Answer: He assured me he would speak to Mark and put an end to that practice.**

Question: When was this, approximately?

**Answer: I think it happened a few times, and it will have been before this incident in March. The frustrating thing is that it is in Mr Lawler's day book, and I am well aware that he has destroyed his day book, so ...**

Question: What are you aware is in Mr Lawler's day book?

**Answer: That he has put a comment in that he would – he apologised to me – and that he would manage his other Inspectors more efficiently.**

Question: How do you know it was in his day book?

**Answer: Because he wrote it down and asked me to sign it.**

Question: That kind of exchange, and the signing of a day book, sounds like quite a significant issue. It is not every day that the Chief Inspector is asking an Inspector from operations into training to countersign a day book?

**Answer: No, sir, it was a very frustrating time for me.<sup>172</sup>**

**8.84** Inspector Nutter did not dispute that he had played some part in arranging for TFU officers, including X7 and Z15, to undergo external training in the MPS area, but denied that it had led to friction between himself and the CFI.<sup>173</sup> Mr Beer QC pressed him on the point:

Question: Did that cause, your involvement in that process, an issue with Inspector Marcus Williams?

**Answer: Not that I am aware of, sir.**

Question: He told the chairman that he challenged you about it on a number of occasions and you said words to the effect of, "I've got to get GMP match-ready for the Olympics", and he challenged you and you said, "I don't take orders from Inspectors". Did that happen?

**Answer: I don't remember that conversation, sir. That is not the kind of language I would have used with a fellow officer and certainly not another Inspector. However, I did have my portfolio, and my portfolio was to get the team match-fit, and, obviously, Mr Williams had his area of business, and I do believe that Mr Williams would have been aware of that process because millions of pounds were being put into Greater Manchester Police and with other large metropolitan forces to make sure we had all these officers trained. There was a government structure around that, which meant we would have regular meetings with our colleagues from other forces to manage**

<sup>172</sup> Marcus Williams, TS/6233:6–6235:3.

<sup>173</sup> Nutter, TS/6575:23–6576:3; TS/6577:24–6578:4.

**this process, and the CFI, the operational lead Inspector, which was myself, and also the head of the unit, which was Mr Lawler, were all invited to those meetings, and these started in around about 2009 and went on for several years. So the process of training officers in Greater Manchester Police to become CTSFOs was well-known and completely transparent.**

Question: He said it reached such a head that he took the issue up with Chief Inspector Lawler. Chief Inspector Lawler apologised to him. A note was made in Chief Inspector Lawler's day book which was countersigned by Marcus Williams, and Chief Inspector Lawler promised that he would take it up with you. Were you aware of any of that?

**Answer: No, sir. The only thing that I would be aware of would be the fact that Mr Lawler, as our sort of manager of that team, would have often had conversations with both Mr Williams and myself around improving team communications, but not speaking to me in that way about an issue with Mr Williams, no.**

Question: So the friction that Inspector Williams told the chairman about two days ago, that didn't happen?

**Answer: Not in the way that Mr Williams has described, no, sir. I don't recognise that as being the level of issue that Mr Williams has indicated.<sup>174</sup>**

**8.85** Having seen both men give evidence on this point, I find the account of Inspector Williams more credible. Despite professional efforts by both officers to suppress it, their mutual antagonism is quite palpable in the email chain, and the evidence of PS Whittle tends to confirm that by early 2012 it had become a significant problem.<sup>175</sup> The source of the difficulty was undoubtedly the TFU's practice of organising external training for its AFOs with only minimal reference to the FTU, something unique in the experience of Mr Arundale.<sup>176</sup> It may be that the FTU's ineffectiveness in carrying out the NPIA development plan had contributed to the low regard in which Inspector Nutter appeared to hold the FTU. There is also some force in Inspector Nutter's point that he had the urgent task of getting his AFOs "match-fit" in time for that summer's London Olympic Games. He seems to have regarded the "regular meetings" that had been taking place since 2009 – meetings to which GMP's CFI had been invited – as having generated the necessary degree of "transparency".<sup>177</sup> Transparency, however, was not enough. It was the job of the CFI, not Inspector Nutter, to manage and oversee GMP firearms training, and the very least the CFI was entitled to expect from the TFU was a scrupulous respect for the FTU's proper sphere of responsibility.

**8.86** Inspector Williams's frustration at seeing his department bypassed, if not ignored, by the TFU was thus entirely justified. The blame for the breakdown in communication lies not with his department, but with the TFU. Inspector Nutter should not have interfered as he did in the process of organising AFOs' external training; still less should he have delayed the delivery of course reports to the CFI. At the same time, it was not all Inspector Nutter's fault. I see no reason to doubt Inspector Williams's evidence that he had raised his concerns with CI Lawler before March 2012, without result. If CI Lawler took any measures to remedy the situation, they produced no discernible improvement. The fact that, thereafter, Inspector Nutter felt able not only to carry on organising his officers' external training but even to intercept their course reports suggests to me that CI Lawler somehow left him with the impression that he could do so with impunity. As head of the TFU, therefore, CI Lawler bears some responsibility for the unhappy state of affairs I have described. It leaves me with the overall impression that within GMP's TFU, the healthy *esprit de corps* to which any specialist police

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<sup>174</sup> Nutter, TS/6576:1–6577:21.

<sup>175</sup> Whittle, TS/6298:3–25.

<sup>176</sup> *Supplementary (2nd) Report of Ian Arundale QPM*, 5 April 2017, §71; Arundale, TS/6926:19–6927:7.

<sup>177</sup> Nutter, TS/6576:12–6577:3.

department should aspire had begun to degenerate into an unhealthy exceptionalism manifesting itself in a disdain for the views of those who did not belong to it.

- 8.87** In his evidence to the Inquiry, Mr Kevin Nicholson, the firearms lead within the specialist operations faculty at the College of Policing, was at pains to emphasise the mutual dependency of firearms operations and training.<sup>178</sup> Where the heads of a force's firearms operational and training departments are no longer in effective communication or are at loggerheads, it is only to be expected that serious problems of the kind identified in this chapter will arise.
- 8.88** When the IPCC (as it then was) conducted its investigation into the death of Mr Grainger, the Force did not reveal that X7 and Z15 had failed their CTSFO course. Mr Mark Williams, Firearms Training Manager for the Serious Organised Crime Agency (SOCA, now the National Crime Agency), was asked to help IPCC investigators with "firearms training aspects" relating to the armed deployment of 3 March 2012.<sup>179</sup> He attended the GMP Firearms Training Centre on 24 July and 25 July 2013 and looked at the training records of the relevant officers, including X7 and Z15.<sup>180</sup> Inspector Marcus Williams and PS Whittle were both present. Although Mr Mark Williams found an entry referring to Z15's return on 27 February 2012 from the CTSFO course, he was not given the reason for it, nor was he told anything about X7's attendance on the same course. It was not until March 2017, when he saw some of the email messages referred to in this chapter (see section C), that he learned that both officers had failed the course.<sup>181</sup> Inspector Williams apologised for his part in not disclosing the position to Mr Mark Williams, whom he described as a friend of his.<sup>182</sup>

## F. Y19

- 8.89** "Y19" was the deployment's tactical adviser ("TA") at the time of Mr Grainger's death. He had taken over that role from "Q3" during the afternoon of 3 March. It was the first occasion on which Y19 had acted as TA in a MASTS operation.<sup>183</sup> Further, since he had never been trained as a MASTS AFO in accordance with the national curriculum, he was not occupationally competent to act as TA in a MASTS operation.<sup>184</sup> That was not a mere technicality,<sup>185</sup> nor, as Y19 candidly acknowledged, was it a deficiency that Y19's previous observation of MASTS training could be expected to remedy:

We were watching the tactics I think over I think it was a two- or three-hour period, so we watched numerous run-throughs of numerous scenarios, and whilst they were extensive, I mean, to come away from that thinking, "Well, does that now make me MASTS TAC qualified?" I don't know, I just believed you should practise what you preach and if you have done that ... operationally, so then it made you much better and provides better experience in advising somebody rather than somebody who has just watched a training session ... I realised that, "Well, I am limited in that, because I have never actually physically done that, but I have watched a lot of scenarios".<sup>186</sup>

<sup>178</sup> Kevin Nicholson, 16 February 2018, TS/57:4–17.

<sup>179</sup> Mark Williams, witness statement, 15 March 2017, Bundle X/275, §5.

<sup>180</sup> Mark Williams, witness statement, 15 March 2017, Bundle X/275, §7.

<sup>181</sup> Mark Williams, witness statement, 15 March 2017, Bundle X/275, §10.

<sup>182</sup> Marcus Williams, TS/6244:2–6245:9.

<sup>183</sup> Y19, Operation Idris interview, 29 October 2014, Bundle L/123, §136; Bundle H/134; Bundle L/136.

<sup>184</sup> Arundale, TS/6930:17–6931:10.

<sup>185</sup> Pemberton, expert report, Bundle I/1061.

<sup>186</sup> Y19, TS/3170:23–3171:8; TS/3172:4–6.

**8.90** I find that refreshingly sensible approach, which happens to accord with the view of Mr Arundale,<sup>187</sup> far more persuasive than the efforts of experts instructed on behalf of the defence for Sir Peter Fahy in the health and safety prosecution of GMP<sup>188</sup> to minimise the practical significance and impact of Y19's lack of occupational competence as a TA.

**8.91** As Mr Arundale explained, "a tactical advisor who is not trained and experienced in MASTS will be of limited use to a SFC/TFC and may not foresee, and therefore be unable to proactively advise upon, potential risks and pitfalls associated with specialist tactics and equipment that they are not sufficiently familiar with or competent in relation to".<sup>189</sup> That was a particularly important consideration in the MASTS deployment of 3 March 2012:

Question: It may be suggested that in this case, in reality what the TAC adviser was likely to add to decision making, where the type and tactic and contingency were both obvious, was very limited. Do you agree with that suggestion or not?

**Answer: No, I think particularly in this deployment, any deployment involving advanced tactics or MASTS needs particularly good quality tactical advice to ensure that all potential contingencies, all relevant options and tactics are considered and available if appropriate.**<sup>190</sup>

**8.92** Mr Arundale was too polite to add that access to high-quality advice is even more essential where, as in the case of Supt Granby, the TFC is out of his depth.

**8.93** It was not Y19's fault that he was performing a role for which he did not possess the necessary qualification and skills. In spite of his private misgivings, he assumed that he was occupationally and operationally competent to advise in a MASTS operation because nobody told him otherwise.<sup>191</sup> He acted reasonably in trusting the judgement of those whose responsibility it was to ensure compliance with the National Police Firearms Training Curriculum. Unfortunately, they had overlooked a change to the curriculum's F2 module dating back to June 2011. The CFI at the time had missed it, and so did Inspector Williams.<sup>192</sup> Even after the death of Mr Grainger, a review conducted by GMP's firearms department mistakenly implied that Y19 had been qualified to act as a MASTS TA,<sup>193</sup> and as late as November 2014 Inspector Williams was making the same assertion in a witness statement prepared in respect of the health and safety prosecution of GMP.<sup>194</sup>

**8.94** Anyone who has ever had to confront the problem of keeping pace with a constant stream of amendments to voluminous official documents will know how easy it can be to miss something important. However, Mr Arundale described a well-established system for communicating such changes to local forces:

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<sup>187</sup> Arundale, TS/6931:22–6932:9.

<sup>188</sup> Pemberton, expert report, Bundle I/1061; David Sturman, expert report, Bundle I/1032. GMP's defence was in response to the prosecution of Sir Peter Fahy, in his capacity as Chief Constable, for an alleged offence contrary to the Health and Safety at Work etc. Act 1974, arising out of the events leading to Anthony Grainger's death.

<sup>189</sup> *Report of Ian Arundale QPM*, 4 November 2016, §180.

<sup>190</sup> Arundale, TS/6932:22–6933:6.

<sup>191</sup> Y19, TS/3165:13–24.

<sup>192</sup> Q6 (Marcus Williams), witness statement, 4 September 2015, Bundle H/277, §277.

<sup>193</sup> Review, Bundle X/4. According to an accompanying email message, the officers who conducted the review were CI Lawler, Inspector Williams and Inspector Nutter: Bundle X/1.

<sup>194</sup> Q6 (Williams), witness statement, 7 November 2014, Bundle H/247.

Question: What was the process for notification of changes to the national curriculum at that time?

**Answer: There was a direct electronic process to forces, to chief firearms instructors and others, notifying them of any changes to the curriculum. There would also be a series of national briefing sessions throughout the year, chief firearms instructors' conferences, there were a number of methods for communicating any substantive changes to the curriculum. This was an important change.**<sup>195</sup>

**8.95** There is, therefore, no excuse for the FTU's failure to register and implement the amendment.

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<sup>195</sup> Arundale, TS/6931:11–21.



# Chapter 9: Post-Incident Events and Procedure

## A. Could Anthony Grainger's life have been saved?

- 9.1** The most urgent action following the shooting of Anthony Grainger was to secure prompt medical attention for his injuries. "Q9" fired the fatal shot at or about 19:08 (see Chapter 5). As soon as his colleagues realised what had happened, they moved as swiftly as they could to administer first aid and trauma care.<sup>1</sup> After some debate as to whether the team should summon an ambulance or drive Mr Grainger to hospital themselves, "W4" informed the tactical adviser ("TA"), "Y19", by radio that a shot had been fired and an ambulance would be required.<sup>2</sup> The ambulance service received the summons at 19:13.<sup>3</sup> Within two minutes, an ambulance set out. After some difficulty identifying the precise location of the incident, the crew reached the scene at 19:28.<sup>4</sup> By that time, Mr Grainger had already died; indeed, he had lost consciousness within seconds of being shot, well before the authorised firearms officers ("AFOs") managed to extract him from the stolen Audi (see Chapter 5).
- 9.2** The projectile fired by Q9 penetrated both lungs and the pulmonary trunk of Mr Grainger, causing shock and massive internal haemorrhage.<sup>5</sup> It was the opinion of Dr Brian Rodgers, supported by Dr William Lawler, both distinguished and immensely experienced forensic pathologists, that death, while not instantaneous, would have resulted "very, very quickly", within "a matter of minutes".<sup>6</sup>
- 9.3** After Mr Grainger was shot, police officers and paramedics at the scene did their utmost to save his life. His injuries were not survivable, however, and there was nothing anyone could have done that might have prevented his death.

## B. Post-incident management and procedure

- 9.4** The right to life protected by Article 2 of the European Convention on Human Rights includes a procedural duty to conduct a prompt, effective and independent investigation into any death caused by a police officer or other agent of the State. In cases involving deaths caused by police officers in England and Wales, the principal guarantee of the investigation's independence is the statutory duty to refer such incidents to the Independent Police Complaints Commission ("IPCC").<sup>7</sup>
- 9.5** At the time of the events with which this Inquiry is concerned, the post-incident procedures to be adopted in relation to the fatal discharge of a weapon by the police were set out in the *Manual of Guidance on the Management, Command and Deployment*

<sup>1</sup> See, for example, G1, witness statement, 9 March 2012, Bundle A/174; V3, witness statement, 9 March 2012, Bundle A/168–169.

<sup>2</sup> W4, witness statement, 9 March 2012, Bundle A/94.

<sup>3</sup> Bundle G2/567.

<sup>4</sup> Bundle G2/609.

<sup>5</sup> Brian Rodgers, TS/5613:19–13; TS/5624:19–22.

<sup>6</sup> Rodgers, TS/5625:2–5626:7; William Lawler, TS/5643:19–22.

<sup>7</sup> Police Reform Act 2002, schedule 3, paragraph 13(1). On 8 January 2018, the IPCC was replaced by the Independent Office for Police Conduct.

of *Armed Officers*,<sup>8</sup> an underlying policy of which is to insulate any post-incident inquiry, as far as possible, from those officers whose actions are to be investigated. In practice, there will almost inevitably be a delay before IPCC investigators can take over the investigation of an incident referred to them by a local force. Recognising the problem, the *Manual of Guidance* reminded chief officers of their obligation to promulgate suitable operating protocols.<sup>9</sup> The source of that obligation was the Home Office *Code of Practice on Police use of Firearms and Less Lethal Weapons* then in force:

Police authorities and chief officers of police should ensure that operating protocols exist within their forces defining the action to be taken throughout the various stages of an investigation or review of an operation involving weapons requiring special authorisation. These should include:

- (a) The management of the scene of the incident and continuity of command until the appointment of a Senior Investigation Officer, with an appropriately resourced investigation team;
- (b) The identification of suitable venues for the post-incident procedures to be conducted;
- (c) The selection and training of officers to undertake the role of Post Incident Manager, which should include longer term arrangements for liaison, welfare and management of the officers concerned;
- (d) Procedures for the hand-over to an appointed independent investigation team, where necessary;
- (e) A structured and documented process for the operational re-mobilisation of officers, where appropriate, when an investigation has been completed.<sup>10</sup>

**9.6** In compliance with that requirement, Greater Manchester Police (“GMP”) had issued its own *Standard Operating Procedure* for dealing with post-incident procedures.<sup>11</sup> That document, now superseded,<sup>12</sup> professed to be “closely assimilated” with the *Manual of Guidance*, stating that “where the policies within this document have deviated from the *Manual of Guidance* the rationale and justification for this has been given within the document”.<sup>13</sup> In fact, I have been unable to find examples of any such “rationale and justification”; nor, with the single exception of the *Standard Operating Procedure*’s restriction to designated Principal Officers<sup>14</sup> of the requirement that they give personal initial accounts before going off duty, have I managed to identify any manifest contradiction of the *Manual*’s advice that is relevant to the present Inquiry. While the authors<sup>15</sup> of the *Standard Operating Procedure* appear to recognise that there may be some inconsistencies between the two documents, the differences are primarily in tone and emphasis. For all that, their cumulative practical effect is significant. Taken as a whole, the *Standard Operating Procedure* is a somewhat

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<sup>8</sup> ACPO, ACPOS and NPIA (2011) *Manual of Guidance on the Management, Command and Deployment of Armed Officers*, third edition, Chapter 7.

<sup>9</sup> *Ibid.*, §7.13.

<sup>10</sup> Home Office (2003) *Code of Practice on Police use of Firearms and Less Lethal Weapons*, §6.4.1.

<sup>11</sup> GMP, *Standard Operating Procedure for Post Incident Procedures*, version 15, 19 February 2010, Bundle C/834.

<sup>12</sup> North West Armed Policing Collaboration (2016) *Post Incident Standard Operating Procedure*. Unless otherwise specified, references in the body of this Report to GMP’s *Standard Operating Procedure* are to the document current in 2012. The criticisms made of that version do not apply to the present *Standard Operating Procedure*.

<sup>13</sup> GMP, *Standard Operating Procedure for Post Incident Procedures*, version 15, 19 February 2010, §1.3.

<sup>14</sup> *Ibid.*

<sup>15</sup> The document’s author is an officer known as “J3”. The reviewing officer was Chief Inspector J. Ellison (not to be confused with Superintendent Stuart Ellison) and the authorising officer was Chief Inspector Michael Lawler.

disquieting document. In contrast to the *Manual's* broad emphasis on “the interests of the public, the Police Service and everyone involved in the incident”,<sup>16</sup> GMP's *Standard Operating Procedure* accords a higher priority to measures designed to uphold the Force's own reputation, its operational interests and the welfare of officers. Those are all, indeed, important considerations, but the approach commended by the *Manual of Guidance* strikes a more judicious balance between the competing aims and objectives of post-incident procedures. For that reason, and because its status as national guidance exceeds that of GMP's purely internal *Standard Operating Procedure*, I have treated the *Manual of Guidance* as the authoritative source of good practice in March 2012.

**9.7** At the same time, there are some indications that GMP's officers were following the Force's *Standard Operating Procedure*, rather than the *Manual of Guidance*. Chief Inspector (“CI”) Anthony Simpson, the Post Incident Manager (“PIM”), admitted as much, conceding that he was not aware of the *Manual of Guidance* chapter dealing with post-incident procedures<sup>17</sup> and had been “solely guided” by GMP's *Standard Operating Procedure*.<sup>18</sup> That may help to explain his failure to obtain personal initial accounts from most of the officers who had been involved in the armed deployment of 3 March 2012. Further, the refusal of AFOs to be video-interviewed appears to reflect guidance in the same document (see paragraph 9.20). In those circumstances, it may be helpful to illustrate the difference in tone between the *Manual of Guidance* and the *Standard Operating Procedure* by highlighting one or two examples.

**9.8** A comparison of the approach to the initial actions to be taken at the scene of an incident involving the discharge of a firearm speaks for itself. The *Manual of Guidance* sets out a concise list of priorities:

7.20 Following the discharge of a firearm, the Tactical Firearms Commander should initially establish what has taken place, including the extent of any casualties and take action, as appropriate, to ensure:

- Resources are adequately deployed to deal with the situation, including medical aid, welfare and operational and technical support;
- Continuity of command of any ongoing crime-in-action;
- Integrity of process in relation to securing best evidence;
- Senior command and independent investigative authorities are notified of the event;
- The community impact is considered, and where appropriate, action is taken to address these issues.<sup>19</sup>

**9.9** GMP's *Standard Operating Procedure* is woollier, and appears, whether intentionally or otherwise, to assign a higher priority to achieving operational objectives than to the provision of medical aid to any casualties. In contrast to the *Manual of Guidance*, it fails to respect the important distinction between the original crime investigation and the new and independent investigation into the discharge of a police firearm:

3.1 Following the discharge of a firearm in policing operations, the first consideration will be the achieving of immediate operational objectives. AFOs will still have a duty to maintain their operational effectiveness and react to the ongoing situation. Objectives may

<sup>16</sup> ACPO, ACPOS and NPIA (2011) *Manual of Guidance on the Management, Command and Deployment of Armed Officers*, third edition, §7.12.

<sup>17</sup> Anthony Simpson, TS/6045:22–6046:2.

<sup>18</sup> Simpson, TS/6047:14–15.

<sup>19</sup> ACPO, ACPOS and NPIA (2011) *Manual of Guidance on the Management, Command and Deployment of Armed Officers*, third edition, §7.20.

become dynamically revised in view of altered circumstances such as the existence of injured parties or increased threat levels. The role of commanding the AFOs executing the agreed tactic will remain with the TFU [Tactical Firearms Unit] Team Leader and TFU Operational Commander. They will update the Tactical Commander when it is safe and practical to do so.

3.2 Once the immediate objectives have been achieved, the Tactical Commander will make an assessment of the situation with the following points for consideration:

- To what extent have the original objectives been met?
- Are persons injured and what measures have or need to be put in place to treat and extract those persons?
- Are there any critical operational safety issues that require immediate attention?
- Has the Tactical Commander received a suitable briefing from his/her Operational Commander(s) enabling him/her to establish the basic facts of what has taken place?
- Have all the relevant scenes been identified and what action is required to locate and preserve these scenes?
- Have arrangements begun to hand over the scene and extract the AFOs from the location?
- Has contact been made with the IIO [Initial Investigating Officer] to facilitate successful handover?
- Has the Strategic Commander been briefed?<sup>20</sup>

**9.10** That this confusion of two distinct investigations is not an isolated slip, but reflects deliberate policy, appears from the opening paragraphs of the relevant section of GMP's *Standard Operating Procedure*; to preserve the context, it is necessary to quote the passage at some length:

6.1 GMP PSB [Professional Standards Branch] will take on the role of the Initial Investigators and as such will provide the SIO [Senior Investigating Officer] and IIOs in the first instance.

6.2 It is anticipated that most, if not all, investigations will be classed as independent investigations run by the IPCC. GMP PSB will take the necessary actions to commence a thorough and robust investigation until such time as the IPCC are in a position to receive formal handover for their independent investigation.

6.3 There may be circumstances where the original incident involving the discharge of a firearm during policing operations came about as a direct result of the existence of subjects involved in the commission or attempted commission of serious and organised crime. In those circumstances the investigation will be conducted with a dual emphasis:

- (a) The criminal investigation into offences allegedly committed by the subjects of the original police operation.
- (b) The investigation into the discharge of a firearm by police.

6.4 In such situations, the original investigators for the organised criminal element will retain control of their part of the investigation, however they will be required to work under the control of the SIO/IIO investigating the discharge by police. This is especially pertinent when dealing with the crime scene where it is impractical to expect that several examinations of the scene will take place. One examination should accomplish the requirements of all interested parties.<sup>21</sup>

**9.11** There will almost always be some delay before investigators from the IPCC can reach the scene of an incident referred to it by a local force. The *Manual of Guidance*

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<sup>20</sup> GMP, *Standard Operating Procedure for Post Incident Procedures*, version 15, 19 February 2010, §§3.1–3.2.

<sup>21</sup> *Ibid.*, §§6.1–6.4.

provides for that contingency by recognising that the local force should retain initial responsibility for the new investigation until the IPCC can take over:

The responsibility for securing evidence and taking appropriate action in an Article 2 investigation remains with the Police Service until such time as the independent investigative authority has taken over the investigation.<sup>22</sup>

- 9.12** As the reference to Article 2 of the European Convention on Human Rights unequivocally shows, the *Manual of Guidance* is here contemplating the mandatory independent investigation into the fatal discharge of a firearm by a police officer, and not any on-going or pre-existing criminal investigation. As to the latter, the *Manual of Guidance* incorporates this proviso:

Nothing in this section should be interpreted as constraining effective action by the Police Service or the officers involved in adopting an operationally necessary procedure to secure best evidence, arrest or bring to justice those who may be involved in ongoing criminal activity or a follow-up investigative process.<sup>23</sup>

- 9.13** The *Manual of Guidance* warns that there may be aspects of the original police operation that potentially fall within the scope of the independent Article 2 investigation:

The scope of the investigation is likely to be wide-ranging. It will not only include the circumstances of any injury to or death of, any person who may have been shot, but also the circumstances leading up to the discharge of firearms, and all the issues surrounding this such as the management and planning of the deployment.<sup>24</sup>

- 9.14** The underlying policy of the *Manual of Guidance* is thus to preserve a clear distinction between the original police operation and the independent Article 2 investigation and (subject only to the proviso already noted<sup>25</sup>) to accord priority to the latter. Interim arrangements pending the arrival of independent investigators are intended to “enable a managed transition from the operational phase of the incident to the investigation”.<sup>26</sup>

- 9.15** By contrast, GMP’s *Standard Operating Procedure* conflates the two inquiries into a single investigation that has “a dual emphasis”<sup>27</sup> and, by listing the original criminal investigation first, reverses the *Manual’s* order of priorities, thereby compromising the independence and, potentially, the integrity of any Article 2 investigation. Although, in requiring the original investigators to work “under the control of the SIO/IIO investigating the discharge by police”,<sup>28</sup> the *Standard Operating Procedure* cedes theoretical precedence to the Article 2 inquiry, it effectively treats the post-incident procedure as a continuation of the original police operation, modified to reflect the needs of an independent, but subsidiary, Article 2 investigation.

- 9.16** In my opinion, the implementation of such an approach risks non-compliance with the Article 2 duty to conduct a prompt, effective and, above all, independent investigation

<sup>22</sup> ACPO, ACPOS and NPIA (2011) *Manual of Guidance on the Management, Command and Deployment of Armed Officers*, third edition, §7.88.

<sup>23</sup> *Ibid.*, §7.87.

<sup>24</sup> *Ibid.*, §7.83.

<sup>25</sup> *Ibid.*, §7.87.

<sup>26</sup> *Ibid.*, §7.26.

<sup>27</sup> GMP, *Standard Operating Procedure for Post Incident Procedures*, version 15, 19 February 2010, §6.3. The only reference to “dual emphasis” to be found in the *Manual of Guidance* occurs in the context of disarming injured or traumatised officers, where a “dual emphasis on safety and evidential integrity should apply at all times”. See ACPO, ACPOS and NPIA (2011) *Manual of Guidance on the Management, Command and Deployment of Armed Officers*, third edition, §7.32.

<sup>28</sup> GMP, *Standard Operating Procedure for Post Incident Procedures*, version 15, 19 February 2010, §6.4.

into a fatal police shooting. As to the duties of the force under investigation, the *Manual of Guidance* is perfectly clear:

The responsibility of the police force being investigated is to facilitate that investigation through, for example:

- Identification and preservation of scenes and exhibits;
- Identification of immediately available witnesses;
- Securing of physical evidence;
- The availability of experienced family or witness liaison officers.<sup>29</sup>

**9.17** The *Manual of Guidance* identifies the specific post-incident responsibilities of the Initial Investigating Officer (“IIO”) and the PIM.<sup>30</sup> Those responsibilities are, without exception, directed to the furtherance of the Article 2 investigation. They do not include supervising or controlling the original police operation, which remains entirely separate and is, in any event, not constrained from adopting an “operationally necessary procedure” for any of the purposes specified in the *Manual of Guidance*.<sup>31</sup>

**9.18** This chapter has already referred to the AFOs’ reluctance to provide the IPCC with video-recorded evidence. The *Manual of Guidance* contains no explicit reference to video-recorded evidence but makes it clear that the “manner in which statements are obtained or provided will be decided by individual witnesses subject to the legal advice they receive”.<sup>32</sup> GMP’s *Standard Operating Procedure*, however, offers an unmistakably discouraging “steer”:

Principal Officers should consider whether they are happy to provide their statement in the format of a video recorded interview as opposed to a written statement. This needs careful consideration because video recorded interviews are more inherently likely to deny a Principal Officer true anonymity and will necessitate significant control measures to ensure Principal Officers’ anonymity is protected. Requests to have such material edited under public interest immunity could cause anxiety for officers and their families and such requests are not guaranteed to be successful.<sup>33</sup>

**9.19** Here, too, the logic is not altogether easy to follow. It is true that the preservation of officers’ anonymity, where necessary, is an extremely important consideration. Ultimately, however, the question of whether an officer is entitled to retain operational anonymity in subsequent legal proceedings is one for the appropriate court or legal authority to determine. There will, unfortunately, be a degree of anxiety for the officer concerned whatever the form in which his evidence is to be presented, but the evidential format adopted by the officer should not affect the outcome of any application for anonymity or other protective measures.

**9.20** Despite its correct concession that some applications for anonymity may prove to be unjustified, GMP’s *Standard Operating Procedure* appears to embody an underlying policy that officers should not agree to be video-interviewed under any circumstances, even where there may be no arguable grounds for anonymity and video-recorded testimony may represent the best evidence available. The *Standard Operating Procedure* voices only objections to the practice; not one single advantage is presented for consideration by individual officers. It is difficult to reconcile such

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<sup>29</sup> ACPO, ACPOS and NPIA (2011) *Manual of Guidance on the Management, Command and Deployment of Armed Officers*, third edition, §7.89.

<sup>30</sup> *Ibid.*, §§7.130–131.

<sup>31</sup> *Ibid.*, §7.87.

<sup>32</sup> *Ibid.*, §7.98.

<sup>33</sup> GMP, *Standard Operating Procedure for Post Incident Procedures*, version 15, 19 February 2010, §5.21.

one-sided guidance with the obligation of the force being investigated “to facilitate that investigation”.<sup>34</sup>

- 9.21** The *Standard Operating Procedure*’s guidance might be less objectionable if, in practice, it were applied with sufficient flexibility. Unfortunately, the applications for anonymity and other protective measures submitted to this Inquiry suggest otherwise. While most applications proved to be justified, others did not; one or two were wholly unrealistic. There was, moreover, very little discrimination between applications of varying strength, and only the most superficial attempt to tailor individual applications to the particular circumstances applying to each. Instead, the applications and statements in support merely repeated the same blanket objections to giving evidence without a full panoply of protective measures, irrespective of individual merit. Somewhat ironically, that formulaic approach resulted not only in the inclusion in some applications of significant factual misstatements, but also, in a few cases, in the omission of equally significant supporting material. Had the Inquiry team not carefully undertaken its own checks, those errors and omissions would have gone undetected, with potentially serious consequences. In the event, GMP did not seek to challenge any of the Inquiry’s decisions to refuse anonymity or other protective measures. Considerable public time and money might have been saved if, instead of applying a rigid policy of demanding anonymity for all AFOs regardless of individual justification, the officers with overall responsibility for formulating the applications had taken a more focused and realistic approach in the first place.
- 9.22** As it happens, the IPCC did not seek to video-record interviews with any of the AFOs. Instead, it proposed making audio recordings of the interviews. Neither the Police Federation nor any of the individual officers had any objection to that method of proceeding, although, for reasons explored later in this chapter, it did not come to pass.
- 9.23** Of more direct relevance to this Inquiry is the *Standard Operating Procedure*’s misleading treatment of what it describes as “initial factual notes”.<sup>35</sup> By that expression, the document presumably intends reference to what the *Manual of Guidance* consistently calls “personal initial accounts”. The *Manual of Guidance* prescribes a four-stage approach to the provision of factual accounts during the post-incident process. Stage One is a situation report to the tactical firearms commander (“TFC”) to enable him to manage the incident.<sup>36</sup> Stage Two requires the PIM to establish the “basic facts of what happened” so as to confirm which officers were at the scene, their roles, and which of them discharged their weapons.<sup>37</sup> Stage Three covers personal initial accounts:

Subject to legal and medical advice officers should provide a personal initial account of the incident before going off duty. Each officer’s initial account should consist only of their individual recollection of events and should be written, signed and dated. Detailed accounts will be made later. The purpose of the personal initial account is to record their role, what they believed to be the essential facts and should, where relevant, outline the honestly held

<sup>34</sup> ACPO, ACPOS and NPIA (2011) *Manual of Guidance on the Management, Command and Deployment of Armed Officers*, third edition, §7.89.

<sup>35</sup> GMP, *Standard Operating Procedure for Post Incident Procedures*, version 15, 19 February 2010, §§5.5–5.20.

<sup>36</sup> ACPO, ACPOS and NPIA (2011) *Manual of Guidance on the Management, Command and Deployment of Armed Officers*, third edition, §7.93.

<sup>37</sup> *Ibid.*, §§7.94–7.95.

belief that resulted in their use of force. The same guidance relating to conferring applies to personal accounts as it does to detailed accounts.<sup>38</sup>

**9.24** Stage Four covers “detailed accounts”, otherwise referred to as “evidential statements”.<sup>39</sup>

**9.25** Nowhere in its treatment of Stage Three does the *Manual of Guidance* expressly state that the only officers who should be required to provide personal initial accounts are those whom the PIM has identified as Principal Officers. In my view, the context suggests that Stage Three applies to all officers “involved in the incident”.<sup>40</sup> GMP’s *Standard Operating Procedure*, however, appears to proceed upon the basis that “initial factual notes” should only be completed by Principal Officers:

Initial factual notes completed by Principal Officers are designed to provide the investigation team with sufficient information to enable them to conduct an effective investigation. It must be borne in mind that Principal Officers may be witnesses to criminal offences (for example a crime in action committed by subject(s)) and as such investigation teams may have the added pressure of PACE [Police and Criminal Evidence Act 1974] detention rules and time limits.<sup>41</sup>

**9.26** The astute reader will scarcely need reminding that, while officers (whether Principals or not) involved in a fatal police shooting may indeed be witnesses to “a crime in action committed by subject(s)”, they will most certainly have been present at a homicide. Be that as it may, I can see no justification for confining the scope of personal initial accounts to those officers whom the PIM has identified as Principal Officers.

**9.27** In fairness to the authors of the *Standard Operating Procedure*, the *Manual’s* treatment of Principal Officers is open to more than one interpretation. It does not, unfortunately, make clear whether the expressions “Principal Officers” and “officers involved in the incident” are interchangeable. In any event, the point has less practical impact than might at first be supposed, because the *Standard Operating Procedure* adopts a very broad definition of “Principal Officers” in the context of MASTS (“Mobile Armed Support to Surveillance”) operations:

Weapons and ammunition should be seized from ALL Principal Officers. This may be limited to a small number of officers where it is clear that only they were in the immediate vicinity of an incident, or could extend to a larger number where all officers at the scene could potentially have been directly involved e.g. MASTS.<sup>42</sup>

**9.28** On that understanding, GMP’s own guidance suggests that in the present case, personal initial accounts should have been obtained from all the AFOs deployed on 3 March 2012.

**9.29** I can see no good reason why GMP’s *Standard Operating Procedure* should need to concern itself with overarching principles already covered in the national *Manual of Guidance*, let alone contradict or undermine them. A local protocol exists to amplify national guidance, not to replace it. Its proper purpose is to make detailed provision for the implementation of the *Manual’s* precepts and advice in the light of local needs

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<sup>38</sup> *Ibid.*, §7.96.

<sup>39</sup> *Ibid.*, §7.105.

<sup>40</sup> *Ibid.*, §§7.97–7.105.

<sup>41</sup> GMP, *Standard Operating Procedure for Post Incident Procedures*, version 15, 19 February 2010, §5.7. See also Policy and Procedure Bundle.

<sup>42</sup> GMP, *Standard Operating Procedure for Post Incident Procedures*, version 15, 19 February 2010, Appendix A.

and resources. A police force should not use its local protocol as a pretext to rewrite national guidance according to its own ideas and preferences.

## C. The post-incident investigation

- 9.30** During the initial phase of a post-incident investigation, i.e. before the IPCC is able to assume control, responsibility for post-incident procedures remains with a senior officer of the local force,<sup>43</sup> who must begin the investigation (which includes notifying the IPCC) and initiate the post-incident process.<sup>44</sup> He should appoint a PIM and an IIO.
- 9.31** In the present case, the PIM was CI Simpson, the Assistant PIM was Inspector Tony Hughes<sup>45</sup> and the IIO was CI John Brennan of GMP's Professional Standards Branch.<sup>46</sup> According to the *Manual of Guidance*:

Initial policing priorities pending the arrival of the independent investigative authority include:

- Management of the scene;
- Establishing what took place;
- Identification of witnesses;
- Identification of Principal Officers;
- Identification and securing of exhibits;
- Media management.<sup>47</sup>

- 9.32** There were two important respects in which the conduct of the post-incident procedure was unsatisfactory, namely: (i) the identification of Principal Officers and the obtaining of initial accounts; and (ii) the timing of AFOs' witness statements and the manner in which they were recorded.

## D. Principal Officers

- 9.33** "Principal Officers" are those who were "directly related to the decision to use force".<sup>48</sup> As an investigation unfolds, however, "others involved in the operation, whose actions or decisions were involved in informing or making critical decisions, may be regarded as Principal Officers".<sup>49</sup> That definition is potentially wide enough to embrace firearms commanders at all levels, as well as those AFOs who discharged firearms or who, without actually firing their weapons, were closely involved in the decisive phase of the operation.
- 9.34** The first IPCC investigator to reach the post-incident management suite at Claytonbrook was Catherine Bates, who had never previously attended a firearms post-incident procedure.<sup>50</sup> By the time she arrived, CI Simpson had not identified any

<sup>43</sup> ACPO, ACPOS and NPIA (2011) *Manual of Guidance on the Management, Command and Deployment of Armed Officers*, third edition, §7.15.

<sup>44</sup> *Ibid.*

<sup>45</sup> Simpson, TS/6084:3; Bundle C/651.

<sup>46</sup> Simpson, TS/6098:1–9.

<sup>47</sup> ACPO, ACPOS and NPIA (2011) *Manual of Guidance on the Management, Command and Deployment of Armed Officers*, third edition, §7.24. See also Policy and Procedure Bundle/372–373.

<sup>48</sup> ACPO, ACPOS and NPIA (2011) *Manual of Guidance on the Management, Command and Deployment of Armed Officers*, third edition, §7.42.

<sup>49</sup> *Ibid.*

<sup>50</sup> Catherine Bates, TS/6674:9–10.

Principal Officers, although he told the Inquiry that he would have so regarded Q9 and “Z15” (the officer who had discharged Hatton rounds into the stolen Audi’s nearside tyres).<sup>51</sup> Further, since nobody had told him that “X9” (or any officer, for that matter) had discharged a CS canister inside the stolen Audi, he had not identified X9 as a Principal Officer.<sup>52</sup> CI Simpson agreed with the suggestion of Sophie Cartwright, Junior Counsel to the Inquiry, that “X7”, as operational firearms commander (“OFC”), should also have been treated as a Principal.

**9.35** The senior IPCC investigator, Peter Orr, seems to have discussed the identification of Principal Officers in the course of a telephone conversation with the Assistant PIM, Inspector Hughes. According to a note in Miss Bates’s work book, Mr Orr told her that the Principals would include Q9 and Superintendent (“Supt”) Mark Granby, but no other AFOs unless they had been “standing next to” Q9:

11:25 [p.m.] Advised by Karl Thorougood – sols [solicitors] will be resistant to providing individual accounts.

Peter Orr spoke to A/PIM [Hughes] re principal officers

principal [i.e. Q9] + silver [i.e. the TFC, Supt Granby] –

– all others not principals unless standing next to him<sup>53</sup>

**9.36** Even on that limited basis, W4 (as driver of the “Alpha” car) should have been made a Principal Officer, because he did not leave the vehicle until after Q9 had shot Mr Grainger,<sup>54</sup> a fact of which Miss Bates was, however, then unaware.<sup>55</sup>

**9.37** The person named in Miss Bates’s note as Karl Thorougood was a Police Federation representative. It is not clear whether Mr Thorougood had actually spoken to any solicitors by that stage or, if he had, whether they had yet taken instructions from their clients.<sup>56</sup> At least one officer, “J4”, did not speak to a solicitor on the night.<sup>57</sup> Certainly, the *Manual of Guidance* envisages that Principal Officers should have access to “early professional legal advice”,<sup>58</sup> and the obligation to provide a personal initial account is expressly subject to such advice.<sup>59</sup> Presumably any solicitors advising AFOs would have been engaged on their behalf by a staff association such as the Police Federation.<sup>60</sup> At the same time, the identification of Principal Officers and the provision of personal initial accounts seem to me to involve separate questions that should not be elided or confused. In March 2012, the IPCC had no power to compel officers to provide evidence,<sup>61</sup> but the identification of Principal Officers, and the decision to require an officer to provide a personal initial account, are always matters for independent investigators; they are not subject to negotiation with solicitors, staff association representatives or anyone else. Whether to provide an initial personal account when required to do so is, however, a separate decision that the individual officer must be permitted to take in the light of legal (or, where appropriate, medical) advice.

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<sup>51</sup> Simpson, TS/6075:10–19.

<sup>52</sup> Simpson, TS/6062:16–6063:9.

<sup>53</sup> Bates, work book, Bundle C/652.

<sup>54</sup> Simpson, TS/6074:6–14.

<sup>55</sup> Bates, TS/6672:4–8.

<sup>56</sup> Bates, TS/6700:3–7.

<sup>57</sup> J4, TS/4415:19.

<sup>58</sup> ACPO, ACPOS and NPIA (2011) *Manual of Guidance on the Management, Command and Deployment of Armed Officers*, third edition, §7.66.

<sup>59</sup> *Ibid.*, §7.96.

<sup>60</sup> *Ibid.*, §7.85.

<sup>61</sup> Bates, TS/6707:23–6708:4.

**9.38** The evidence of Miss Bates suggests that those distinctions may not have been respected as scrupulously as they might have been:

Question: Can you just explain a bit more about what happened before this entry [i.e. the 11:25 p.m. entry in Miss Bates's work book] in respect of what you were asking for when you attended?

**Answer: So I would have been following Chapter 7 [of the *Manual of Guidance*].**

Question: Yes?

**Answer: And the stage process in there with initial accounts provided by all officers. At 11.25 I was informed that the solicitors would be resistant to providing individual accounts and as a consequence I telephoned Peter Orr and asked for his guidance in respect of that, because obviously it went away from the Chapter 7 guidance.**

Question: Yes?

**Answer: Peter Orr spoke directly to the Assistant PIM. I was told that the Principal and the Silver, it had been agreed they would provide initial accounts and that all others weren't Principal Officers unless they were standing next to the officer who had fired the shot ... I believe I then spoke to Peter Orr and he asked me where the surveillance teams were, asked me to secure the surveillance log and reiterated that he didn't require detailed accounts, only initial accounts, from the Principals. And from the others he required an indication.**

Question: When you say, "from the others he required an indication", what do you mean by that?

**Answer: As to their level of involvement.<sup>62</sup>**

**9.39** Miss Bates was doing her best to follow the provisions in the *Manual of Guidance*<sup>63</sup> under Mr Orr's supervision, but she was not aware of GMP's own *Standard Operating Procedure*.<sup>64</sup> She explained that she regarded the investigation as having acquired independent status at 21:00, when Mr Orr told her that it would be independent.<sup>65</sup> In practice, however, since she did not reach the suite until 22:40, the IPCC had limited control of the investigation until that time.<sup>66</sup> At 23:00, Miss Bates still had very little information to go on.<sup>67</sup> It was, she said, Mr Orr who told her during their conversation at 21:00 that Q9 and Supt Granby would be treated as Principal Officers. As her own note makes clear,<sup>68</sup> she did not regard that as an exhaustive list; other AFOs were liable to be added once their proximity to Q9 became clear. Like CI Simpson, she was not told that a CS canister had been used during the incident.<sup>69</sup>

**9.40** Under questioning from Pete Weatherby QC, CI Simpson was ultimately to concede that all the AFOs (i.e. the occupants of all four cars) should have been treated as Principal Officers.<sup>70</sup> In my view, that goes too far. It is certainly true of the officers in the first three police vehicles, but it does not apply to the occupants of the fourth ("Delta") car, none of whom reached the scene of the incident until after Mr Grainger had been shot. At the same time, against the background of the fatal shooting of a subject who by this time was known to have been unarmed, it should have been clear to the PIM that both the strategic firearms commander ("SFC") and the TFC

<sup>62</sup> Bates, TS/6664:9–6665:11.

<sup>63</sup> Bates, TS/6657:21–6658:2.

<sup>64</sup> Bates, TS/6666:18–25.

<sup>65</sup> Bates, TS/6658:19–6659:12.

<sup>66</sup> Bates, TS/6658:19–6659:4.

<sup>67</sup> Bates, TS/6663:21–22.

<sup>68</sup> Bates, work book, Bundle C/652.

<sup>69</sup> Bates, TS/6666:3–17.

<sup>70</sup> Simpson, TS/6121:5–6122:25.

were arguably officers “whose actions or decisions were involved in informing or making critical decisions” and whose potential status as Principal Officers merited serious consideration.<sup>71</sup> In my view, the TFC certainly ought to have been treated as a Principal Officer and his policy log promptly seized. Whether the same can be said of the SFC at such an early stage of the investigation is less obvious except with the advantage of hindsight; on balance, I do not think it fair to criticise those in charge of the post-incident procedure for failing to identify the most senior commander as a Principal Officer at such an early stage of the investigation.

**9.41** On any view, therefore, the 12 AFOs from the Alpha, “Bravo” and “Charlie” vehicles (including X7, the OFC) should have been required to make personal initial accounts, as should the TFC, Supt Granby. Arguably, if the obligation to provide initial accounts extends to all officers involved in the incident, not just those identified as Principal Officers, the four occupants of the Delta vehicle should also have done so. As it was, only Q9, X7 and Z15 provided such accounts. CI Simpson was unable to explain why he had not obtained an initial account from Supt Granby, who was present at the post-incident management suite at the material time.<sup>72</sup> While CI Simpson was aware that it would be necessary to take possession of senior commanders’ policy logs, he saw no great urgency in that task:

Question: In terms of you saying you don’t know why “we didn’t take an initial account on the night”, was that something you would have expected, in terms of the evidence you have just given?

**Answer: I think that the theory being given that – I don’t want to speculate too much, but this is five years ago, so I am not trying to remember my thought processes at the time, but everything Mr Granby would have done would have been either tape recorded or recorded on a live log, at the time. So the immediate need to secure that sort of evidence from him wasn’t quite probably as urgent as the operational officers who had been deployed on the ground.**

Question: Can I ask then, in terms of having an awareness that there were live logs that silver commander and TFC would complete, did you give consideration as part of your understanding of the basic facts to inform your decision as to who the principal officers should be, as to seeking Mr Granby’s TFC log?

**Answer: I think we stated that the logs would have to be seized as part of the evidential process.**

Question: Do you recall who you said that to?

**Answer: No, I don’t, no.**

Question: Similarly, in terms of following that through, did you give any other consideration in terms of seeking the gold commander’s log?

**Answer: I think the gold commander, as well, who, we had already said previously, I knew by then was Mr Sweeney, he was brought to or he came to the post-incident management suite. And, similarly to Mr Granby, that those logs would need to be seized at some stage.<sup>73</sup>**

As this Inquiry has discovered (see Chapters 3 and 4), CI Simpson’s expectation that “everything Mr Granby would have done would have been either tape recorded or recorded on a live log at the time” was far too optimistic.

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<sup>71</sup> ACPO, ACPOS and NPIA (2011) *Manual of Guidance on the Management, Command and Deployment of Armed Officers*, third edition, §7.42.

<sup>72</sup> Simpson, TS/6071:16–22.

<sup>73</sup> Simpson, TS/6071:23–6073:3.

**9.42** In the event, it was not CI Simpson, but a deputy senior investigator from the IPCC, James Donaghy, who assumed responsibility for the identification of Principal Officers. Instead of doing so solely by reference to the criteria in the *Manual of Guidance*,<sup>74</sup> however, Mr Donaghy decided to treat as Principal Officers those he understood had discharged weapons, adding X7 (the OFC) partly on the basis that he could provide information.<sup>75</sup> Although, in common with other IPCC investigators, Mr Donaghy did not at first know that an officer had deployed CS, he conceded in evidence that, once he had received the three initial accounts, he should have added X9 to the list of Principal Officers.<sup>76</sup>

**9.43** Mr Donaghy appears to have allowed the pressure of time and competing tasks to influence his decision as to which officers he should identify as Principals:

**Answer: Rightly or wrongly, this is what I believe my rationale was. I was aware that the officers had been on duty since 4.30 a.m. I was aware we were coming up to 24 hours. I was aware a man had been shot by the police. I wanted to move that investigation forward and there was things that were going to have to be done during the night and the next day. What I was seeking was an account and an understanding, and I, from the briefing, identified the people who I thought could provide me with that information and I identified three officers at an early-ish stage. That was the man who fired the fatal shot –**

Question: Yes?

**Answer: – The man who fired the Hatton round, because they have used force, and the bronze commander, because he’s – from recollection, and I haven’t seen his account since the night, I think he was out of the car, you know, he was there very close. What I was very conscious of is – and I’ve got – to be fair to the officers, nobody ever said to me “We’re tired, we can’t cooperate with this”. There was none of that, but what I was aware that was going to happen was that we were going to recover the weapons as a priority, that process would be videoed and that would be a fairly long process.**

Question: Yes?

**Answer: The officer – each officer – is entitled to legal advice, and advice from his staff representative, if he wants to get it. What I wanted is to get an account so that I could understand what had happened and I could – assist me if necessary to manage the scene, I could brief a ballistics expert, and I could brief the pathologist. So I identified the officers who I thought could give me the best chance of doing – of obtaining that information quickly. And I identified those three officers.<sup>77</sup>**

**9.44** In effect, Mr Donaghy was using Stage Three (personal initial accounts) as a means of achieving Stage Two (establishing the basic facts), thereby subordinating the former to the latter.

**9.45** The wording of the relevant entry in Mr Donaghy’s work book confirms that shortage of time, and the need to obtain first-hand information about what had happened, were dominating his thinking:

Accounts from

Team Leader [i.e. the OFC, X7]

Officer who fired shots

<sup>74</sup> ACPO, ACPOS and NPIA (2011) *Manual of Guidance on the Management, Command and Deployment of Armed Officers*, third edition, §7.42.

<sup>75</sup> James Donaghy, TS/6748:23–6749:1.

<sup>76</sup> Donaghy, TS/6744:8–21.

<sup>77</sup> Donaghy, TS/6738:10–6739:23.

Officer who poss fired Hatton Rounds  
Any other significant officers  
Need to prioritise due to lateness of hour.<sup>78</sup>

**9.46** Mr Donaghy confirmed during his evidence to the Inquiry that, in using the phrase “any other significant officers”, he had in mind the possibility of adding more Principals at some later stage:

Question: ... by recording “any other significant officer”, what did you mean by that?

**Answer: Anybody else who is significant. Coming out of that could have been something else. Anybody who I later found out would be significant, I would declare a Principal Officer.**<sup>79</sup>

**9.47** The *Manual of Guidance* recognises that additional officers may come to be regarded as Principals “as the investigation unfolds”.<sup>80</sup> Such persons may well include senior commanders or TAs who, while not able to contribute useful knowledge about the incident itself, may nevertheless qualify as Principal Officers by reason of their involvement in “informing or making critical decisions”.<sup>81</sup> A note in Mr Donaghy’s work book records that he met the SFC (Assistant Chief Constable (“ACC”) Terry Sweeney), TFC (Supt Granby) and TA (Y19) during the early hours of 4 March:

1.15 a.m. Meet ACC Sweeney, Supt Granby, [Y19]

Informed that I do not intend at this stage requesting 1st accs [accounts]

I would not normally get them from persons performing these roles but I would request statements within 5 days.<sup>82</sup>

**9.48** In considering who should be treated as Principal Officers, Mr Donaghy seems to have concentrated on each candidate’s potential value as a witness, rather than on the role he had played in decision-making. That approach, which effectively bypasses the criteria in the *Manual of Guidance*, suffers from the obvious disadvantage that it may tempt the investigator to focus his attention on those officers who were physically present at the incident to the exclusion of senior commanders or advisers, thereby causing him to assign a higher priority to peripheral witnesses than to those responsible for important decisions. That Mr Donaghy unfortunately succumbed to that temptation is seen in his exchange with Miss Cartwright concerning the SFC, TFC and TA:

Question: I think you recorded: “Informed that I do not intend at this stage requesting first accounts”?

**Answer: Yes, from them, yes.**

Question: Why was that?

**Answer: Again, I think I was trying to concentrate and gain an understanding of what had actually happened from the officers I had identified as Principal Officers.**

Question: Yes, but again in terms of perhaps particularly looking at the TA [tactical adviser] and the silver commander, who had been directly involved with the movement of the operation from State Green to Amber and then to State Red and the arrest –

**Answer: Yes.**

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<sup>78</sup> Donaghy, work book, Bundle R/585.

<sup>79</sup> Donaghy, TS/6742:11–16.

<sup>80</sup> ACPO, ACPOS and NPIA (2011) *Manual of Guidance on the Management, Command and Deployment of Armed Officers*, third edition, §7.42.

<sup>81</sup> *Ibid.*

<sup>82</sup> Bundle R/586.

Question: – Could they not be officers that had relevant information that should have been given by way of first account?

**Answer: There could have been, yes. Absolutely. But I made the decision and, you know, that was my decision of who I was going to get first accounts off.**<sup>83</sup>

**9.49** Mr Donaghy went on to explain that he had been extremely busy with other tasks, including the securing of evidence, on the first night of the investigation. He gave the same explanation for his decision not to seize commanders' logs:

Question: Can I ask, in terms of the logs of each of these officers, did you make a request on the night to have sight of the logs that each would have completed?

**Answer: No I didn't.**

Question: Why was that?

**Answer: I think – again, I think because there was a lot of other things happening. I was trying to do a lot of other things and I just – I never.**

Question: In terms of, just so we are clear, did you have a knowledge that gold, silver and the bronze commander would have completed logs that would have a lot of key information that would have been easily and readily available to inform your understanding of the basic facts?

**Answer: Yes, yes, I would have been aware they keep logs, yes.**<sup>84</sup>

**9.50** In hindsight, it is obvious that the prompt seizure of commanders' logs would have averted any risk of post-incident tampering; for example, the state of ACC Sweeney's log might have revealed definitively how much, if any, of his crucial entry misleadingly dated 2 March (see Chapter 4) he had completed before Mr Grainger's death. Nevertheless, I am loath to criticise Mr Donaghy or CI Simpson for underestimating that risk at the time. They were extremely busy – "spinning a lot of plates", as CI Simpson put it<sup>85</sup> – and were forced to assign priorities to individual tasks without knowing the full picture. In those circumstances, their sanguine assumption that no officer as important as ACC Sweeney would take advantage of the delay by retrospectively inserting or modifying log entries was perhaps understandable. One of the melancholy lessons to be drawn from these events is that independent investigators can no longer afford to take for granted the probity of even the most senior police officers.

**9.51** At the same time, against the background of the fatal shooting of an unarmed man, Mr Donaghy did not need hindsight to realise that the TFC had been involved in "informing or making critical decisions" and therefore qualified as a Principal Officer. Supt Granby should therefore have been treated as a Principal on the night. In my view, the same also applies to each of the 12 AFOs from the three leading cars in the police convoy. However, I acknowledge that the official guidance available to Mr Donaghy did not define the expression "Principal Officer" as clearly as it might have done. In retrospect, it is easy to criticise Mr Donaghy for not realising that he should have included the AFOs from the Alpha, Bravo and Charlie vehicles as Principal Officers. I recognise, however, that he was applying ambiguous official guidance on the basis of limited information and while working under extremely difficult conditions.

**9.52** Before leaving this topic, and in fairness to investigators, it is necessary to add some observations about the unreasonable pressure of time under which they were forced to operate during the early hours of 4 March. That pressure was not of their making.

<sup>83</sup> Donaghy, TS/6755:12–6756:5.

<sup>84</sup> Donaghy, TS/6756:19–6757:8.

<sup>85</sup> Simpson, TS/6067:9–10.

It was the decision by firearms commanders to extend the armed deployment past 19:00 on 3 March that generated the urgency.

**9.53** By the time of the incident in the car park, the AFOs had already been on continuous duty for more than 14 hours, having paraded at (or very soon after) 04:30. It is true that they had been resting, or at least physically inactive, during much of that time. Almost to a man, they denied being affected by fatigue (although X9, who had been up since 03:00, conceded that the length of the deployment would “undoubtedly” have affected him).<sup>86</sup>

**9.54** I agree with the view of Ian Arundale QPM, the Inquiry’s expert witness, that commanders did consider their officers’ welfare at the time.<sup>87</sup> Where, with the very greatest of respect to Mr Arundale, I find myself unable to agree is in relation to the very long hours worked by the AFOs on 3 March, which he thought did not have a negative impact upon the outcome of the deployment.<sup>88</sup> While it is impossible to be certain whether fatigue played a part in the decisions or actions of any of the AFOs (including Q9), it would scarcely be surprising if it did.

**9.55** In support of the contrary view, Mr Arundale relied in part on the “considerable period of rest and relaxation that occurred” during the day, but that relaxation was, it seems to me, primarily physical. However much “down time” they had, the AFOs had to remain close to their equipment and ready to move at a moment’s notice. They could not know when, or even whether, they might suddenly be required to carry out decisive action, nor could they be sure how great an opportunity they might have beforehand to make the necessary mental preparation and adjustment. Such “relaxation”, involving the need to maintain a basic level of mental alertness, is bound to become wearing with the passage of many hours, leading eventually to a state of mental exhaustion that mere physical inactivity cannot be expected to alleviate. That such a combination of tension and tiredness may impair sound judgement is something that at least one Metropolitan Police Service instructor responsible for specialist firearms training was at pains to emphasise to his students in February 2012:

You have all worked extremely hard in today’s exercises, this will have been a valuable lesson to all that tiredness and adrenaline can lead to mistakes being made.<sup>89</sup>

**9.56** I recognise that the subjects of firearms deployments may act unpredictably and that precise intelligence as to their intentions is rarely, if ever, available. Often, commanders will have little or no idea how long the need for an armed deployment may last. Those are, however, known difficulties for which planners must make as much allowance as their resources permit. AFOs may be required to make life or death decisions in an instant. To expect them to be sufficiently alert and capable more than 12 hours after being briefed, and 14 hours after first parading for duty, is potentially unrealistic. The response that for most of that time AFOs can relax and are, accordingly, not required to maintain themselves in a state of high alert may well strike the man in the street as unconvincing. The very fact that AFOs sometimes have little or no idea when, or even whether, they will be called upon to make a decisive intervention is bound to

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<sup>86</sup> X9, TS/3971:12–14.

<sup>87</sup> *Report of Ian Arundale QPM*, 4 November 2016, §603.

<sup>88</sup> *Ibid.*, §611.

<sup>89</sup> CQC training record, Bundle X/168.

affect their alertness over the course of many hours. Anecdotally at any rate, that is a commonplace of conventional military wisdom:

There can be no doubt that the maintenance of a constant state of preparedness throughout a long period of inactivity imposes a great strain which tends to stifle enthusiasm and lower morale.<sup>90</sup>

- 9.57** It is not for me to attempt to define what should constitute a reasonable period of continuous duty for AFOs; I am no more qualified than Mr Arundale to judge the “physiological and psychological impact of extended periods of duty”.<sup>91</sup> Circumstances will vary from one deployment to another. As Mr Arundale observes,<sup>92</sup> long hours are part of the reality of uncertain and high-risk police operations. It may not always be possible to avoid tours of duty lasting more than 12 hours.<sup>93</sup> However, the “long hours culture” that, according to Mr Arundale,<sup>94</sup> exists in some firearms departments ought to be challenged. There should be some “cut-off” point beyond which a team must be relieved or, if that is impossible, simply stood down. If it is not feasible to brief and deploy a relief team after the lapse of a reasonable period, commanders may have to accept that public safety demands a different form of intervention, for example disruption.
- 9.58** Any assessment of what amounts to a reasonable period in this context must be based upon the results of up-to-date psychological research and medical expertise. It also needs to reflect the fact that AFOs’ hours of duty begin before they actually deploy and are liable to extend for a significant period beyond the conclusion of any decisive intervention, particularly when a weapon has been discharged. The *Manual of Guidance* requires the welfare needs of officers to be “addressed throughout the post-incident process”.<sup>95</sup> It follows that commanders cannot afford to plan deployments on the optimistic assumption that nothing will go wrong. In the present case, a strike on the car park was not the only way of safeguarding the public once the length of the MASTS deployment exceeded a reasonable period, as I think that it clearly did. There were other police assets in the area, including Cheshire Constabulary Armed Response Vehicles that might have been deployed to disrupt any planned criminal activity on the part of the subjects of Operation Shire.

## E. The decision to make written witness statements

- 9.59** Time pressure should not have presented a difficulty when it came to Stage Four of the IPCC investigation, and the provision of detailed statements. According to the *Manual of Guidance*:

7.97 Detailed accounts should not normally be obtained immediately. They can be left until the officers involved in the shooting are better able to articulate their experience in a coherent format, usually after at least forty-eight hours. The detailed account should include, if relevant, why the officer considered the use of force and discharge of firearms to be absolutely necessary.

<sup>90</sup> Fritz Otto-Busch (1956) *The Drama of the Scharnhorst*.

<sup>91</sup> *Report of Ian Arundale QPM*, 4 November 2016, §607.

<sup>92</sup> *Ibid.*, §604.

<sup>93</sup> *Ibid.*, §606.

<sup>94</sup> *Ibid.*, §607.

<sup>95</sup> ACPO, ACPOS and NPIA (2011) *Manual of Guidance on the Management, Command and Deployment of Armed Officers*, third edition, §7.64. See also Policy and Procedure Bundle/379.

7.98 The independent investigative authority will wish to have detailed statements from witnesses. These statements may be taken by the independent investigative authority or be provided by the witnesses themselves. The manner in which the statements are obtained or provided will be decided by individual witnesses subject to the legal advice they receive. Where officers decide to provide their own statements then these should be (except in exceptional circumstances) submitted to the independent investigative authority within seven days of the date of the incident under investigation.<sup>96</sup>

**9.60** For reasons that remain obscure, it was not until 7 March that the IPCC, through its lead investigator, Mark Bergmanski, formally indicated its preference for audio-recorded interviews with AFOs. Mr Orr, the senior investigator, had assigned Mr Bergmanski to the investigation team on the morning of Sunday 4 March.<sup>97</sup> At the direction of Darren Quinlan, the deputy senior investigator, Mr Bergmanski spent the rest of that day at the scene of the incident, conducting house-to-house enquiries.<sup>98</sup> On Monday 5 March, he was allocated the role of lead investigator under Mr Quinlan's supervision,<sup>99</sup> assuming formal control at 12:30.<sup>100</sup> He was occupied with other aspects of the investigation during the rest of Monday and most of the following day, Tuesday 6 March.<sup>101</sup>

**9.61** Shortly after 08:00 on 6 March, Mr Bergmanski telephoned Mr Thoroughgood, GMP's Police Federation representative, to arrange a meeting to discuss the interviewing of officers.<sup>102</sup> As he explained to Miss Cartwright, the meeting took place at 11:00 on Wednesday 7 March:

Question: Are you able to assist us ... as to what was discussed on 7 March in respect of interviewing of officers?

**Answer: My recollection of it is that both Darren Quinlan and myself spoke to Karl Thoroughgood, who was a Federation representative, about our intention to interview the officers involved in the incident and to ensure that the process was actually audio-recorded.**

Question: Why was it that the process was to be audio-recording, why was that seen as being necessary?

**Answer: It was obviously considered good practice and obviously in terms of the interviewing of officers, that would facilitate a better account of events as opposed to officers undertaking the statements on their own. The whole process, the thinking behind it, was that each officer would be interviewed, the process would be recorded for transparency and a detailed account could be obtained from officers.**

Question: By reference to the discussion that was had on 7 March, was there anything said at that time to give any indication that that would not be a process that would be taken forward?

**Answer: No, my recollection is, is that certainly was not objected to, and we sort of proceeded on the understanding that is how we would progress the enquiry.<sup>103</sup>**

**9.62** By this stage, the 48-hour minimum period prescribed by the *Manual of Guidance*<sup>104</sup> had long expired and AFOs were anxious to give their detailed accounts while events

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<sup>96</sup> ACPO, ACPOS and NPIA (2011) *Manual of Guidance on the Management, Command and Deployment of Armed Officers*, third edition, §§7.97–7.98.

<sup>97</sup> Mark Bergmanski, witness statement, 9 October 2012, Bundle A/229.

<sup>98</sup> *Ibid.*

<sup>99</sup> *Ibid.*

<sup>100</sup> Bergmanski, work book, Y/920.

<sup>101</sup> Bergmanski, work book, Y/920–922.

<sup>102</sup> Bergmanski, work book, Y/922.

<sup>103</sup> Bergmanski, TS/6799:23–6800:22.

<sup>104</sup> ACPO, ACPOS and NPIA (2011) *Manual of Guidance on the Management, Command and Deployment of Armed Officers*, third edition, §7.97.

were still fresh in their memories.<sup>105</sup> In principle, they were prepared to co-operate with a process of conducting audio-recorded interviews, although that was not a unanimous view.<sup>106</sup> Regrettably, they found themselves facing yet more delay, as appears from an email dated 8 March which Mr Quinlan sent to two senior colleagues, Moir Stewart and Steve Reynolds:

Moir/Steve,

I have met with the police federation and they have no concerns and support our position that we interview the officers on tape and obtain statements. They are meeting with the AFOs today and tomorrow and they will update me then. I have booked the rooms in Sale from 14 March – 22 March and we are hoping to do 3 officers per day. I will update you further when the federation get back to me tomorrow.

Regards,

Darren<sup>107</sup>

**9.63** On the same day (8 March), a meeting took place between the Operation Shire AFOs and representatives of the Police Firearms Officers Association (“PFOA”). That meeting led to a collective decision by the AFOs to withdraw their consent to take part in audio-recorded interviews, and to make written witness statements instead. CI Brennan notified Mr Bergmanski of the decision in an email sent at 06:26 on 9 March:

Mark,

The firearms officers from last Saturday’s incident saw members of the Association of Police Firearms yesterday.

As a result they do not now wish to provide statements on audio to the IPCC, but intend to commence writing their own accounts, within the law, later today or tomorrow.

My understanding is that as a group they are unlikely to change from this position.

I will contact you later when I have more information.

John<sup>108</sup>

**9.64** The immediate occasion for the sudden change of heart was undoubtedly the AFOs’ meeting with the PFOA. The main reason was a justified feeling of frustration at the slow progress of the IPCC’s investigation. Officers were understandably anxious to place their accounts on record as soon as they could. Theoretically, there was nothing to prevent any individual from making a written statement of his own volition, but AFOs were reluctant to act independently, without guidance from their managers. The *Manual of Guidance* suggests that statements should not normally be recorded for “at least forty-eight hours”.<sup>109</sup> After 72 hours, officers began to approach J4, telling him, for example, “I need to get this information down”.<sup>110</sup> J4 was equally keen to record his own account.<sup>111</sup> He passed the AFOs’ concerns up the management chain but received no response:

Question: What was the message that came back?

**Answer: We didn’t have a message that came back.**

<sup>105</sup> For example, W9, TS/4643:6–4644:1.

<sup>106</sup> For example, U2, TS/4132:22–4133:2.

<sup>107</sup> Bundle R/1290.

<sup>108</sup> Bundle Y/1044.

<sup>109</sup> ACPO, ACPOS and NPIA (2011) *Manual of Guidance on the Management, Command and Deployment of Armed Officers*, third edition, §7.97.

<sup>110</sup> J4, TS/4382:24–4383:2.

<sup>111</sup> J4, TS/4384:22–24.

Question: Why didn't you make a statement?

**Answer: Because we were in a process of a post-incident procedure and we didn't want to take our own executive action without guidance.<sup>112</sup>**

U2 gave a similar explanation, blaming the IPCC for the delay in obtaining statements from AFOs:

**Answer: There is frustratingly long delays between the event and an actual statement being written, which seems to be governed by – more by investigative bodies, without wanting to criticise any particular one, I think we know which one I am referring to.**

Question: You are referring to the IPCC?

**Answer: Yes.**

Question: So it was the IPCC's fault that you didn't write your substantive or substantial statement until 9 March, was it?

**Answer: There was a – from memory, quite a significant to-ing and fro-ing of when we would provide that statement and my general overview feeling was that everybody within the operation wanted to write down that account as soon as possible, because they didn't want to forget any relevant details, which is perfectly reasonable, I think.<sup>113</sup>**

**9.65** When asked whether there had been anything to stop him from writing down his own account, U2 agreed that nobody had instructed him not to do so,<sup>114</sup> but made the point that he preferred to comply with the post-incident process rather than act independently.<sup>115</sup>

**9.66** The PFOA's contribution was, in the event, benign. It is an organisation which has a legitimate role to play in helping to look after the welfare of AFOs (particularly Principal Officers) in the aftermath of a police weapon discharge, when officers may find themselves subject to practical and emotional strains of which they are unlikely to have previous experience. The *Manual of Guidance* recognises this, noting that the PFOA "offers valuable additional support and appropriate services to Principal Officers and their families".<sup>116</sup> All the same, it ought to be obvious, as Mr Bergmanski agreed,<sup>117</sup> that it is unwise for such an organisation to conduct a meeting with AFOs before those officers have provided their detailed Stage Four accounts. It is even less wise to conduct such a meeting without keeping and preserving a proper record of it. In fairness, however, the PFOA representatives who met AFOs on 8 March did not find out that the officers had not yet provided detailed accounts until the meeting itself.

**9.67** What happened was that the PFOA's Chief Executive, Mark Williams, attended the meeting at GMP's firearms unit with other officials of the association and the officer known as "V53", who had been responsible for fatally shooting Mark Duggan seven months earlier in London. After introducing himself and his companions and explaining that the visit was for welfare purposes, Mr Williams asked when the AFOs had provided their Stage Four accounts. Upon learning, to his surprise, that they had still not done so, he advised them to consult experienced specialist solicitors with a

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<sup>112</sup> J4, TS/4384:25–4385:5.

<sup>113</sup> U2, TS/4223:3–18.

<sup>114</sup> U2, TS/4223:19–4224:5.

<sup>115</sup> U2, TS/4225:23–4226:8.

<sup>116</sup> ACPO, ACPOS and NPIA (2011) *Manual of Guidance on the Management, Command and Deployment of Armed Officers*, third edition, §7.107.

<sup>117</sup> Bergmanski, TS/6808:24–6809:23.

view to avoiding any further delay, and then brought the meeting to a close. V53 had some private contact with Q9, the purpose of which was to discuss family support.<sup>118</sup>

**9.68** In evidence, the AFOs were unanimous in maintaining that the PFOA meeting confined itself to welfare matters or, as W9 pithily put it, “welfare and PIP [Post Incident Procedure] stuff”;<sup>119</sup> there was no discussion of the facts or evidence.<sup>120</sup> I see no reason to doubt that evidence, supported as it is by a short statement provided to the Inquiry by Mr Williams,<sup>121</sup> nor have I found any evidence to suggest that there was any discussion of the incident itself, or that anything said at the meeting in any way influenced the evidence given by Q9 or any of the other AFOs. On the contrary, the meeting served a useful purpose in accelerating the provision of their Stage Four detailed accounts.

**9.69** Against the background I have just summarised, I do not think the AFOs acted unreasonably in refusing to take part in audio-recorded interviews. They were rightly concerned to place their accounts on record promptly while they could still recall the details of what had happened. The *Manual of Guidance* provided that each officer was perfectly entitled to decide the manner in which he provided his statement.<sup>122</sup> The best the IPCC could offer was to conduct audio-recorded interviews between 11 and 19 days after the incident. Pressed by Hugh Davies QC, for Q9, Mr Bergmanski was unable to come up with a good reason for that delay, which was plainly excessive and unnecessary.

## F. Conferring and the flip chart

**9.70** While the AFOs’ decision to make written witness statements was, in the circumstances, entirely sensible, the way in which those statements came to be recorded was nothing less than extraordinary. The *Manual of Guidance* discourages officers from conferring with one another before giving their accounts, but recognises that in some cases a genuine need to confer may arise in relation to issues other than an officer’s honestly held belief:

7.99 As a matter of general practice, officers should not confer with others before making their accounts (whether initial or subsequent accounts). The important issue is to individually record what their honestly held belief of the situation was at the time force was used. There should, therefore, be no need for an officer to confer with others about what was in their mind at the time force was used. If, however, in a particular case a need to confer on other issues does arise, then, in order to ensure transparency and maintain public confidence, where some discussion has taken place, officers must document the fact that this has taken place, highlighting:

- Time, date and place where conferring took place;
- The issues discussed;
- With whom;
- The reasons for such discussion.

<sup>118</sup> Mark Williams, written statement, 5 April 2017, Bundle R/507–508.

<sup>119</sup> W9, TS/4717:17–21.

<sup>120</sup> *Ibid.*

<sup>121</sup> Bundle R/507–508.

<sup>122</sup> ACPO, ACPOS and NPIA (2011) *Manual of Guidance on the Management, Command and Deployment of Armed Officers*, third edition, §7.98.

7.100 There is a positive obligation on officers involved to ensure that all activity relating to the recording of accounts is transparent and capable of withstanding scrutiny.<sup>123</sup>

**9.71** An internal *Operational Advice Note* dated July 2009<sup>124</sup> confirms that the IPCC was alive to the possibility of police resistance in relation to non-conferring. It advised investigators that in relation to police firearms incidents:

There will be an expectation that the police will comply with the ACPO [Association of Chief Police Officers] Guidance but if it is necessary to issue a Direction to the police to comply with the provisions of Chapter 7 regarding the issue of conferring, advice is provided in the IPCC advice note regarding that and such Directions must be properly recorded. Additionally the reporting senior police officer will be advised that if our direction is not facilitated there will be a need to provide a written explanation as to why.<sup>125</sup>

**9.72** Although Miss Bates had noted Mr Thoroughgood’s warning that solicitors representing AFOs would be “resistant to providing individual accounts”, there does not appear to have been any discussion of precisely what that meant and, particularly, whether it was an indication that the solicitors thought the officers should be permitted to confer before providing initial accounts. Certainly, Miss Bates did not issue any formal direction in line with the IPCC’s *Operational Advice Note*.<sup>126</sup> There is, however, no evidence to suggest that those officers who provided initial accounts conferred with one another about the contents of those statements before doing so.

**9.73** The issue of “conferring” did not arise until later, and then only in relation to the making of detailed written statements. Shortly after 1 p.m. on 9 March, the AFOs congregated in a large room at Nexus House, where they all made their written witness statements simultaneously in one another’s presence. It is not clear who devised that method of proceeding; J4, the team supervisor who had liaised with senior managers,<sup>127</sup> was unable to clarify:

Question: How was it, then, that you came to make a statement on Friday, 9 March?

**Answer: That was arranged.**

Question: But who arranged it?

**Answer: It was arranged above me, I don’t know who.**

Question: Who gave you the message to turn up for 1.15 at Nexus House?

**Answer: I can’t recall that.**

Question: You cannot help us with who gave the green light to making a statement?

**Answer: No, there are many people involved in the post-incident procedure. I cannot recall who gave us that information.**<sup>128</sup>

**9.74** In the absence of contamination of evidence through, for example, unnecessary conferring, the practice of having all officers provide their detailed accounts in a single room at the same time is not, in itself, objectionable. For the reasons articulated by Simon Chesterman,<sup>129</sup> I respectfully agree with his view that the separation of

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<sup>123</sup> *Ibid.*, §§7.99–7.100.

<sup>124</sup> Bundle R/1291–1309.

<sup>125</sup> Bundle R/1297.

<sup>126</sup> Bates, TS/6669:3–10.

<sup>127</sup> J4, TS/4383:16–4384:17.

<sup>128</sup> J4, TS/4385:6–17.

<sup>129</sup> Mr Chesterman was Mr Arundale’s immediate successor as armed policing lead for the National Police Chiefs’ Council (formerly ACPO).

officers should not occur routinely, but should be confined to cases of strictly demonstrable necessity.<sup>130</sup>

**9.75** What took the present case out of the ordinary was not the failure to separate witnesses, but the presence in the room of a prominently displayed flip chart (see Figures 12–14). The chart consisted of three A1 sheets on which J4 set out a number of so-called “facts” for the assistance of officers in drafting their statements. These “facts” did not, however, represent the outcome of discussion between those present. Indeed, J4 explained to the Inquiry that he had drawn many of them from various sources, including the logs of the TA and TFC and the operational briefing sheets:

Question: Right, what was the purpose in doing so, in providing other officers the information on these three sheets?

**Answer: Yes, we identified that we were going to have to confer on certain matters of fact, of points of fact, i.e. –**

Question: Again, who is the “we” there?

**Answer: Myself, Mr Holroyd<sup>131</sup> and the other officers.**

Question: Why did you agree that you had to confer on certain matters?

**Answer: Well, this was six days after the event had taken place.<sup>132</sup>**

**9.76** The purported justification for this process seems to have been that the passage of six days since the incident had given rise to a genuine “need to confer”, as mentioned in Chapter 7 of the *Manual of Guidance*,<sup>133</sup> and that the *Manual’s* insistence on transparency<sup>134</sup> was adequately satisfied by the fact that the “facts” had been reduced to writing and preserved, and the officers had disclosed the nature of the process in their statements.

**9.77** So much of that explanation is wrong that it is not easy to know where to begin. In the first place, the lapse of six days, while unnecessary and regrettable, was within the seven-day limit contemplated by the *Manual of Guidance* for the provision of detailed written statements.<sup>135</sup> It could not, therefore, amount to a proper justification for departing from the “general practice”<sup>136</sup> that officers should not confer before (or, for that matter, while) making their statements. Further, the process did not meet the *Manual’s* precepts on transparency, which require the documentation of conferring between officers to include, *inter alia*, the issues discussed, with whom, and the reasons for such discussion. Merely stating, as officers were instructed to do, that “During the making of this statement I from time to time clarified with my colleagues matters relating to times, vehicles, locations, + suspect details” (see Figure 14)<sup>137</sup> was neither sufficient nor even accurate.

<sup>130</sup> Simon Chesterman, 16 February 2018, TS/145:21–152:20.

<sup>131</sup> Nick Holroyd, a legal representative from the firm of solicitors then known as Russell, Jones and Walker.

<sup>132</sup> J4, TS/4382:1–16.

<sup>133</sup> ACPO, ACPOS and NPIA (2011) *Manual of Guidance on the Management, Command and Deployment of Armed Officers*, third edition, §7.99.

<sup>134</sup> *Ibid.*

<sup>135</sup> *Ibid.*, §7.98.

<sup>136</sup> *Ibid.*, §7.99.

<sup>137</sup> Bundle R/509–511. In full, the words on the flip chart read as follows: “I made this statement at Nexus House on 9/3/12, commencing at 1315 hrs, in the presence of my colleagues. During the making of my statement I from time to time clarified with my colleagues matters relating to times, vehicles, locations + suspect details.” See also, for example, X7, written statement, 9 March 2012, Bundle A/84.

Figure 12: Sheet 1 of the flip chart

To D 0430hrs. 3/3/12  
77/12.  
Newspapers Issued. approx. 0600  
BRIEFING Starts 0557-0615  
TERMS TO LEIGH P.S.  
REST PERIOD.  
1815 - LEAVE LEIGH P.S.  
(GREEN) RAVEN INN  
WASHINGTON LEAD  
SOMEONE WITH  
1908- STATE AMBER HEY SGT  
LANE  
1912 - STATE RED

Figure 13: Sheet 2 of the flip chart

RED AUDI  
DAVID TOTTON. 32 yrs.  
ANTHONY GRAINGER. 35 yrs.  
JOSEPH TRAVERS.  
\* REMEMBER ALIAS' \*

Figure 14: Sheet 3 of the flip chart

I MADE THIS STATEMENT AT  
NEXUS HOUSE ON 9/3/12, COMM.  
ENDING AT 1315HRS, IN THE  
PRESENCE OF MY COLLEAGUES. DURING  
THE MAKING OF MY STATEMENT I  
FROM TIME TO TIME CLARIFIED WITH MY  
COLLEAGUES MATTERS RELATING TO  
TIMES, VEHICLES LOCATIONS, + SUSPECT  
DETAILS  
(CONFRAZ FORM OF WORDS)

**9.78** It was not accurate for the simple reason that this was not “conferring” at all. If anything, it was coaching. The flip chart was, in reality, a crib sheet or, putting it a little more politely, a hymn sheet from which all the AFOs were expected to sing in perfect unison. Officers did not pool their recollections.<sup>138</sup> They (or, to be more accurate, some of them) simply wrote down certain details that they had been instructed to copy. The concluding “form of words” which the flip chart instructed officers to append to their statements was thus seriously misleading.<sup>139</sup> It is true that the statement<sup>140</sup> of one officer, W4, identified five colleagues with whom he claimed to have clarified various details, but in his evidence to the Inquiry W4 conceded that most, if not all, of those details in his statement appeared on the flip chart anyway. Q9, one of the five officers with whom W4 said he had spoken, denied that there had been any consultation in relation to the details recorded on the flip chart:

Question: Which colleagues did you consult in relation to the four matters that are set out there: times, vehicles, locations and suspects?

**Answer: I didn’t consult with any of them; it is what was from the flip chart.**

Question: Right, so you didn’t consult with anyone else, but you wrote down that you did?

**Answer: Yes, that was a form of words which was put on the flip chart which the legal representative said, “Put that at the end of the statement”.**

Question: On that, why did you write something that wasn’t true?

**Answer: It was basically to highlight that we had used the flip chart to –**

Question: But it doesn’t say that, though, does it?

**Answer: No, it doesn’t, sir.<sup>141</sup>**

**9.79** Those objections would have sufficed to condemn the use of the flip chart even if its contents had been impeccably accurate. In several respects, however, they were not. The times at which State Amber and State Red were called are not precisely known, because there is no contemporaneous record of them. So far as this Inquiry has been able to establish from officers’ mobile telephone billing records, they were probably called at about 19:07 and 19:08 respectively. The road named as “Hey Shot Lane” is in fact Hey Shoot Lane. Even the false registered number displayed on the stolen Audi is wrongly given as “LO08 LOD”, instead of RO08 LOD.

**9.80** The straightforward explanation is that the author of the flip chart, J4, had taken the details concerned from sources which he regarded as unimpeachable, but which were, unknown to him, themselves corrupted by errors. In so doing, he acted in good faith. He was not to know that the briefing pack from which he took some of the details (including the stolen Audi’s displayed number) had itself been copied, without proper checking, from an earlier briefing. Nor could he have guessed that the accuracy and contemporaneity of senior officers’ policy logs were not things that could be taken for granted (see Chapters 3 and 4). It probably seemed to him that nothing could go wrong. Yet, as any experienced lawyer or police officer should know, there is no “fact” so unassailably incontrovertible or unimportant that human indolence and ineptitude (not to mention chicanery) cannot render needlessly contentious. For that reason alone, the flip chart idea was as futile as it was misguided. It was a deceptively circular process. Instead of achieving its laudable aim of preventing factual errors, it

<sup>138</sup> Q9, TS/4828:14–21. See also H9, TS/5233:2–7.

<sup>139</sup> According to Q9, the legal representative who provided the “form of words” was Mr Holroyd, of the firm then known as Russell, Jones and Walker.

<sup>140</sup> W4, written statement, 9 March 2012, Bundle A/95.

<sup>141</sup> Q9, TS/4828:17–4829:6.

only served to perpetuate those that already existed and, indeed, to mask them from detection by appearing to corroborate them. The very fact that a number of officers who had taken part in the “strike” stated, for example, that State Red had been called at precisely 19:12 made it less likely that the original source of that time would be challenged or corrected.

**9.81** Some of the AFOs, trusting that the information on the flip chart had originated from dependable sources, incorporated parts of it in their statements.<sup>142</sup> Others – wiser, perhaps, than their superiors or advisers – recognised the central problem, namely that their statements were supposed to represent their own personal recollections of events rather than some prefabricated standard version fed to them by somebody else. Although U2 would say only that he considered the collective preparation of witness statements by reference to the flip chart “unnecessary”,<sup>143</sup> I formed the distinct impression that he was uncomfortable with the entire process. To his colleague G6 it “seemed slightly strange”.<sup>144</sup> Another officer, W9, chose not to use any of the information on the flip chart, apart from the registration number displayed by the stolen Audi (which was wrong anyway):

Question: Can you see, the flip chart says: “TOD [tour of duty] 0430 on 3 March”? You have written: “At 0445 hours I paraded ...” Yes?

**Answer: That’s correct, sir.**

Question: You have not used the information on the flip chart?

**Answer: No, sir.**

Question: Why not?

**Answer: Because I knew – for a firearms operation, they will say, say the briefing is at 6.00, they will say: “be in for 5.00 for a 6.00 briefing”. I knew on that day, because I had problems finding my car keys, that I got in work at 4.45.**

Question: Why did you not write “4.30”? You were being told this is the information?

**Answer: Because it is my statement, sir ...**<sup>145</sup>

**9.82** W9 (whom I regard as a particularly conscientious and experienced officer) went on to give the same explanation in relation to other details on the flip chart, including the time (18:15) at which the team was said to have left Leigh Police Station:

Question: Looking at it as a whole, taking a step back, would you agree it looks like you used your own recollection of events rather than what you were being told to write down? Is that accurate?

**Answer: From my recollection, I was writing what I could remember and I thought were the times. You know, it is very precise, “1815”. I wouldn’t have a clue what time I left Leigh Police Station, so I just wrote my statement as I normally would.**

Question: Is that because you would feel uncomfortable about taking times from a flip chart that had been written up on a board for you to use?

**Answer: Should it go to a prosecution case, it is me that has to stand in court, hasn’t it, and give evidence –**

Question: A bit like now?

**Answer: Like now.**

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<sup>142</sup> For example, U2, TS/4133:23–4134:21.

<sup>143</sup> U2, TS/4239:5–4240:15.

<sup>144</sup> G6, TS/4275:4–11.

<sup>145</sup> W9, TS/4647:9–25.

Question: Would that be because you realised that you shouldn't write down that something has happened at a particular time when you did not know that for yourself?

**Answer: Well, I put it as I saw it. I didn't know the specific time, so I put what I thought it was.**<sup>146</sup>

- 9.83** Q9 thought that in hindsight the use of the flip chart did not “seem right”.<sup>147</sup> Oddly, even J4, the flip chart's author, eschewed the opportunity to adopt any of the information it displayed. Pressed by Jason Beer QC, Leading Counsel to the Inquiry, for an explanation for that decision, he was quite unable to come up with one. “H9” was another officer who decided not to incorporate details of which he had no first-hand knowledge: “I knew that if I was asked, ‘how did you know it was 1908?’ I wouldn't have known that personally”.<sup>148</sup>
- 9.84** It is small wonder that so many officers, including even the author of the flip chart, had misgivings about it. They sensed, rightly, that the method GMP adopted for recording their Stage Four accounts was fundamentally wrong. The officers should not have been prompted as to the contents of their statements. I accept that those who organised and participated in the process did so in good faith. The entire process was, however, completely misconceived. That such a travesty of correct post-incident procedure took place with the apparent approval and even encouragement of professional lawyers passes comprehension.
- 9.85** Beyond that, the initial post-incident investigation as a whole was slow and ineffectual. The IPCC should have insisted upon taking prompt personal initial statements from all the occupants of the first three cars in the police convoy, as well as from the TFC and TA. Commanders' logs and other contemporaneous documentation should have been seized on the night. Had those actions taken place, the urgent need to obtain further personal initial accounts, in particular from the SFC, would undoubtedly have come to light far sooner than it did.

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<sup>146</sup> W9, TS/4651:22–4652:17.

<sup>147</sup> Q9, TS/4826:8–12.

<sup>148</sup> H9, TS/5234:7–13.



# Chapter 10: General Topics and Conclusions

- 10.1** “We live in a world that has walls, and those walls need to be guarded by men with guns.”<sup>1</sup> The defence of the British public against terrorism and other forms of organised crime depends upon the vigilance, skill and bravery of armed police officers, all of them volunteers. Yet the burdens we lay on those who protect us are sometimes so inconsistent as to be barely reconcilable. As the mortal menace posed by armed criminals continues to grow, we expect more men and women to volunteer for firearms duties. At the same time, we require any agent of the state who uses lethal force to submit to an intensive and gruelling process of forensic scrutiny that may culminate in a prosecution for murder. We can hardly blame those who say with Aaron Sorkin’s memorable stage character, Colonel Nathan Jessep, “I have neither the time nor the inclination to explain myself to a man who rises and sleeps under the blanket of the very freedom that I provide, then questions the manner in which I provide it! I’d prefer you just said ‘thank you’ and went on your way.”<sup>2</sup>
- 10.2** Of course, we cannot just go on our way. This Inquiry had to take place, otherwise the UK would have been in breach of its obligations under Article 2 of the European Convention on Human Rights. What is more, the Inquiry had to be as meticulous as it has been. In the words of Sir Brian Leveson, President of the Queen’s Bench Division, “the use of fatal force by police officers rightly requires the most detailed and rigorous investigation”.<sup>3</sup> Where, as in the present case, the surviving documentary record is neither complete nor uniformly reliable, only the most searching examination of what remains, and of witnesses’ oral testimony, has any chance of getting at the truth. If practical proof were needed, it lies, perhaps, in the fact that the present Inquiry has exposed many material facts and grounds for serious criticism that an earlier examination by the Independent Police Complaints Commission (“IPCC”) failed to uncover. In so doing, it has established that Greater Manchester Police (“GMP”) did not conduct the armed deployment on 3 March 2012 in accordance with the requirements of Article 2. Further, the Inquiry has identified the need for important changes of practice that the IPCC’s investigation was not able to detect.
- 10.3** It is fair to allow that the present Inquiry has enjoyed a number of practical advantages not available to other investigators, not least access to sensitive material that the IPCC would not have been permitted to see even if it had pursued its enquiries in greater depth than it did. To my knowledge, and that of Counsel to the Inquiry, this is the first time the process of handling, interpreting and disseminating secret intelligence has ever been subjected to detailed judicial inspection in any UK forum. Precisely because such an opportunity may never present itself again, I have tried to take full advantage of it to conduct the most detailed examination and analysis of the closed documentation. For obvious reasons, I cannot reveal any of that material in this Report, but it has helped to inform many of my open conclusions. Further, I have, to the greatest extent that it is permissible for me to do so in an open report, taken pains to set out the reasoning underlying those of my conclusions that are based wholly or partly upon closed material.
- 10.4** I have tried not to lose sight of the intractable difficulties that inevitably attend the conduct of complex firearms operations against determined and ruthless organised crime groups. Some of the submissions I heard from core participants seemed to me

<sup>1</sup> Colonel Nathan Jessep, in Aaron Sorkin’s stage play, *A Few Good Men* (1989).

<sup>2</sup> *Ibid.*

<sup>3</sup> *R (on the application of E7) v Sir Christopher Holland* [2014] EWCA 452 (Admin), at §1.

to underestimate those difficulties. In reality, the activities of professional criminals are not susceptible to reliable prediction. Dependable intelligence is a rare commodity. Even where it exists, it is seldom unambiguous. It is almost invariably fragmentary and may prove positively misleading. Time is often short, and resources scarcer than investigators or planners would like. In such circumstances mistakes are almost inevitable.

- 10.5** It is a matter of concern that certain critically important documents<sup>4</sup> did not emerge until very late in the investigation – in some cases even after the main evidential hearing had finished,<sup>5</sup> representing a failure to disclose relevant material promptly to the Inquiry.
- 10.6** Underlying this disappointing lack of openness was, I think, a general disinclination on the part of GMP's Tactical Firearms Unit ("TFU") to expose its actions and decisions to external scrutiny. Such reluctance is not always a bad thing, and there are undoubtedly circumstances in which it may be necessary. The law has long recognised that there is a legitimate public interest in keeping certain methods of investigation out of the public domain. I do not, therefore, criticise GMP for having qualms about making video recordings of armed interventions or audio recordings of radio transmissions. It is true, as Pete Weatherby QC pointed out,<sup>6</sup> that the protection of the public interest in secrecy is more a matter of devising and implementing secure police systems and procedures than of declining to generate such material in the first place. It is equally true that the practice of routinely recording interventions carries obvious advantages, of which its potential usefulness to investigations such as the present Inquiry is perhaps less important than its capacity to provide valuable material for internal review and training purposes. However, GMP was not the only UK force that declined to make such recordings, and the technical challenges involved in doing so were greater in 2012 than they are now.
- 10.7** Even today, recording the covert radio or telephone communications of armed policing operations presents considerable difficulty. Such exchanges do not necessarily pass through a centralised controller, and some officers may in any event choose, for good reason, to use mobile telephones in preference to dedicated radio systems.<sup>7</sup>
- 10.8** Nevertheless, it is my firm view that an unduly reticent, at times secretive attitude prevailed within GMP's TFU throughout the period covered by this Inquiry. It was something their Cheshire Constabulary colleagues noticed. During a telephone conversation with Ian Stead, the local force's Force Incident Manager ("FIM"), on the morning of 3 March 2012, Inspector Andrew Ross expressed some annoyance at the fact that the Cheshire Armed Response Vehicle ("ARV") crews on standby at Risley police station had no idea why they were there. The explanation Mr Stead offered was that if it should become necessary for Cheshire firearms officers to intervene in what was a GMP operation, they would "run it as a spontaneous job anyway"<sup>8</sup> and therefore did not need a detailed briefing. That may well have been so, but behind Inspector Ross's frustration lies the clear implication that he felt GMP's TFU was not providing its Cheshire colleagues with enough information about what was going on.

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<sup>4</sup> Bundle X/1–45; X/117–272; X/275–277; Y/107–157.

<sup>5</sup> CSDC Late Disclosure Bundle.

<sup>6</sup> Michael Lawler, TS/3024:12–13.

<sup>7</sup> Simon Chesterman, 16 February 2018, 134:1–135:23.

<sup>8</sup> Telephone transcript, Bundle M8/61.

**10.9** In a series of telephone conversations that day, Police Constable (“PC”) Claire Shaw, the operational firearms commander (“OFC”) in charge of the ARVs waiting patiently all day long at Risley, also voiced a degree of irritation at the lack of communication. At 4 p.m., she complained that within minutes of Chief Inspector (“CI”) Christopher Brierley telling her the operation was likely to be stood down, she had received further information that “they’re expecting the job to go ahead today round about 6 o’clock”.<sup>9</sup> She clearly had very little idea what “the job” might entail; as she remarked to Mr Stead, “we’ve no authority or anything, we’re just here on the off chance that something goes awry, I think”.<sup>10</sup> PC Shaw was due to hand over to a new OFC at 19:00, a time-consuming process that she thought might require her to leave her post for as long as half an hour.<sup>11</sup> At 18:14, still having heard nothing about the progress of GMP’s operation, she rang Mr Stead’s successor as FIM, Alan Fairclough:

Hiya, I’m just wondering if you know anything, ’cos, as of yet, we don’t ... I tried to get hold of Mr Brierley, that’s all, ’cos 6 o’clock was the kind of time frame I was given, and I’ve not been able to get hold of him, and certainly nothing’s come over the air.<sup>12</sup>

As Mr Fairclough explained, the problem lay not so much with her Cheshire superiors, who probably knew as little as she did, but with those who were in charge of the GMP operation:

It’s all very “cloak and dagger”, and it does wind me up, but if they said it was all going to happen at 6, one would assume that the [GMP Mobile Armed Support to Surveillance (“MASTS”)] team must be moving for them to give that sort of prediction.<sup>13</sup>

**10.10** Less than 24 hours earlier, following the previous day’s armed deployment, Cheshire’s firearms team had already registered unease at the lack of communication from GMP’s TFU. In the relevant Operations Incident Form, under the heading “Points Raised”, the following summary appears:

Concerns raised that GMP felt there was sufficient threat to inform Cheshire FIM, however they would not divulge what the threat was. This might have placed Cheshire officers at risk, which may have been mitigated with more information from GMP.<sup>14</sup>

**10.11** Although CI Brierley diplomatically declined to endorse that criticism, he did not positively disown it:

Question: In respect of the “Points Raised”... would you agree with what is set out there?

**Answer: It is very difficult to criticise GMP, not knowing what they knew that they could have told us, so not being privy to that information makes it very, very difficult to assess whether or not it was information that would have benefited us and not compromised the operation. So it is *almost* like I am sitting on the fence, and I don’t intend to, but unless I know what they knew, I can’t really assess as to whether or not it would have benefited Cheshire to know it and then do a risk assessment of it as to whether or not us knowing it would compromise the operation.**<sup>15</sup>

Unlike CI Brierley, I have the advantage of knowing what GMP knew. While I cannot reveal it here, I am able to confirm that the Cheshire firearms commanders and officers were justified in sensing that they had been unreasonably kept in the dark.

<sup>9</sup> Telephone transcript, Bundle M8/71.

<sup>10</sup> *Ibid.*

<sup>11</sup> Telephone transcript, Bundle M8/24.

<sup>12</sup> Telephone transcript, Bundle M8/23.

<sup>13</sup> *Ibid.*

<sup>14</sup> Operations Incident Form, 2 March 2012, Bundle M5/49.

<sup>15</sup> Christopher Brierley, TS/2208:12–24.

- 10.12** I do not suggest that the TFU should have revealed details of the intelligence they had received; they were entitled, indeed obliged, to maintain secrecy in accordance with the appropriate handling conditions. Nor would it be fair to blame the TFU for the prolonged frustration endured by Cheshire's ARV officers during the morning and early afternoon of 3 March, for GMP's own MASTS officers were in much the same situation. As the local force, however, Cheshire Constabulary retained overall responsibility for public safety within its own territory and was entitled to prompt notification of significant developments, if only to enable its own firearms commanders to consider and prepare for any mitigating action they might deem necessary.<sup>16</sup> GMP ought therefore to have informed local commanders of the first sign of movement by Operation Shire's subjects towards the county boundary on 3 March. Still more should it have promptly notified Cheshire of the loss of surveillance following the stolen Audi's arrival in Culcheth.<sup>17</sup> In the event, GMP said nothing, with the result that it was not until after Anthony Grainger had been fatally shot that Cheshire Constabulary learned of the incursion into its own territory of Operation Shire's subjects.
- 10.13** Viewed in isolation, GMP's failure to keep the local force informed of those crucial developments, not to mention subsequent events, might as readily be explained by inadvertence as by design. There are, however, aspects of GMP's approach to the business of the present Inquiry which convince me that Cheshire officers were correct to think that they were being needlessly kept in the dark. I have already referred to the late disclosure by GMP of certain relevant documents. Without minimising the practical difficulties involved in tracing and obtaining such material,<sup>18</sup> the real problem lay elsewhere, namely in the Force's persistent tendency to withhold information that was already in its possession on the basis that it was deemed to be irrelevant. The large bundle of additional material relating to the CS dispersal canister ("CSDC") provides a striking example. Although its contents were plainly relevant to the Inquiry's Terms of Reference (see Appendix A), GMP failed to notify the Inquiry of its existence until 20 April 2017, barely a week before the main evidential hearing concluded. Another example is the late disclosure of significant material relating to the training and qualification of certain officers involved in the deployment of 3 March 2012.<sup>19</sup>
- 10.14** As I have noted elsewhere in this Report (see Chapter 9), I detected a similar lack of openness in the TFU's formulaic and, at times, unrealistic approach to its applications for anonymity and other protective measures, which seemed to me to reflect a predetermined and excessively rigid policy of maintaining the highest degree of secrecy conceivable, regardless of individual necessity or the legitimate requirements of the public interest. There were, too, occasions when senior officers made what turned out to be flimsy appeals to the existence of closed material as a basis for declining to answer certain questions in public (and therefore in the presence of core participants or their legal representatives), only to find themselves obliged when challenged to

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<sup>16</sup> Ian Arundale, TS/7217: "What I have been very clear on is there should have been a disruption contingency or contingencies in this matter. Very unusually the resources were available for it and the time was available to plan a range of options. That could have led a tactical adviser and the AFOs [authorised firearms officers] from Cheshire to scope the area, scope the premises, scope all the potentials that could happen if the subjects did indeed arrive at Culcheth."

<sup>17</sup> Arundale, TS/6989–6992; TS/7064; TS 7070: "There was also the potential to create time in order to consider appropriate options by for example using the available marked uniform resources, including four Cheshire ARVs, to flood the area and disrupt any criminal activity." See also Arundale, TS/7214–7217.

<sup>18</sup> See GMP's letter to the Chairman dated 15 March 2017 (Appendix F).

<sup>19</sup> Bundle X/1–45; X/117–272; X/275–277.

concede that there was no good reason why they should not answer the relevant questions in open session.<sup>20</sup>

- 10.15** My concern at this disappointing lack of candour extends, I am afraid, beyond the present Inquiry to certain aspects of GMP's conduct in the criminal proceedings against Sir Peter Fahy, in his capacity as Chief Constable, for an alleged offence contrary to the Health and Safety at Work etc. Act 1974, arising out of the Force's planning and conduct of the armed operation on 3 March 2012. In this Report, I have identified two examples of misleading assertions, of which the more egregious was the defence statement's specious claim that the Home Office had approved the CSDC;<sup>21</sup> the other was the witness statement which Detective Constable Andrew Talbot made for the purpose of those proceedings, in which he included details of an unrelated investigation (Operation Ascot) in such a way as to imply, incorrectly, that the information in question had featured in the thinking of Operation Shire's investigators.
- 10.16** At the heart of the TFU's approach to external scrutiny lay a deep-seated ethos of departmental exceptionalism quite different from the healthy *esprit de corps* that normally sustains the morale of a specialist organisation. It was an ethos rooted in complacency, and it manifested itself, as I have noted elsewhere (see, for example, paragraph 8.86), in a profound and sometimes arrogant disdain for the views of others. Its most pernicious effect was to cause a progressive atrophy of the department's capacity to confront and learn from its own mistakes. Unfortunately, there are indications that it persists to the present day.
- 10.17** The attitude I have described is a recurring factor in many of the criticisms I have made in this Report. It helps to explain the TFU's unilateral decision to introduce and deploy, without Home Office approval, a chemical weapon (CSDC) for which no other law enforcement agency in the land had identified any operational need (and which would probably not have been approved even if the correct process had been followed), as well as the department's dogged obstinacy in persevering with the enterprise in the teeth of cogent criticism from the National Policing Improvement Agency ("NPIA") (see Chapter 7). It was a significant factor in the TFU's appropriation of responsibilities proper to the Firearms Training Unit ("FTU") (see Chapter 8), its adoption of an internal post-incident procedure that was at odds with national guidance (see Chapter 9), and its failure to keep Cheshire commanders adequately informed about developments in Culcheth on the evening of 3 March 2012 (see Chapter 4).
- 10.18** The same attitude also contributed to what struck me as an occasional disinclination on the part of the department to engage as constructively as it might have done with the business of this Inquiry. The accusation levelled by Mr Weatherby QC that GMP's "default position" was to "deny first and then look for learning second",<sup>22</sup> while too broad in its application to the Force as a whole, was not without truth in respect of the TFU. It is difficult, otherwise, to account for Chief Superintendent John O'Hare's concession that the TFU did not recognise the true extent of the problems it faced until

<sup>20</sup> For example, Steven Heywood, TS/2700 and subsequent transcript disclosed from closed hearing: see TS/2761. See also Gist 5 of the evidence of Superintendent Mark Granby: "Granby was asked about the following exchange [Granby TS/3669:3–3670:13] and confirmed that in fact it was not closed session material to which he was referring."

<sup>21</sup> Amended Defence Case Statement, 11 November 2014, Bundle I/1125, §41.2. The Force's conduct of those proceedings is not a matter for this Inquiry, but I consider that the circumstances in which the defence statement came to be submitted merit further investigation by the appropriate authorities with a view to establishing whether any person committed an offence.

<sup>22</sup> 15 February 2018, 164:7–12.

after the Inquiry's main hearing,<sup>23</sup> a delay which owed much to the unduly defensive posture which the TFU had chosen to adopt.

**10.19** During the main Inquiry hearing, for example, I detected a disquieting tendency to regard some of Ian Arundale QPM's legitimate criticism of the TFU as an unrealistic application of counsels of perfection – the fruit, as it were, of mere book-learning. The implication seemed to be that Mr Arundale, the Inquiry's expert witness, was advocating artificially high standards that no busy urban police force such as GMP could reasonably be expected to meet. I cannot agree with that approach. The principles embodied in documents such as the *Code of Practice* and the *Manual of Guidance*<sup>24</sup> are the product of extensive research and discussion between firearms practitioners at the highest level. They apply to all agencies equally. While the realities on the ground are bound to vary between individual police forces, the standards to be maintained are – or should be – universal. Where the safety of the public is at stake, there can be no exceptions or exemptions for “larger” or “busier” forces.

**10.20** Superintendent (“Supt”) Alan Wood (former chief firearms instructor) hit the nail on the head in an email message he sent to Detective Chief Inspector Ryan Davies on 29 November 2016:

I am of the opinion ... that operational colleagues during this era at times pushed for the wrong things, based on their operational status, i.e. “we do the job so know best”. This was not always the case and, as in this example, their enthusiasm sometimes at expense of proper documented procedure catches up with GMP at a later time??<sup>25</sup>

The immediate context of Supt Wood's observation was GMP's unauthorised introduction of the CSDC, but I think his words have a wider application, embracing, for instance, the TFU's dismissive reaction to the expert evidence which Mr Arundale gave to the Inquiry.

**10.21** It is not “Utopian” to expect that firearms commanders should be properly trained and qualified, to require them to apply the National Decision Model (“NDM”) conscientiously in accordance with the provisions of the *Manual of Guidance*, or to insist that, wherever practicable, they document their actions and decisions contemporaneously. The proper completion of firearms logs is not a mere paper exercise, let alone tedious “admin” to be deferred to some later date or even omitted altogether. On the contrary, it is the retrospective confection of such logs in the light of after-acquired knowledge that threatens to convert what should be a logical and transparent process into a formulaic and potentially misleading paper trail.

**10.22** Even where senior officers were aware that their decisions might attract criticism, they did not always grasp its full significance or take prompt and effective action to deal with it. The stubborn pursuit of the CSDC project is one example. The pervasive misconception within the TFU as to the true nature of a MASTS deployment provides another. Many officers thought of MASTS not as a flexible platform in support of surveillance, but as a “tactic” with the predetermined outcome of decisive armed intervention. That misunderstanding involved an important question of substance and not mere terminology, because it led to some commanders failing to give sufficient

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<sup>23</sup> John O'Hare, 15 February 2018, 166:6–10.

<sup>24</sup> Home Office (2003) *Code of Practice on Police use of Firearms and Less Lethal Weapons* and ACPO, ACPOS and NPIA (2011) *Manual of Guidance on the Management, Command and Deployment of Armed Officers*, third edition; now the Armed Policing module in the College of Policing's *Authorised Professional Practice*.

<sup>25</sup> CSDC Late Disclosure Bundle/301.

weight to (or even to consider) alternative and potentially safer tactical options (see Chapters 2, 3 and 4). Yet there is no evidence that the TFU learned anything from the events of 3 March 2012, or took advantage of the opportunity to reconsider their approach or improve their understanding of the MASTS platform.

**10.23** When Kevin Nicholson and his team from the College of Policing conducted their review of GMP’s armed policing policy and training, they carried out a “dip” sample of authorised firearms officer (“AFO”) briefing slide presentations from 2016 and 2017. In two cases (half the sample), they found that the Armed Support to Covert Operations (“ASCO”) or MASTS deployment was described as “the tactic”.<sup>26</sup> As Mr Nicholson explained, that was incorrect:

It is an operational platform from which a number of options and contingencies can be delivered and, on the action slide of the briefing presentation, enforced stop and extraction was shown, and nothing else in terms of contingencies on the ones I saw, which would lead me to conclude that ... the pre-empted end result of that operation is likely to be an enforced stop and extraction while subjects are in vehicles.<sup>27</sup>

Mr Nicholson acknowledged that the sample was necessarily a small one, and his team had not had the opportunity of listening to audio recordings of the briefings in question. All the same, his findings tend to confirm my impression that the fundamental misunderstanding of MASTS which Mr Arundale exposed had become so deeply ingrained in the thinking of some TFU officers as to be virtually ineradicable.

**10.24** That is not an overstatement. C Supt O’Hare assured the Inquiry:

[S]ince the beginning of our response to the incident in Culcheth, we have done CPD [continuing professional development] events and briefings to senior officers, with tactical advisers, with everybody involved in the planning and leadership of anything involved in either armed support to surveillance tactics, to ... reinforce the fact that the tactic is there to support the surveillance operation, not necessarily to be the final intervention.<sup>28</sup>

That such sustained internal efforts, repeated over a significant period of time, failed to remove the misunderstanding of MASTS within GMP’s TFU is truly remarkable.

**10.25** With regret, I cannot avoid observing that the very manner in which GMP commissioned the Nicholson review lends support to my conclusion that the Force’s priority was not so much to “learn lessons” as to demonstrate to others that it did not need to do so because it had already learned them. The distinction matters, not least because it caused the review to reach at least one conclusion that was both incorrect and unduly favourable to GMP, namely the Key Finding that GMP had anticipated Mr Arundale’s recommendation that the CSDC should be withdrawn by abandoning the device as long ago as June 2013. That was not so (see Chapter 7).

**10.26** The error occurred – without any fault on the part of the College of Policing team that conducted the review – for two reasons. In the first place, it seems clear that Mr Nicholson and his colleagues were not shown the documents which revealed the true position; the relevant papers were among the material which GMP initially claimed not to be relevant and which the Force did not disclose to the present Inquiry until after the main evidential hearing had concluded. The second reason is that the objectives and terms of reference which GMP specified for the Nicholson review were skewed from the outset towards generating conclusions that would tend to favour the

<sup>26</sup> Kevin Nicholson, 16 February 2018, 67:8–9.

<sup>27</sup> Nicholson, 16 February 2018, 67:9–20.

<sup>28</sup> O’Hare, 15 February 2018, 132:1–10.

Force and enhance its public image. The commissioning of the review was at least as much an exercise in damage limitation as a genuine attempt to rectify past mistakes. It thus tends to reinforce, rather than refute, the accusation of institutional complacency.

**10.27** GMP's declared objectives for the College of Policing review were as follows:

- A. To examine the progress made by GMP between 2012 – 2017 (since the shooting of Anthony Grainger) in terms of policy and practice and what improvements may still be required following the oral evidence at Liverpool Crown Court [a reference to the Inquiry hearing, which had taken place at the QEII Law Courts in Liverpool].
- B. Demonstrate to the family and partner of Anthony Grainger and to the Public Inquiry:
  - (i) What practices have changed in the GMP TFU and FTU since the death of Anthony Grainger on 3rd March 2012;
  - (ii) That GMP is sincere and committed to learning meaningful lessons relevant to firearms policing arising from Anthony Grainger's death; and from matters learned during oral evidence heard by the Inquiry between 17th January and 18th May 2017;
  - (iii) To draw upon lessons learned from the Grainger Inquiry in an effort to improve the command and control and governance of GMP firearms policing operations and
  - (iv) To increase public trust and confidence in Greater Manchester firearms policing having regard to the overarching principles of sustained public protection.<sup>29</sup>

**10.28** Without wishing to question the authenticity of GMP's professed motives, that list of objectives calls for comment. It is true that the objectives included a desire to "learn what improvements may still be required" and to "draw upon lessons learned from the Grainger Inquiry in an effort to improve the command and control and governance of GMP firearms policing operations". That much is commendable. The emphasis of the remaining objectives, however, seems to me to be more upon what had already been achieved than upon what might still need to be done.

**10.29** Item B(ii) provides a particularly instructive example. It requires the review to "Demonstrate to the family and partner of Anthony Grainger and to the Public Inquiry ... That GMP is sincere and committed to learning meaningful lessons relevant to firearms policing arising from Anthony Grainger's death". The problem is not so much the question-begging manner in which GMP framed the objective as the fact that it is there at all. One might have thought that the priority – indeed the whole point – of an independent review is not to produce a list of problems that have ceased to exist, but to expose any that remain to be solved.

**10.30** The point becomes clearer from the terms of reference that follow the list of objectives, the second of which specifies that "the review needs to be cognisant of the Inquiry findings [*sic*] to date and focus upon what improvement GMP Firearms Unit has made in terms of policy and practice between 2012 and 2017". Again, the requirement to "focus upon what improvement GMP Firearms Unit has made" might be thought to run the risk of diverting the review's energy away from the far more pressing task of identifying improvements that the TFU had not made but that might be necessary in the public interest.

**10.31** Similar considerations apply to the request to "highlight progress" in "areas which have drawn adverse comment from CTI [Counsel to the Inquiry] during the oral

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<sup>29</sup> Bundle Z2/634–636.

evidence”.<sup>30</sup> It seems calculated to steer the review towards conclusions that would tend to enhance GMP’s reputation rather than to improve public safety.

- 10.32** In making these observations, I do not mean to deny the usefulness to this Inquiry of up-to-date confirmation of significant changes in practice since 2012. Indeed, the Inquiry was later to ask for such information for the purpose of formulating recommendations. That, however, was an entirely separate process, conducted at the express request of the Inquiry. The true purpose of the College of Policing review was – or ought to have been – to provide an independent and thus objective assessment of GMP’s firearms training and policy with particular reference to its compliance, or otherwise, with national guidance.
- 10.33** In the event, the somewhat tendentious terms in which the review’s objectives and terms of reference had been framed produced no mischief, because Mr Nicholson and his team discharged their responsibilities conscientiously and with conspicuous objectivity. The fact remains, however, that the objectives and terms of reference which the TFU laid down for the College of Policing review were neither as balanced nor as probing as they might have been. They demonstrate, in my view, that as late as 2017, after the Inquiry hearing had concluded, the TFU remained incapable of exercising genuinely objective judgement in relation to its own conduct and that of its officers. They provide further evidence of an entrenched hostility to criticism, as well as of a latent impulse to identify the public interest with the department’s own interests and reputation.
- 10.34** I do not suggest that the TFU went so far as to subordinate public safety to its own interests or the welfare of its officers, but I certainly detected a tendency to conflate the protection of the public with that of the Force. Indeed, on one memorable occasion, Chief Inspector Michael Lawler came close to expressly equating the two. He expressed the view that in deciding to convene a panel to review “Z15”’s Metropolitan Police Service (“MPS”) course failure, Inspector Marcus Williams had been “protecting the force”.<sup>31</sup> It was a point which Mr Weatherby QC took up:

Question: The real point here though, Mr Lawler, is not “protecting the force”, is it? The real point here is that if you have a firearms officer being deployed on very risky operations, the risk is not to the force, the risk is to other officers, to the general public, to subjects of operations. That is the real risk, isn’t it?

**Answer: The risk is to the force and therefore by its nature it is to the public.**<sup>32</sup>

I do not for one moment suppose that CI Lawler intended by those words to suggest that public protection is, as it were, merely incidental to the protection of GMP, for that would be to reverse the true order of priorities. Nevertheless, his remark betrays an attitude of mind which carries with it the danger of failing to recognise situations in which the interests of the Force and the public interest might diverge.

- 10.35** It would be an exaggeration to describe the TFU as a dysfunctional department. I have no reason to doubt that it conducted many MASTS operations (particularly those in which CS canisters were not deployed) in a satisfactory manner. It did not, however, sustain the consistently high level of professionalism that the public is entitled to expect from a specialised armed unit. It was neither as good as it should have been nor as good as some of its commanders thought it was. Over the years covered by my investigation, the prevailing culture of complacency blinded the unit to its own

<sup>30</sup> Bundle Z2/732. See also O’Hare, 15 February 2018, 168:19–169:25.

<sup>31</sup> Lawler, TS/3001:2–10.

<sup>32</sup> Lawler, TS/3012:20–3013:2.

shortcomings, with the result that its highest aspiration became its own mediocrity and its loftiest ideal the status quo.

- 10.36** The corporate failures I have described in this chapter reflect a lack of effective leadership within the TFU. It is the senior commanders who set the tone of a specialised firearms department. With few exceptions, those from whom I heard evidence during the present Inquiry seemed to me to lack the necessary degree of critical insight into their own professional shortcomings or the collective deficiencies of the department they were supposed to lead.
- 10.37** It is surely not unreasonable to require firearms commanders to adhere scrupulously to national guidance. Such guidance prescribes minimum standards, not some arbitrary set of distant and unattainable ideals. Were it not so, other law enforcement agencies – not to mention at least one of GMP’s own firearms commanders<sup>33</sup> – would not have managed to comply with it. It cannot, therefore, be sufficient excuse for those who fail to attain those standards to plead that their critics – whether firearms instructors, practitioners from other forces or independent bodies such as the present Inquiry – must be applying excessively ambitious criteria out of ignorance of the practical reality of armed policing.
- 10.38** Without a concerted willingness to admit and confront past mistakes, a professed desire to “learn lessons” is little more than hot air. I have to say that I doubt whether the TFU as presently constituted is capable of successfully renewing itself from within. It is unlikely to implement the radical changes that are required as long as its leadership continues to lack the collective will or critical objectivity necessary to undertake them. As the TFU’s ineffectual reaction to the NPIA review of its use of CSDC demonstrates (see Chapter 7), even the objective advice of a “critical friend” is unlikely to accomplish very much.
- 10.39** I should not conclude this section of my Report without registering my sincere admiration for the majority of individual officers within the ranks of GMP’s TFU. They are conscientious, dedicated and courageous public servants whose number, I have no doubt, includes many future commanders of great distinction.
- 10.40** “Q9”’s decision to shoot Mr Grainger must be judged against the circumstances as he honestly understood them to be at the time, even if his understanding was incorrect. At the critical moment, Q9 mistakenly but honestly believed that Mr Grainger had a firearm with which he was about to open fire on the approaching AFOs. That he jumped to the wrong conclusion is partly his own fault and partly the fault of his commanders, whose incompetent planning and slipshod briefing directly contributed to his faulty appreciation of the facts.
- 10.41** It was not so much that firearms commanders overstated the threat which Mr Grainger posed; in some respects, they understated it.<sup>34</sup> They left Q9 with the misleading impression that on 3 March 2012 the subjects of Operation Shire were intending to carry out a “lie-in-wait” robbery during which they might take hostages. Worse, commanders omitted to brief the AFOs about the stolen Audi, particularly the extent to which approaching officers would be able to see inside the vehicle and cover its occupants. Above all, they failed to reconsider the tactical options available to them once the Audi reached the Jackson Avenue car park, particularly after the surveillance team had lost contact with the subjects. While the initial decision to authorise a MASTS

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<sup>33</sup> Superintendent Stuart Ellison (see Chapter 2).

<sup>34</sup> Arundale, TS/7193:8–20.

deployment was objectively reasonable, it did not follow that it had to culminate in an armed intervention. In the circumstances that prevailed at or immediately before 19:00 on 3 March, the wiser course would have been to disrupt the activities of the Audi's occupants, deferring arrests to a safer opportunity.

## A. Operation Samana

- 10.42** Operation Samana was an investigation by GMP into the theft in July 2011 of a memory stick belonging to a detective constable from the Force's drug squad. The memory stick, which was unencrypted, was the private property of the officer concerned and contained sensitive data the disclosure of which posed "significant risks to certain named individuals".<sup>35</sup> The officer kept the device in his wallet. On the evening of 17 July 2011, he left the wallet in the kitchen of his home along with the keys to his car, which was parked on the drive outside. An intruder entered the kitchen through an unlocked door and stole both the wallet and the car keys, using the latter to steal the officer's car.
- 10.43** The officer's use of the memory stick to store sensitive official data was unauthorised and therefore as unlikely to have been known to anyone else as the fact that he happened to store it in his wallet. The burglary took place during the early evening while the officer was at home. Everything about the crime suggests that it was opportunistic and that the theft of the wallet containing the memory stick was, in any event, ancillary to the intruder's primary objective of stealing the officer's car. Nevertheless, the disappearance of an unencrypted storage device containing sensitive police data inevitably led to the launching of Operation Samana to recover the stolen memory stick and identify, assess and manage the risks which its theft had engendered.
- 10.44** In their efforts to find the missing device, investigators conducted thorough enquiries into the theft and disposal of the car. They learned that an airbag which may have originated from the stolen vehicle had been sold by a car breaker's business in Radcliffe. The proprietor of the business was a man called Colin Waters, who lived at the same address as Mr Grainger. The police arrested both men and searched buildings with which they were thought to be linked. In the event, the investigation disclosed no evidence to link Mr Grainger with the disposal of the airbag or the theft of the vehicle to which it was thought to belong.
- 10.45** The memory stick has not been recovered. There is no information or intelligence to suggest that any unauthorised person has obtained access to its contents.
- 10.46** On 6 January 2012, GMP resolved to take no further action against Mr Grainger or Mr Waters. That was after Operation Shire had begun but well before Shire's investigators had identified Mr Grainger as a potential subject.
- 10.47** Aside from the incidental circumstance, documented elsewhere in this Report (see Chapter 2), that Operation Shire happened to adopt the subject profile of Mr Grainger that Operation Samana's team had prepared in 2011, there is no connection of any kind between the two investigations and no remotely credible reason to suppose that the decisive intervention on 3 March 2012 had anything to do with the stolen memory stick. The two events were wholly unrelated.

<sup>35</sup> Report of Ian Foster, 20 February 2013, Bundle N1/1.

## B. Was there another vehicle?

- 10.48** Detective Inspector (“DI”) Robert Cousen was understandably concerned that Operation Shire’s subjects might have access to a second stolen vehicle.<sup>36</sup> He knew that the organised crime group (“OCG”) had originally been in possession of two stolen cars and had used both of them in the expeditions to Stoke-on-Trent. On 9 February 2012, police officers unconnected to Operation Shire seized one of the cars, and by early March DI Cousen was in possession of sensitive intelligence which led him to believe that his subjects might be trying to source a replacement.
- 10.49** Having considered the material to which DI Cousen had access, I am of the view that his concern was well founded. However, I have seen nothing to suggest that Operation Shire’s subjects had succeeded in obtaining a second stolen vehicle by the evening of 3 March. Indeed, for reasons which I cannot reveal here but which I have set out in my closed Report, I think it at least as plausible that the purpose of that day’s expedition to Culcheth was to steal such a car for use in a subsequent armed robbery as that it was for the purpose of committing the robbery itself.
- 10.50** More than a week after Mr Grainger’s death, GMP came into possession of an item of sensitive intelligence suggesting that on 3 March an identified individual had driven a second vehicle containing weapons and balaclavas to Culcheth and that the vehicle had fled the scene after Mr Grainger was shot. Given that it has been possible to demonstrate conclusively that one important element of that intelligence cannot possibly be correct, I regard the whole of it as unreliable.
- 10.51** Despite the presence of surveillance and other police officers in the immediate area, no evidence has emerged to support the theory that a second stolen vehicle travelled to Culcheth on the evening of 3 March. Leaving aside Robert Rimmer, who was certainly nowhere near Culcheth that day, there is no evidence to indicate that anyone other than the three occupants of the stolen Audi ever had any connection with or involvement in such criminal enterprise as was in contemplation on 3 March. While it is impossible to dismiss out of hand the hypothesis that a second vehicle may have been involved in the events of that evening, it is one that I regard as improbable.
- 10.52** Much the same applies to the suggestion that before the Audi’s arrival in Culcheth an accomplice had concealed weapons – specifically an imitation firearm and a machete – in a rubbish bin near the Jackson Avenue car park. That, too, was something that did not come to light until after Mr Grainger’s death. Police officers who searched the car park immediately after the shooting of Mr Grainger found no weapons of any kind. None came to light later.
- 10.53** Again, I cannot altogether exclude the possibility that weapons had been hidden outside the car park, in an area not covered by the police search. That, however, is not easy to reconcile with the behaviour of the subjects at the scene, who remained in the stolen Audi for a significant period without making any attempt to retrieve concealed weapons. For that reason, as well as for additional reasons which I cannot give here but which I have discussed in my closed Report, I regard it as unlikely that an accomplice had concealed weapons in Culcheth on 3 March.

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<sup>36</sup> Robert Cousen, TS/1474:12–24.

## C. Recent civilian deaths in MASTS operations

- 10.54** In recent years, there have been at least two other cases in which police officers have fatally shot members of the public in the course of intelligence-propelled MASTS operations conducted against the occupants of suspect vehicles.
- 10.55** On 30 April 2005, armed officers of the MPS carried out an enforced vehicle stop in Edgware against a car which was believed to (and did) contain several firearms. An officer (“E7”) inside one of the police cars shot and killed Azelle Rodney, a passenger in the back of the suspect vehicle.
- 10.56** When E7 opened fire, he could see only Mr Rodney’s upper torso and head; he could not see his hands.<sup>37</sup>
- 10.57** On 4 August 2011, an armed officer (“V53”) of the MPS shot and killed Mark Duggan following an enforced vehicle stop in Tottenham. Seconds earlier, Mr Duggan had alighted from the nearside sliding door of the subject minicab carrying a Bruni pistol. The inquest jury concluded that V53 had acted lawfully.
- 10.58** Once Mr Duggan got out of the minicab, V53 could see the whole of his body, but he would not have had a clear view of him before that, while Mr Duggan was still inside the vehicle.
- 10.59** There are obvious respects in which those cases differ from each other and from the present matter, not the least of which is the fact that the Duggan and Rodney cases both involved enforced stops of vehicles in motion, whereas GMP’s TFU conducted its intervention against the occupants of a stationary vehicle in a public car park. A factor common to all three cases, however, is the restricted ability of armed officers to see what the subjects were doing inside the vehicle immediately before or at the time of the decision to open fire.
- 10.60** It is only to be expected that the inevitably restricted view into the passenger compartment of a conventionally designed car, even where it is not fitted with so-called “privacy glass”, will usually prevent someone outside from seeing anything of the occupants but their heads and upper torsos. An obvious consequence is that an armed officer attempting to detain a person inside a car may judge it necessary to discharge his weapon in circumstances where he would not have done so had the subject (particularly his hands) been in full view from the outset. That strikes me as a potentially critical factor when assessing the risks involved in conducting a MASTS vehicle “strike”.
- 10.61** In any MASTS intervention, the armed officers must necessarily seek to bring subjects under control as soon as the officers have shown themselves. It follows that where they are conducting an enforced stop against a vehicle in motion, they will have no choice but to seek to bring its occupants under control while the vehicle is still moving.
- 10.62** The position may not be quite so straightforward where the subject vehicle is already stationary at the point of intervention. As I understand it, the current orthodoxy regards the dominant consideration in such cases as “the element of containment”,<sup>38</sup> there being an obvious risk to the public in allowing the occupants of a suspect vehicle to get out of it before any threat they may pose has been neutralised.

<sup>37</sup> *The Report of the Azelle Rodney Inquiry*, 5 July 2013, §19.28.

<sup>38</sup> Chesterman, 16 February 2018, 130:19–131:22.

**10.63** It appears to me that the problem occasioned by limited visibility, whether into moving or static vehicles, has yet to receive the degree of consideration it really merits. In the present case, it seems not to have featured at all in the calculations of GMP's firearms commanders, who would otherwise hardly have implemented the incoherent policy of seeking to contain the subjects within the stolen Audi while simultaneously discharging a CSDC inside it.

**10.64** A peer review commissioned by the MPS following publication of the report of Sir Christopher Holland's inquiry into the death of Azelle Rodney concluded that there was little practical scope for improvement. Mr Nicholson summarised the position in a statement to the present Inquiry:

This review process, which incorporates extensive environmental scanning, has resulted in significant changes for many aspects of armed policing, many of those being tactical changes; however there has been very little change to the considerations and tactical options related to stopping and immobilising moving vehicles which contain armed subjects. This reflects the very limited viable options available when there is a requirement to stop a moving vehicle in such circumstances, and where a combination of risks from the moving vehicle, firearms and the potential of a pursuit all have to be considered and minimised.<sup>39</sup>

Those comments relate specifically to the problem of dealing with vehicles that are in motion. It may be that different considerations apply where, as in the present case, subjects thought to be armed are inside a stationary car.

**10.65** In recent years, significant changes have taken place in the design and construction of private cars. The increasing popularity of window glass so heavily tinted as to have the practical effect of converting a conventional saloon car into what, to someone observing from outside, might just as well be a van provides one relevant example. Another, perhaps, is the burgeoning and seemingly endless fashion for SUVs and other cars with greatly raised ground clearance and, therefore, passenger compartments significantly higher than those of the less physically assertive vehicles that were in favour not so many years ago. Those are all design features which are liable, and in some cases calculated, to inhibit external observation of the vehicle's occupants and which for that very reason may well prove especially attractive to professional criminals. I cannot help wondering whether such changes in private car design have been adequately reflected in firearms policy and practice. Has the time come to review and, perhaps, reformulate the orthodox approach to detaining armed criminals in vehicles?

**10.66** These are immensely difficult practical questions. They can only be answered by those professionals whose responsibility it is to settle firearms policy at the national level. Balancing the factors involved is a delicate exercise. It is not for me, as a lay member of the public, to seek to interfere in a discipline of which I have no expert knowledge or personal experience. For that reason, I do not presume to offer any opinion of my own, confining myself to a general observation that the particular factor of limited visibility into subject vehicles (whether moving or static) seems to deserve greater weight in the formulation and application of police firearms policy than it has hitherto received.

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<sup>39</sup> Nicholson, witness statement, 20 December 2017, Bundle Z1/178.

# Chapter 11: Recommendations

## A. Background

- 11.1** The Inquiry's Terms of Reference (see Appendix A) require me to "... make any such recommendations as may seem appropriate".
- 11.2** I determined at an early stage that I would not seek to obtain evidence from witnesses about possible recommendations during the course of the hearings concerning the events which culminated in the death of Anthony Grainger. Instead, I decided that I would wait until after the evidence concerning those events had been heard, and after I had had sufficient time to consider it, before seeking evidence about possible recommendations. This was for a number of reasons, including the following:
- It seemed to me important not to require the institutional Core Participants to file evidence concerning possible recommendations before I had formed provisional views as to the conduct of Operation Shire. There would have been no point in requiring participants to file a mass of evidence in relation to a particular matter if, after hearing about the conduct of the operation, there was no matter of concern or requiring possible change. Moreover, the discipline of hearing, first hand, the oral evidence of the live witnesses – especially the police officers – would give me a much better insight into the conduct of the intelligence-gathering and firearms operations, allowing me to approach the issue of recommendations with all of that knowledge at my fingertips.
  - Operation Shire was conducted in 2011 and 2012; by the time the Inquiry was conducting its oral hearings, in January to May 2017, five or so years had elapsed, making it unlikely that all the practices and procedures in operation in 2011/2012 were still currently in effect. I made it clear in directions issued to the Core Participants that I did not wish to examine the iterative changes in policy that had occurred in the course of that five-year period, and instead intended to focus only on current policies, doctrine and practices in the areas that I identified.

## B. Approach

- 11.3** The process that the Inquiry undertook to secure documentary and witness evidence was as follows.
- 11.4** First, Counsel to the Inquiry communicated to all Core Participants, to the public authorities that had proper interest in the issues, and to the wider public a list of the issues which I thought – at that stage – it was necessary to consider, in order to determine: (i) whether in due course to make a recommendation; and (ii) if so, the nature and terms of that recommendation (and the appropriate individual, organisation or public authority to whom it should be addressed). The Inquiry made it clear that the List of Issues was not to be taken by any person as indicating in any way the view that I had taken on the other issues identified in the Terms of Reference, or that I was minded to make a recommendation about any particular issue. The List of Issues was sent to those representing the family of Mr Grainger, Greater Manchester Police ("GMP"), the College of Policing, the National Police Chiefs' Council ("NPCC"), the Independent Office for Police Conduct ("IOPC"), Her Majesty's Inspectorate of Constabulary and Fire & Rescue Services ("HMICFRS", the successor, from July 2017, to Her Majesty's Inspectorate of Constabulary, "HMIC"), the National Crime Agency and the Home

Office. The List of Issues was also published on the Inquiry's website and is set out below. I asked that the public authorities listed, and any other organisation with a proper interest in the subject matter of the issues listed, should provide the Inquiry with witness and documentary evidence relevant to the matters set out in the List of Issues that related to their work, responsibilities or duties, or upon which they felt able to offer assistance to the Inquiry. I sought evidence in relation to the following matters:

**A. Intelligence collection, analysis and dissemination**

1. What (i) GMP and (ii) national policies exist as to the collection, analysis and dissemination of intelligence for the purposes of a planned armed deployment within the meaning of the *Armed Policing Authorised Professional Practice*?
2. What (i) GMP and (ii) national policies exist as to how a threat assessment should be created, quality assured and presented to AFOs [authorised firearms officers] for the purposes of a planned armed deployment within the meaning of the *Armed Policing Authorised Professional Practice*:
  - a. Generally; and
  - b. Where AFOs have participated in an operation involving more than one authorisation or deployment but which involves changes in the intelligence picture and / or subjects of the operation?
3. How in practice within GMP are such threat assessments (i) created, (ii) quality assured, and (iii) presented to AFOs – in particular:
  - a. Who has responsibility for the creation of a threat assessment that is to be provided to AFOs;
  - b. Who has responsibility for quality assuring such a threat assessment; and
  - c. Who has responsibility for presenting such an assessment?

**B. Evaluation, procurement and authorisation of specialist munitions**

4. What (i) GMP and (ii) national policies exist in relation to evaluation, procurement and authorisation of specialist munitions for use by the police service?
5. What checks, audits and / or inspections do national police bodies (such as the College of Policing, the NPCC or HMIC) conduct of each Force's evaluation, procurement and evaluation of specialist munitions?
6. How in practice does GMP evaluate, procure and authorise specialist munitions?
7. Is there a national pro forma document recording the authorisation (or the refusal of such an authorisation) to deploy on an operation specialist munitions so as to ensure that all benefits and risks are fully considered and documented from the outset of an armed deployment and that only 'approved' munitions are considered for deployment?
8. What review, if any, has been conducted of the 'authorisation' for CS RIP [round irritant projectile] Rounds that occurred prior to the introduction of the 2003 *Code of Practice* to ensure that all guidance and approved use criteria fit the current operational policing requirements and Home Office expectations regarding less lethal approval and use?

**C. CS Dispersal Canisters**

9. When, by whom, and why was the CS Dispersal Canister removed from operational deployment and use by the police service?
10. Is it intended to re-introduce the CS Dispersal Canister into operational deployment and use by the police service?

**D. Firearms operations and training**

11. What (i) GMP and (ii) national policies exist as to the planning, command, control and execution of Mobile Armed Support to Surveillance ("MASTS") operations?

12. To what extent do such documents clearly differentiate between MASTS as an operational method of supporting surveillance (and delivering a standard range of tactical options) and the additional tactical options of 'intervention' and 'interception' that MASTS-trained AFOs can deliver?
13. To what extent do such documents make express provision for the manner of the conduct of cross-border firearms operations?
14. What (i) GMP and (ii) national policies exist as to the (contemporaneous) completion of records concerning the planning, command, control and execution of a planned firearms operation within the meaning of the *Armed Policing Authorised Professional Practice*?
15. What (i) GMP and (ii) national policies exist concerning the communication of the outcomes of firearms training courses from the host Force to the home Force of an officer and the consideration of such outcomes by the home Force?
16. How within GMP are the terms of such policies carried into effect in practice?
17. What (i) GMP and (ii) national policies exist concerning the initial and refresher training of:
  - a. Strategic Firearms Commanders;
  - b. Tactical Firearms Commanders;
  - c. Operational Firearms Commanders;
  - d. Tactical Advisors; and
  - e. AFOs?
18. How within GMP are the terms of such policies carried into effect in practice – in particular:
  - a. What records of such training are maintained; and
  - b. What, if any, systematic review or audit of such training is conducted?
19. Has GMP commissioned a review of armed policing policy and training to ensure compliance with the *Code of Practice*, the *Armed Policing Authorised Professional Practice* and the NPFTC [National Police Firearms Training Curriculum] and which incorporates any lessons learned from Operation Shire?

**E. Post-incident procedures**

20. What (i) GMP and (ii) national policies exist concerning post incident procedures following the discharge of a firearm by an AFO? In particular, what is the current policy as to:
  - a. The recording of first and subsequent accounts from police officers who have been involved in an incident in which a police officer has discharged a firearm?
  - b. The permissibility or otherwise of separating police officers from each other after such an incident?

**F. Audio and video evidence**

21. What (i) GMP and (ii) national policies exist as to the recording of the radio communications of AFOs when deployed on an operation for which authorisation to carry firearms has been given?
22. What is the position of national police bodies as to whether such radio communications should be so recorded?
23. What (i) GMP and (ii) national policies exist as to the need for AFOs to be equipped with body worn videos when deployed on an operation for which authorisation to carry firearms has been given?
24. What is the position of national police bodies as to whether AFOs should be so equipped on such operations?

25. What (i) GMP and (ii) national policies exist as to the need for vehicles in which AFOs are carried to be equipped with audio and / or video recording equipment when deployed on an operation for which authorisation to carry firearms has been given?
26. What is the position of national police bodies as to whether such vehicles should be so equipped on such operations?

**G. Firearms doctrine and policy generally**

27. In the light of the circumstances of the deaths of Azelle Rodney on 30.4.05 (and the report of the Inquiry into his death of 5.7.13) and of the circumstances of the death of Mark Duggan on 4.8.11 (and the PFD [Prevention of Future Deaths] report of 29.5.14) what national reviews or revaluations have been undertaken as to the necessity and risks of:
  - a. The use of decisive action intervention firearms tactics in relation to a person suspected of carrying a firearm or firearms when that person is contained within a motor vehicle;
  - b. The provision of 'static cover' in the course of such an intervention;
  - c. The use of apparatus to identify to subjects that AFOs conducting such interventions are police officers – specifically (i) the illumination of (hitherto) hidden blue lights on unmarked police vehicles, and / or (ii) integral loud speaker systems that could be used to broadcast information or instructions outside an unmarked police vehicle.

**11.5** The second part of the process was the response of organisations and public authorities to the call for evidence. I am pleased to report that, by and large, the response was a positive one and the relevant public authorities provided the Inquiry with the evidence that it needed in order to undertake this part of its work. I had made it clear in directions issued by Counsel to the Inquiry that I expected and required complete openness from organisations and public authorities in this stage of the Inquiry's work concerning: (i) the position that had been reached; (ii) the improvements made since 2011/2012; and (iii) any work that still needed to be done. The Inquiry received more than 200 pages of witness statements and 1,600 pages of supporting material from these organisations.

**11.6** The third part of the process involved the disclosure by the Inquiry (subject to any necessary redaction) to Core Participants of the witness and documentary evidence that it had received in response to the call for evidence that I refer to above. I considered it important that all Core Participants, and especially Mr Grainger's family members, should be as involved as possible in this part of the Inquiry's work – certainly as involved as they had been in the process of uncovering the truth of what had happened in the course of Operation Shire.

**11.7** The last part of the process involved hearing oral evidence from witnesses relevant to the possible recommendations that I had identified. This took place over the course of two days in February 2018. The Inquiry heard evidence from:

- Chief Superintendent John O'Hare, the lead officer in GMP's Specialist Operations Branch and Force Intelligence Branch;
- Detective Chief Superintendent Anthony Creely, a GMP officer and the Head of TITAN, which is the North West's Regional Organised Crime Unit and which co-ordinates the six forces in the North West region;
- Richard Bennett, previously an Assistant Chief Constable of Thames Valley Police, but at the time of giving evidence the Head of the Uniformed Policing Faculty at the College of Policing;

- Kevin Nicholson, a retired Chief Inspector of the Metropolitan Police Service, but at the time of giving evidence the firearms lead within the Specialist Operations Faculty of the College of Policing;
- Deputy Chief Constable Simon Chesterman, the lead for Armed Policing for the NPCC;
- Superintendent James Bartlett, in February 2018 the lead on specialist police operations for HMICFRS, which included the police use of firearms (and police use of less lethal weapons); and
- Matthew Parr, one of Her Majesty’s Inspectors of Constabulary, who in February 2018 held responsibility for inspection of counter-terrorist functions at a national level.

**11.8** I had made it clear before the oral hearings commenced that Core Participants should be aware that, at this stage of the Inquiry’s work, the aim was to undertake a constructively searching analysis of the adequacy of current policy, doctrine and practice and the possible need for future change; and that, while it was obviously impossible entirely to rule out criticism of witnesses for the evidence that they gave, this stage of the process would generally not involve criticism of the witnesses.

**11.9** As I mentioned when conducting the oral hearings, in making recommendations to GMP, to the police service and to others I do not want to recommend the imposition of a whole raft of bureaucratic measures. Instead, my approach has been to make any recommendations as simple as possible, as few as possible, and to be guided by common sense.

## C. Recommendations

### General

**11.10** Following the Azelle Rodney Inquiry, the Association of Chief Police Officers (“ACPO”, effectively the predecessor to the NPCC) recommended that either ACPO National Armed Policing or the College of Policing should commit to managing a national register of recommendations relating to armed policing that arose from reports by the Independent Police Complaints Commission (“IPCC”, now IOPC), prevention of future death reports made in the course of inquests, and statutory inquiries arising from fatal police shootings. It was proposed that, in response to the publication of a recommendation on the national register, each force could give due consideration as to whether the recommendation had relevance to its own circumstances.

**11.11** DCC Chesterman made that recommendation in 2014. By the time the Inquiry came to hear evidence about recommendations in 2018, it had not been implemented. In the course of the hearings concerning possible recommendations, the College of Policing’s witnesses stated that it, the College, had not accepted that it should undertake the role recommended by DCC Chesterman, because of (in summary): (i) the role and functions of the College: its role was said to be to set standards and promulgate guidance, but not to co-ordinate activity across the whole of policing; and (ii) concerns in relation to resources: it was said that the College would, to an extent, have to restructure itself if it were to take on this function. For his part, when he gave evidence, DCC Chesterman agreed with the College that “... the register should be hosted by National Armed Policing and not the College, so I tend to agree

with the College that it should sit with the capability lead for the discipline, which is me ...". As to the substance of the issue, DCC Chesterman agreed that a national policing body ought to manage a national register of recommendations relating to armed policing that arose from IOPC reports, prevention of future death reports made in the course of inquests, and statutory inquiries arising from fatal police shootings. He explained that the issue that had prevented his earlier recommendation from being implemented was not so much a disagreement with the College of Policing as to ownership of the function, but rather securing the financial support for the NPCC to undertake it.

- 11.12 Recommendation 1: A national policing body should manage a national register of recommendations relating to armed policing, and the response to such recommendations, arising from Independent Office for Police Conduct ("IOPC") reports, prevention of future death reports made in the course of inquests, and statutory inquiries concerning fatal police shootings.** I take no view as to which of the national policing bodies should undertake this function: the more important issue for me is that **someone** should do it. The danger that presently exists in the absence of the formality and discipline that such a register brings is that a patchwork quilt exists, in which knowledge of recommendations is variable and inconsistent. Moreover, the existence of a register may assist in the prompt consideration of the recommendation: a recommendation is perhaps more likely to be put into effect – or at least dismissed on good and proper grounds – if the recommendation, and the response to it, are available for all relevant stakeholders to see. Finally, public confidence may also be enhanced if it can be seen that the recommendation has been responded to.

## HMICFRS thematic inspection

- 11.13** Paragraph 2.3.1 of the *Code of Practice on Police use of Firearms and Less Lethal Weapons* provides:

HMIC will continue to monitor police use of weapons requiring special authorisation. This will cover:

- (a) arrangements within forces for threat and risk assessment,
- (b) the selection and training of officers authorised to use such weapons, or to command incidents involving their use or to provide tactical advice relating to their use; and
- (c) compliance with this code and related ACPO guidance.<sup>1</sup>

- 11.14** The reference to "weapons requiring special authorisation" is a reference to **any** weapon other than one which is routinely issued to patrol officers in their use for self-defence.

- 11.15** The evidence that I heard made clear that HMICFRS (or, before it, HMIC) has not conducted a thematic inspection of weapons requiring special authorisation in the recent past: indeed, the last such thematic inspection was carried out as long ago as 2004.

- 11.16** Equally, in terms of specialist munitions, the evidence established that HMICFRS or HMIC had not been required or requested, whether by the Secretary of State, or any other person, to undertake inspection work, specifically in relation to forces' evaluation, procurement and authorisation of specialist munitions as defined in the

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<sup>1</sup> Home Office (2003) *Code of Practice on Police use of Firearms and Less Lethal Weapons*.

College of Policing's *Authorised Professional Practice* ("APP") and that it had not otherwise specifically inspected that issue under its inspection programme.

- 11.17** In the last decade or so, the threat from armed criminality has shifted significantly; equally, the police service has made substantial enhancements of the armed policing response to that threat.
- 11.18** Although HMICFRS (or HMIC) has in the past undertaken inspections that touched upon the police use of firearms and less lethal weapons (including inspections within its Peel inspection programme that looked at the use of Taser and individual forces' strategic firearms threat and risk assessments, and thematic inspections relating to counter-terrorism), no thematic inspections have been undertaken in relation to: (i) the selection and training of officers authorised to use weapons requiring special authorisation (paragraph 2.3.1(b) of the *Code*); (ii) the selection and training of officers authorised to command incidents involving the use of weapons requiring special authorisation (paragraph 2.3.1(b) of the *Code*); (iii) the selection and training of officers authorised to provide tactical advice relating to the use of weapons requiring special authorisation (paragraph 2.3.1(b) of the *Code*); (iv) compliance with the *Code* and/or APP relating to the police use of firearms (paragraph 2.3.1(c) of the *Code*); or (v) compliance with the *Code* and/or APP concerning the procurement and use of special munitions.<sup>2</sup>
- 11.19** In the light of the findings that I have made in relation to a wide range of troubling issues within GMP (including: the procurement of special munitions; the occupational and operational competence of a number of officers; the handling, analysis and dissemination of intelligence; the command and control of pre-planned firearms operations; and the use of Mobile Armed Support to Surveillance (MASTS)) and the findings of previous inquiries and inquests concerning similar issues, in my view the time has come for HMICFRS to undertake a thematic inspection or inspections into the issues raised in the preceding paragraph.
- 11.20** **Recommendation 2: Her Majesty's Inspectorate of Constabulary and Fire & Rescue Services ("HMICFRS") should conduct a thematic inspection or inspections concerning: (i) the selection and training of officers authorised to use weapons requiring special authorisation (paragraph 2.3.1(b) of the *Code of Practice on Police use of Firearms and Less Lethal Weapons*); (ii) the selection and training of officers authorised to command incidents involving the use of weapons requiring special authorisation (paragraph 2.3.1(b) of the *Code*); (iii) the selection and training of officers authorised to provide tactical advice relating to the use of weapons requiring special authorisation (paragraph 2.3.1(b) of the *Code*); (iv) compliance with the *Code* and/or the Armed Policing module of *Authorised Professional Practice* ("APP") relating to the police use of firearms (paragraph 2.3.1(c) of the *Code*); and (v) compliance with the *Code* and/or APP concerning the procurement and use of special munitions.** I have deliberately not formulated this recommendation prescriptively, whether as to the precise content of such inspections, or as to the timescales within which they should be conducted. Those are matters for HMICFRS.

<sup>2</sup> *Ibid.*

## Special munitions

- 11.21** It will be appreciated that one of the most significant issues uncovered by the Inquiry was that GMP's procurement (and thus the deployment and use) of the CS dispersal canister was undertaken outside, and in breach of, the *Code*.
- 11.22** It was accepted by all that weapons to which the *Code* applies (as to which, see paragraphs 1.3.3 and 1.3.4 of the *Code*) should not be procured, and therefore deployed or used, unless they have been approved in accordance with the process set out in the *Code*.
- 11.23** It is my firm view that the existing *Code* makes it sufficiently clear to a reasonable reader that the approval process set out in paragraph 4.3 must be undertaken before any weapon to which the *Code* applies is available for use by a police officer. See, in particular, paragraph 4.3.4 of the *Code*:
- The processes for evaluating, assessing and adopting new weapon systems and tactics, and arranging for any related training to accredited standards, must be completed before such weapons and tactics are to be regarded as available generally for use by police forces.<sup>3</sup>
- 11.24** The evidence that I heard, however, suggested that some may take advantage of the absence of an express prohibition in the *Code* on the use by the police service of weapons that have not been approved in accordance with the process set out in paragraph 4.3 of the *Code*.
- 11.25** Moreover, the North West Armed Policing *Standard Operating Procedure on Weapons and Ammunition* makes no provision for the approval process in the *Code* to be completed before any new weapon is introduced into use. Instead, it appears to enable the NPCC lead in the North West region to approve new weapons even if they have not gone through the approval process described in the *Code*.
- 11.26** **Recommendation 3:** The Secretary of State for the Home Department should ensure that the new *Code of Practice on Police use of Firearms and Less Lethal Weapons* contains an express prohibition on the use of a new weapon system by the police service until the approval process set out in the *Code of Practice* has been completed and the new system has been approved by the Secretary of State.
- 11.27** **Recommendation 4:** The North West Armed Policing *Standard Operating Procedure on Weapons and Ammunition* should be amended so that it only permits the use of new specialist munitions that have been approved in accordance with the *Code of Practice on Police use of Firearms and Less Lethal Weapons*.

## Intelligence collection, analysis and dissemination in the context of pre-planned firearms operations

- 11.28** As I have made clear elsewhere in this Report, the diligent and careful collection, analysis and dissemination of intelligence is of the first importance to the effective conduct of pre-planned armed policing operations. Things went badly awry in Operation Shire. At the hearings conducted in February 2018, the senior GMP witnesses who gave evidence accepted that, even by that date, GMP did not have any written policy that specifically related to the collection, analysis and dissemination

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<sup>3</sup> *Ibid.*, §4.3.4.

of intelligence for the purposes of planned armed deployments within the meaning of the Armed Policing module of the APP. This surprised me, particularly because of the concerns that had been raised about GMP's handling of intelligence in connection with Operation Shire, namely: (i) by the IPCC in its report of October 2013; (ii) through the criminal proceedings brought against Sir Peter Fahy in January 2014;<sup>4</sup> and (iii) by Ian Arundale QPM, the Inquiry's expert witness, in his report from November 2016.

**11.29 Recommendation 5: Greater Manchester Police ("GMP") should design and promulgate a written policy that specifically relates to the collection, analysis and dissemination of intelligence for the purposes of planned armed deployments within the meaning of the Armed Policing module of *Authorised Professional Practice* ("APP"). While it will be for GMP to determine the specific content of such a policy (having regard, in particular, to regional co-operation arrangements), it must address:**

- the use of intelligence in threat and risk assessments for planned armed deployments;
- where responsibility lies for the creation of threat and risk assessments for planned armed deployments;
- where responsibility and processes lie for the assurance of threat and risk assessments for planned armed deployments;
- the use of intelligence in briefings and presentations to authorised firearms officers ("AFOs") in planned armed deployments;
- where responsibility and processes lie for the assurance of briefings and presentations of threat and risk assessments to AFOs in planned armed deployments; and
- where responsibility lies for training officers in the use of intelligence in threat and risk assessments for planned armed deployments and in the creation, assurance and presentation to AFOs of such assessments.

## Mobile Armed Support to Surveillance ("MASTS")

**11.30** As Mr Arundale QPM made clear to the Inquiry, surveillance and MASTS are very valuable and sometimes essential operational methodologies to combat the most determined criminals and organised crime groups.

**11.31** I have concluded that, in this case, the fundamental problem underlying the collective failure by commanders and advisers to give adequate and early consideration to alternative tactical options was their shared misconception that MASTS was itself a firearms "tactic", rather than an operational means of supporting surveillance with an armed officer capability. This turned the entire MASTS methodology on its head: in the eyes of GMP's Tactical Firearms Unit, MASTS became not so much a means of deploying firearms officers in support of a surveillance operation as a means of deploying surveillance officers in support of a firearms operation, the foreordained outcome of which would be an armed arrest.

<sup>4</sup> The proceedings against Sir Peter Fahy were in his capacity as Chief Constable of GMP for an alleged offence contrary to the Health and Safety at Work etc. Act 1974, arising out of the Force's planning and conduct of the armed operation on 3 March 2012.

**11.32 Recommendation 6:** All documents and training relating to Mobile Armed Support to Surveillance (“MASTS”) should:

- clearly differentiate between MASTS as an operational method of supporting surveillance (and delivering a standard range of tactical options), and the additional tactical options of “intervention” and “interception” that MASTS-trained authorised firearms officers (“AFOs”) can deliver;
- make clear that a MASTS deployment authorisation should not be taken to imply that “intervention” or “interception” are preauthorised or preferred tactical outcomes;
- note that decisive action by MASTS officers is a high-risk option and explain what factors lead to higher risks (for example, the presence of a subject inside a stationary vehicle); and
- make clear that the reasons for any strategic or tactical command decision in a firearms operation (including any decision to authorise such an operation) must be recorded at the time the decision is made unless it is impracticable to do so, in which case such reasons, together with a full explanation for not recording them at the time, must be recorded as soon as possible.

## Audio-visual recording of firearms operations

**11.33** It is beyond the scope of this Inquiry, and therefore this Report, to address the range of complex issues that arise in relation to the audio-visual recording of covert firearms operations. This topic has been the subject of research, trials, evaluation and commentary. I have not, for good reasons, examined this material or received expert and other evidence from those with specialist knowledge of these matters: it would have been beyond my Terms of Reference to have done so, and would have unnecessarily delayed the conduct of the Inquiry.

**11.34** All of that said, however, it is fair to note that it would have been of great assistance to the conduct of this Inquiry if:

- the radio communications of the firearms commanders, and the AFOs, had been recorded;
- the “Alpha”, “Bravo”, “Charlie” and “Delta” vehicles had covert video cameras installed within them so that the precise circumstances of the events in the car park in Culcheth could have been recorded; and
- the AFOs had been equipped with body-worn video cameras.

**11.35** I recognise that my narrow perspective as an investigator examining events after they have occurred is but one voice in any balanced discussion as to the merits and disadvantages of deploying covert AFOs in pre-planned firearms operations with the equipment mentioned in the preceding paragraph. It is nevertheless a voice that should be heard.

**11.36 Recommendation 7:** The National Police Chiefs’ Council (“NPCC”) should, in the formulation of policy, take into account that, when establishing the facts, discharging investigative obligations and ensuring openness and transparency

following the discharge of a firearm by a police officer in the course of a pre-planned firearms operation, there are significant advantages in having:

- recordings of the communications of firearms commanders and authorised firearms officers (“AFOs”); and
- video recordings from the body-worn video cameras of AFOs and police vehicles involved in decisive action.

## Special apparatus for MASTS vehicles

**11.37** As I have pointed out elsewhere (see paragraph 5.69), from the moment a MASTS team has to reveal its true nature and purpose, usually when a “strike” is called, the subjects must be left in no doubt that those confronting them are police officers, as opposed (for example) to members of a rival organised criminal gang. Equally, they must be able to hear and readily comprehend any instructions they are given.

**11.38** The use of blue flashing lights (which can be concealed when not in use) is one way of achieving the first of those objectives. As to the second, audible sirens suffer from the disadvantage that they may drown out any verbal commands issued by AFOs. In the fast-moving and confusing circumstances of a MASTS intervention, even where the AFOs conducting it are not encumbered with respirators (as some were on 3 March 2012), it hardly seems satisfactory to rely upon the ability of officers to convey intelligible commands by the use of raised voices, particularly where the subjects are inside a vehicle. As it happens, Mr Grainger and David Totton on 3 March 2012 did, in fact, manage to hear and understand the instruction to show their hands, as their initial compliance demonstrates. However, I was not surprised to find that some witnesses failed to hear or, at any rate, to register some of the shouted instructions. Indeed, some – including even police officers participating in the “strike” – either did not register the sound of gunfire or, if they did, confused it with something else.

**11.39** To this problem there is no perfect solution. In some foreign jurisdictions (see paragraph 5.71), emergency vehicles are fitted with integral loudspeaker systems that enable the occupants to issue readily audible instructions to other road users. I cannot help thinking that something similar, incorporating concealed speakers, could be adapted to the context and requirements of a MASTS intervention. Besides providing a high level of amplification, loudspeakers would help to dominate and subdue the subjects from the outset and should also eliminate any doubt as to the identity of those challenging them.

**11.40** **Recommendation 8:** The National Police Chiefs’ Council (“NPCC”) should consider whether to recommend equipping unmarked vehicles used in Mobile Armed Support to Surveillance (“MASTS”) interventions with apparatus designed to identify to subjects that those conducting such interventions are police officers – specifically (i) the illumination of previously concealed blue lights on unmarked police vehicles; and/or (ii) integral loudspeaker systems that could be used to broadcast information or instructions outside such a vehicle.

## Extended hours of duty

**11.41** I was surprised to learn that by the time State Red was declared on the evening of 3 March 2012, some of the AFOs participating in the deployment (including Q9) had

already been on duty for more than 14 hours. It is true that for much of the day they had been physically inactive, and some had managed to get some sleep. It is also true that none complained of having suffered fatigue. At the same time, if the present culture of long hours is to continue, it ought to be justified by reference to something more scientific than anecdotal evidence. Valuable as it undoubtedly is, the accumulated experience of firearms practitioners is no substitute for academic learning gained through independent and up-to-date physiological and psychological research.

- 11.42** Although the APP requires that rest periods and refreshment breaks must be recorded, it does not prescribe or even recommend any maximum extended deployment time for AFOs. If only because I did not hear evidence about this particular issue during the hearing on recommendations in February 2018, I take the view that the question of whether there should be an upper limit on the number of hours of duty for AFOs and, if so, what that limit should be, is not one for me to determine. These are matters for the NPCC and the College of Policing.
- 11.43** I accept the need for flexibility in what is a peculiarly unpredictable field of police work. Occasions are bound to arise when lengthy shifts of duty prove unavoidable. Nevertheless, I have concluded that the question of whether there should be an upper limit is one that ought to be reviewed in the light of advice from independent experts in physiology and psychology. Alongside legitimate operational factors, such as the need for flexibility, those who conduct that review should bear in mind that, where a decisive intervention takes place, the need to complete post-incident procedures is liable to extend a shift still further, potentially by many hours.
- 11.44** **Recommendation 9: The National Police Chiefs’ Council (“NPCC”) and the College of Policing should jointly decide, in the light of independent expert advice, whether there should be a maximum period of time during which authorised firearms officers (“AFOs”) are permitted to remain on continuous duty and, if so, should ensure that this maximum period is specified in national guidance.**

## Chapter 12: Narrative Conclusion

- 12.1** Anthony Grainger was born on 26 January 1976. He died on 3 March 2012 from a single gunshot wound inflicted by an authorised firearms officer (“AFO”) of Greater Manchester Police (“GMP”) known as “Q9”, life being pronounced extinct at 19:33.<sup>1</sup>
- 12.2** The medical cause of death, as given by Dr Brian Rodgers and Dr William Lawler<sup>2</sup> following post mortem examination, was:
- 1a Shock and haemorrhage;
  - 1b Gunshot wound to chest penetrating both lungs and pulmonary trunk.
- 12.3** Mr Grainger was shot while sitting with two associates, David Totton and Joseph Travers, in a stationary Audi car in a public car park in Culcheth, Cheshire, during an attempt by AFOs to arrest them in the course of a planned Mobile Armed Support to Surveillance (“MASTS”) operation.
- 12.4** The officer who fired the fatal shot, Q9, has said that he did so in the belief that Mr Grainger was reaching for a firearm with which he intended to open fire on Q9’s colleagues.
- 12.5** The Audi, which had been stolen in December 2011, was disguised with false registration plates. Two of its occupants, Mr Totton and Mr Grainger, together with a third man, Robert Rimmer, were subjects of a GMP operation, Operation Shire, which was investigating their suspected involvement in commercial robberies and which had been keeping the subjects under intermittent surveillance for some weeks.
- 12.6** On four out of the five days preceding 3 March, at about the same hour, the stolen Audi had travelled from Salford to the same part of Culcheth and back. The visits had no legitimate purpose but passed without incident.
- 12.7** On Thursday 1 March, anticipating that a “hostage” robbery might take place in Culcheth during the early hours of Friday 2 March, firearms commanders authorised, planned and briefed a MASTS deployment, but the authority was rescinded after the night passed without incident.
- 12.8** Shortly before 7 p.m. on Friday 2 March, the stolen Audi made its fourth and penultimate visit to the centre of Culcheth. Later the same evening, in the belief that the subjects were planning to commit a robbery against an unknown commercial target in Culcheth, firearms commanders authorised a MASTS deployment for the following day, Saturday 3 March 2012.
- 12.9** On the evening of 3 March, the stolen Audi again travelled from Salford to Culcheth, where it was parked in a public car park off Jackson Avenue. Mr Rimmer was not present. Mr Grainger was in the driver’s seat, Mr Totton occupied the front passenger seat and the third man, Mr Travers, sat in the back. It was while they were sitting in the stationary Audi that a team of GMP’s AFOs attempted to arrest them and Q9 fatally shot Mr Grainger.

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<sup>1</sup> Kenneth Fitzpatrick, witness statement, Bundle A/184–185. See also Diagnosis of Death form, Bundle G2/613.

<sup>2</sup> Dr Rodgers report, Bundle A/244–265. Dr Lawler expressed the medical cause of death as a gunshot wound to chest: Bundle A/265A–G.

**12.10** The three men in the stolen Audi were wearing gloves, and Mr Totton and Mr Travers were wearing hats that could be rolled down to form face masks,<sup>3</sup> but the men were not in possession of weapons, nor was there any intelligence to suggest that on this occasion they were armed or had access to firearms. While their visit to Culcheth on 3 March was undoubtedly linked to serious crime, its purpose was probably not to commit a commercial robbery that evening. Instead, it was almost certainly in connection with a future robbery, perhaps to conduct reconnaissance or to steal a car for use in the course of such a robbery.

**12.11** Mr Grainger died because GMP failed to authorise, plan or conduct the MASTS operation on 3 March in such a way as to minimise, to the greatest extent possible, recourse to the use of lethal force. In particular:

- (i) GMP failed to create or develop an accurate intelligence profile of Mr Grainger, relying instead upon a profile that gave a distorted and exaggerated view of the nature and extent of the threat he presented.
- (ii) GMP failed to ensure that all those who commanded and participated in the MASTS operation were occupationally and operationally competent to fulfil their designated roles:
  - The tactical firearms commander (“TFC”), Superintendent (“Supt”) Mark Granby, had recently failed a specialist Police Service of Northern Ireland Joint Services training course. Before allowing Supt Granby to resume a tactical command role, GMP should have considered whether to remove him from firearms command responsibilities pending further assessment of his operational competence but did not do so.
  - The operational firearms commander, “X7”, had not attended his mandatory annual refresher training and had recently failed a counter-terrorist specialist firearms officer (“CTSFO”) course for the second time. He was not occupationally competent at the date of the MASTS operation and, by reason of his second CTSFO failure, was no longer eligible to participate in a MASTS operation in any capacity.
  - One of the AFOs, “Z15”, had also recently failed a CTSFO course. GMP should have suspended him from AFO duties pending remedial training but did not do so until after the death of Mr Grainger.
  - A tactical adviser (“TA”), “Y19”, had never been trained as a MASTS AFO and was not occupationally competent to act as TA in a MASTS operation.
- (iii) GMP’s firearms commanders planned the MASTS operation incompetently in that:
  - They treated the firearms authority of 3 March as a continuation or extension of the previous day’s revoked authority, which had been developed in anticipation of a different threat (an overnight “hostage” robbery), and wrongly assumed that the previous day’s threat assessment and tactical plan remained appropriate without further consideration.
  - Instead of subjecting the available intelligence and information to fresh and independent scrutiny, they uncritically adopted the previous day’s threat

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<sup>3</sup> Investigators also recovered a beanie/bob hat from the front footwell of the car.

assessment and tactical plan without significant amendment. Their failure to detect or appreciate the significance of material changes in circumstances since the previous MASTS operation, including the red Audi's further visit to Culcheth the previous evening, meant that: (i) they did not consider whether the subjects' presence in Culcheth might be for the purpose of some form of criminal activity other than armed robbery (such as to conduct reconnaissance or to steal a vehicle for the purposes of such a robbery); (ii) they failed to identify alternative tactical options, including tactics to disrupt criminal activity without making arrests in Culcheth; and (iii) they failed to plan adequately for contingencies including, in particular, loss of surveillance of the operation's subjects while they were in the centre of Culcheth.

- Instead of treating the MASTS platform as a flexible means of supporting a surveillance operation, they wrongly regarded it as a firearms "tactic", to which surveillance was merely a subordinate accessory, with decisive armed intervention as the default outcome.
  - They unnecessarily purported to authorise the carrying of special munitions, namely CS dispersal canisters (an unapproved and therefore illicit munition) and tyre-breaching rounds. The use of such munitions required the officers tasked with deploying them to approach the Audi with no adequate means of defending themselves, thereby rendering them, to the knowledge of their colleagues, especially vulnerable to violent resistance or retaliation by the Audi's occupants.
- (iv) GMP's commanders briefed the AFOs incompetently, in that:
- Instead of creating a bespoke briefing presentation for the AFOs on 3 March 2012, they adopted the briefing slide presentation that had been prepared for the previous day's deployment in anticipation of a different threat and pursuant to a separate firearms authority that had been rescinded.
  - They failed to inform the AFOs on 3 March that there was no current intelligence to suggest that any of the operation's subjects would be armed or would have access to firearms.
  - They wrongly briefed the AFOs that one of the subjects had been seen a few days earlier in possession of a hacksaw, thereby reinforcing the mistaken theory that the subjects might be contemplating an overnight "hostage" robbery.
  - They overstated Mr Grainger's past criminal history, particularly in relation to violence and firearms, thereby presenting the AFOs with a distorted and exaggerated impression of the threat he was likely to pose.
  - They failed to brief the AFOs about the extent to which officers approaching the stolen Audi (including those tasked with deploying special munitions) would be able to see what was happening inside the vehicle. In particular, they failed to inform the AFOs that, although the Audi's rear screen and rear side windows were heavily tinted, the front windscreen and front side windows were clear.

- (v) GMP's commanders conducted the MASTS operation of 3 March incompetently in that:
- They failed to reappraise the subjects' intentions after (contrary to expectation) the last cash delivery of the day had taken place without incident and failed to carry out any effective review of the threat assessment or tactical plan against the background of a rapidly diminishing number of plausible targets for the robbery they anticipated.
  - They failed to conduct any tactical review of the operation when, shortly before 7 p.m., the surveillance team lost visual contact with the occupants of the Audi. In particular, they failed to consider whether, in the interests of public safety, police officers should take immediate steps to disrupt any intended criminal activity without attempting to arrest the subjects at the scene.
  - They allowed AFOs (including Q9) to remain on duty for an excessive period of time, thereby generating a risk of individual misjudgement through fatigue.
- (vi) Q9 failed to distinguish adequately or at all:
- between information formally briefed to him, which he was entitled to regard as reliable, and anecdotal information which he had gleaned from unofficial and untested sources; and
  - between information relating directly to the subjects of the operation and information relating to other known criminals, who were not at the time active associates of the subjects.
- (vii) The foregoing failures of GMP, its commanders and Q9 himself caused Q9 to believe that the risk which Mr Grainger and the other occupants of the Audi posed to the public and to police officers was significantly greater than it really was, and led Q9 to make the following false assumptions:
- The subjects of the MASTS operation on 3 March would be carrying firearms.
  - The subjects were active criminal associates of a Salford organised crime group, other members of which had previously discharged firearms at police officers while committing robbery.
  - The subjects had travelled to Culcheth in order to carry out an armed robbery which was likely to take the form of a "hostage" robbery involving the kidnapping of commercial employees at gunpoint.
  - Once AFOs deployed from their vehicles to effect the intended arrests, they would be unable to see inside the Audi, leaving Q9 as the only armed officer in a position to monitor what was happening inside the Audi and provide cover for his colleagues.
- (viii) In combination, those false assumptions left Q9 with an exaggerated impression of the threat posed by Mr Grainger and the other occupants of the Audi, as well as of the vulnerability of his own colleagues (especially those tasked with deploying special munitions), thereby making it more likely that he would misinterpret non-compliant actions by the Audi's occupants and predisposing him to decide to discharge his weapon when he might not otherwise have done so.

- 12.12** Q9 shot Mr Grainger in the honestly held belief that he was reaching for a firearm with the intention of discharging it at Q9's colleagues. That belief was, however, incorrect. When Mr Grainger disobeyed Q9's instruction to show his hands, he was probably reaching for the driver's door handle in order to get out of the Audi.
- 12.13** Had GMP's firearms commanders adopted disruption as a tactical option, as they should have done, they would have avoided the risks occasioned by decisive intervention. Had they planned, briefed and conducted the deployment competently, Q9 would have been less likely to misinterpret Mr Grainger's actions and might not have shot him.



# Appendix A: Terms of Reference

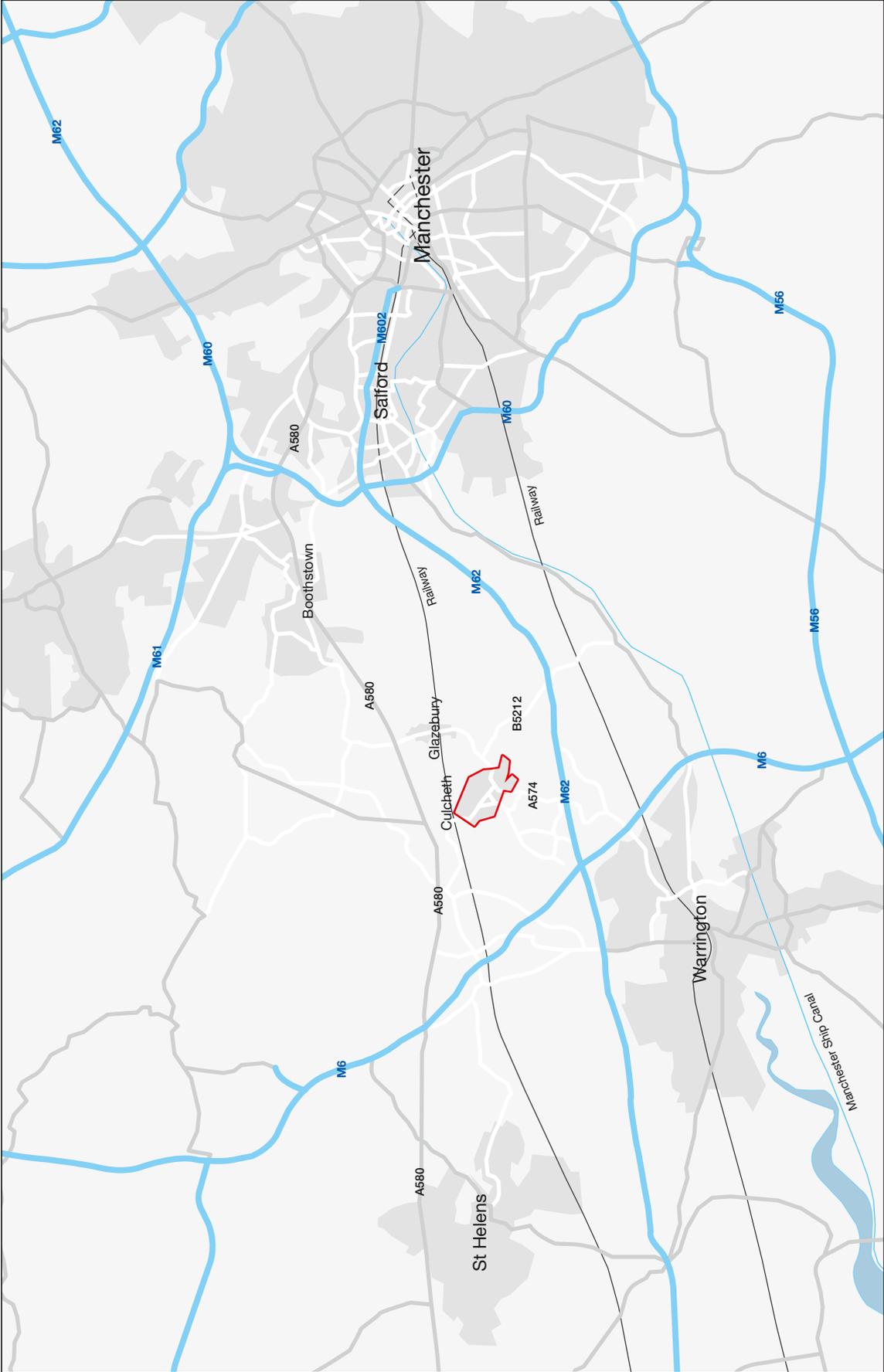
The Inquiry Terms of Reference are:

To ascertain when, where, how and in what circumstances Mr Anthony Grainger came by his death during a Greater Manchester Police operation, and then to make any such recommendations as may seem appropriate. In particular, it will investigate:

1. The objectives and planning of the operation;
2. The information available to those who planned the operation, and the accuracy, reliability, interpretation, evaluation, transmission and dissemination of such information;
3. The decision to deploy armed police officers and to make arrests, and the criteria applied in reaching those decisions;
4. The command and control of the operation, its implementation, the actions of officers during the arrest phase, and the circumstances in which the officer who fired the fatal shot came to discharge his weapon;
5. The suitability or otherwise of the firearms, ammunition and other munitions deployed in the operation;
6. Any relevant firearms policies, protocols or manuals in force at the material time, together with any subsequent revisions or amendments;
7. Whether (and, if so, to what extent) the judgment, reactions or operational effectiveness of any of the planners, commanders or firearms officers were compromised by extended hours of duty or by limitations in their professional capabilities;
8. The extent to which Mr Grainger's injuries would have incapacitated him whilst he remained conscious;
9. Whether, after Mr Grainger was shot, his life could have been saved.



# Appendix B: Map of Culcheth and Surrounding Area





# Appendix C: Operational Risk Assessment for Operation Shire

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## Operation Shire – Operational Risk Assessment

Risk Category	Probability 1-5 LMH)	Impact 1-5 LMH)	Score 1-5 LMH)	Control Measures
<p><b>Police &amp; Community Concerns.</b> E.g. risk of adverse media coverage, adverse affect on the community, damage to professional reputation.</p>				
<p>The OCG being investigated in Operation Shire is involved in a range of criminality. Some of this is visible within the community, some of it less so. Whilst they continue to act criminally there is a risk to public confidence where the community perceive a lack of police action against them. This is particularly so, where they are seen to spend significant amounts of money and own property and vehicles that are visible to the community.</p>	4	3	12	<ul style="list-style-type: none"> <li>The existence of Op Shire is in itself a control measure in terms of tackling this criminality. Saiford is a notorious area for OCG criminality and police activity will only increase public confidence in the ability of the police to investigate and prosecute those involved in such criminality</li> <li>We will agree with the division how best to disseminate good news stories in order that the community are fully sighted on the success of the operation and through this provide reassurance to them</li> </ul>
<p><b>Physical Harm</b> E.g. risk of personal harm to the public, law enforcement operatives or subjects</p>				

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<p>Public, Subjects, other criminals – The risk to the general public from the OCG's criminal activity is potentially medium to high due to the nature of the offences that the subjects of the operation are believed to be involved in, burglary / robbery / TOMV and their previous use of firearms. There is intelligence to suggest that the subjects are currently in dispute with opposing OCG's but this is being managed under a separate operation [REDACTED]</p>	<p>4</p>	<p>3</p>	<p>12</p>	<ul style="list-style-type: none"> <li>The SIO and Dep SIO to be made aware of all such issues so that an appropriate response / disruption can be put in place</li> <li>Where applicable intelligence will be submitted to the FIB for dissemination particularly any intelligence that relates to threats, risk or harm to specific individuals so that threats can be managed in line with the National Threats to Life Policy</li> </ul>
<p>GMP staff – risk of injury through operational duties e.g. conducting arrests, surveillance, use of observations points, [REDACTED] Crops deployments.</p>	<p>3</p>	<p>4</p>	<p>12</p>	<ul style="list-style-type: none"> <li>Specific risk assessments will be carried out for the conduct of operational duties these will be written if planned in advance eg arrests / obs points and dynamic if encountered whilst on the ground. The SIO / D.SIO will ensure all operatives are briefed regarding the environment they are deploying and any known risks will be identified with strategies in place to minimise risk. Due to the nature of the investigations being conducted this will be reviewed on a regular basis</li> </ul>
<p>Risk of injury from the Targets of the operation.</p>	<p>3</p>	<p>4</p>	<p>12</p>	<ul style="list-style-type: none"> <li>We will monitor any intelligence that relates to the Targets particularly the possession or use of firearms or weapons as this may alter the capability</li> </ul>

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					to carry out unarmed surveillance, observation posts or feasibility surveys
Direct threats to investigators due to their involvement in the enquiry.	2	4	8	<ul style="list-style-type: none"> <li>The key control measure is to maintain the covert nature of this enquiry. There is no current intelligence to suggest any threat to GMP officers</li> </ul>	
<b>Psychological Risks</b> E.g. risk of harm to inexperienced operatives or to members of the public exposed to danger.				<ul style="list-style-type: none"> <li>There are currently no threats relating to this category, it will remain under review should there be a need to deploy officers to support CROPS deployments or the like</li> </ul>	
<b>Legal Risks</b> E.g. risk of challenge at court, PII risks, ECHR risks, civil litigation risks.				<ul style="list-style-type: none"> <li>Any data or tactics likely to be subject to a PII hearing will be dealt with in a sensitive manner. The operation is being managed on the CLIO system to ensure transparency.</li> </ul>	
Authorities for covert tactics: It remains a potential area of challenge for any covert operation that the evidence and intelligence we obtain is not covered by the correct authority e.g. RIPA	2	3	6	<ul style="list-style-type: none"> <li>GMP operates an audited system of applications for authorities under legislation such as RIPA. Any relevant authorities will be applied for using this system, which ensures that an independent officer assesses the application in relation to its ECHR compliance</li> <li>Staff will be deployed in line with their training, skills and abilities. E.g. only</li> </ul>	

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<p>Management of exhibits, documents and actions: It will be important to show that we have managed the storage and movement of exhibits correctly. In addition we will need to comply with CPIA and ensure that can demonstrate that all relevant material has been retained and has been subject to the disclosure procedures.</p>	<p>2</p>	<p>2</p>	<p>trained staff will conduct surveillance and OP work</p>
<p><b>Economic Risk</b> E.g. risk of the cost of the operation outweighing the benefit, risk of financial loss to others.</p>	<p>2</p>	<p>3</p>	<ul style="list-style-type: none"> <li>The investigation will be run using the CLIO action management system within the FRU.</li> <li>In addition the SIO is conducting regular reviews of operational activity</li> </ul>
<p>The operation is being managed within the Units devolved budget at this stage. There are currently no significant risks in relation to this.</p>	<p>2</p>	<p>2</p>	<ul style="list-style-type: none"> <li>The cost of the operation will be monitored but given the seriousness of the offences suspected of being committed it is unlikely that the cost of the operation will outweigh the benefit</li> <li>The operation will be staffed predominantly within duty time. Overtime will be monitored by the SIO.</li> </ul>
<p><b>Moral and Ethical Risks</b> E.g. risk of proportionality and necessity challenges, compulsion test or moral obligation to investigate.</p>	<p>2</p>	<p>4</p>	<ul style="list-style-type: none"> <li>The intelligence related to this operation suggests the subjects are involved in serious criminality. The subjects have antecedents that link them to robbery offences. It is therefore proportionate for the covert investigation to establish if the intelligence can be corroborated or refuted.</li> </ul>

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<p>The current intelligence and previous criminality of the subjects justifies an investigation into them. They are believed to be involved in serious crime.</p>	2	2	4	<ul style="list-style-type: none"> <li>Assess the current level of activity. The intelligence picture against each subject is reviewed each month as part of the DSA authorisation. Where appropriate subjects are added or removed</li> <li>In the event an operatives' cover is compromised or the deployment of a sensitive technique becomes known. The circumstances will be outlined to the Force OPSEY</li> <li>The National Compromise Database will be updated to flag the targets knowledge of police tactics for the benefit of any other future planned operations local, regional or national</li> </ul>
<p>Operational Compromise.</p>	3	4	12	
<p>Risk assessment completed by DI 01257 Cousen</p>				Date 15/10/11
<p>SIO DI 1257 Cousen</p>				Date 15/10/11



# Appendix D: Command Structure, from *Manual of Guidance on the Management, Command and Deployment of Armed Officers* (paragraphs 5.8 to 5.25)

## Command Structure

- 5.8 The generic command structure used in the UK Police Service operates at three levels, strategic, tactical and operational. When translated into command roles, they are generally referred to as Gold (strategic), Silver (tactical) and Bronze (operational). For further information see **ACPO (2009) Guidance on Command and Control**.
- 5.9 Firearms operations often form one part of a more complex, multi-faceted operation that will already be using Gold, Silver, Bronze command descriptors. It is, therefore, important to define the command of the firearms element through the use of functional descriptors. The descriptors used throughout this manual are:
- Strategic Firearms Commander;
  - Tactical Firearms Commander;
  - Operational Firearms Commander(s).
- 5.10 **Strategic Firearms Commander** – Determines the strategic objectives and sets any tactical parameters. Retains strategic oversight and overall command responsibility.
- 5.11 **Tactical Firearms Commander** – Develops, commands and coordinates the overall tactical response in accordance with strategic objectives.
- 5.12 **Operational Firearms Commander(s)** – Commands a group of officers carrying out functional or territorial responsibilities related to a tactical plan.
- 5.13 In an operation where the sole purpose is to use armed officers to carry out a specific action at a single location, the roles performed by commanders will be as outlined in **Table 1**.

**Table 1 Command Roles and Functions**

Strategic Firearms Commander	Gold
Tactical Firearms Commander	Silver
Operational Firearms Commander	Bronze

- 5.14 In a complex, multi-seated or cross-boundary operation, where the Gold and Silver Commanders for the entire operation are coordinating and directing the deployment of different police disciplines or other agencies, it may be appropriate for the firearms element of the operation to be commanded by a commander who is working to the Gold and Silver Commanders for the overall operation.
- 5.15 In these situations, using the functional terms (strategic, tactical and operational) to describe the firearms commanders will clarify their roles and distinguish them from the roles being performed by those commanding the overall operation, who will retain the Gold, Silver, Bronze designations.
- 5.16 The command structure offers flexibility in response to a varied and developing range of circumstances and is functional and not based on rank. The structure must be clearly articulated to all those involved in the operation. Where time permits and it is appropriate to do so, briefing notes or flow charts showing the structure can aid people's understanding of it.
- 5.17 Any change in command structure should, where time permits, be discussed before it is undertaken and must then be documented. If an officer outside the command structure gives advice or a directive relating to the operational plan to a commander, then this must be recorded and this officer will be accountable for the advice or direction they have given.
- 5.18 Where AFOs are being deployed, the provisions of Article 2 ECHR and the positive obligation to protect life must take precedence over any other imperative.
- 5.19 In operations involving the deployment of AFOs, it is essential that objectivity and oversight are clearly demonstrated in the decision-making process. Separation of roles and clarity of responsibility is essential to the provision of effective command and tactical advice. Where tactical advice is required by a commander, this advice should be independent. The tactical advisor should be independent of the command structure and not part of the operational deployment. The function of the Strategic or Tactical Firearms Commander must not be undertaken by the Senior Investigating Officer responsible for the investigation of the offences for which the firearms operation is being conducted. It is the responsibility of the Strategic Firearms Commander to satisfy themselves that the tactical plan is capable of meeting the strategic aims of the operation, and that the provisions of Article 2 ECHR (positive obligation to protect life) take precedence.

## Strategic Firearms Commander

### 5.20 The Strategic Firearms Commander:

- Has overall strategic command, with responsibility and accountability for directions given;
- Must set, review, communicate and update the strategy based on the threat assessment and the available intelligence;
- Should consider consulting a Tactical Advisor;
- Should consider any tactical parameters to be placed on the police response;
- Must ensure that the strategy for the armed deployment is recorded, including any changes to it, to provide a clear audit trail;
- Must authorise the deployment of AFOs, or ratify or rescind the deployment where it has already been approved by the Tactical Firearms Commander;
- Should ensure that all decisions are recorded, where practicable, in order to provide a clear audit trail;
- Must ensure that the firearms strategy complies with the wider strategic aims of the overall operation;
- Should test the tactical plan against the established strategy, where practicable and/or time allows;
- Is responsible for overall resourcing in respect of the deployment of AFOs;
- Where appropriate, will chair meetings of the strategic coordinating group when they are held during a multi-agency or multi-discipline response;
- Should set command protocols where appropriate;
- Should consider consulting partners, stakeholders and interest groups involved (if any) when determining strategy;
- Should consider the need for a community impact assessment;
- Should consider declaring and managing the event as a critical incident;
- Should maintain a strategic overview;
- Must be able to be contacted by the Tactical Firearms Commander;

- Is responsible for reviewing and ensuring the resilience and effectiveness of the command structure and the effectiveness of the Tactical Firearms Commander;
- Should consider the appointment of more than one Tactical Firearms Commander where there are clear demarcations geographically (ie, police boundaries), or in respect of roles, or where the management of AFOs is only one part of the operational police response.

## **Tactical Firearms Commander**

5.21 Where a Strategic Firearms Commander is not yet in place, the Tactical Firearms Commander will set the working strategy, including any appropriate tactical parameters. These will be reviewed and ratified by a Strategic Firearms Commander as soon as practicable.

5.22 The Tactical Firearms Commander:

- Must assess and develop the available information and intelligence, and complete the threat assessment: see **Assess Threat and Risk** (6.17 - 6.25);
- Should consult a Tactical Advisor as soon as practicable;
- Is responsible for developing and coordinating the tactical plan in order to achieve the strategic aims, within any tactical parameters set;
- Is responsible for ensuring that officers and staff are fully briefed;
- Should consider the provision of medical support;
- Should be so located as to be able to maintain effective tactical command of the operation;
- Should ensure that all decisions are recorded, where practicable, in order to provide a clear audit trail;
- Provides the pivotal link in the command chain between Strategic and Operational Firearms Commanders;
- Must constantly monitor the need for the continued deployment of AFOs;
- Must review and update the tactical plan and ensure that any changes are communicated to the Operational Firearms Commanders and, where appropriate, the Strategic Firearms Commander;

- Should consider, and where appropriate, conduct a community impact assessment;
- Should consider declaring and managing the event as a critical incident;
- Should consider the number, role and function of the Operational Firearms Commanders;
- Should consider the wider community, public safety and evidential implications of the use of specialist munitions, pyrotechnic devices or incapacitants;
- Should ensure that after all deployed staff are appropriately debriefed, to ensure that operational and organisational learning takes place.

### **Operational Firearms Commander**

#### 5.23 The Operational Firearms Commander:

- Must have knowledge and clear understanding of their role and the overall aim of the operation;
- Must, where practicable, ensure that their staff are appropriately briefed;
- Should be located where they are able to maintain effective command of their area of responsibility;
- Ensures the implementation of the Tactical Firearms Commander's tactical plan within their territorial or functional area of responsibility;
- Updates the Tactical Firearms Commander, as appropriate, on current developments;
- Makes decisions within their agreed level of responsibility, including seeking approval for any variation in agreed tactics within their area of responsibility;
- Must ensure clear communication channels exist between themselves, the Tactical Firearms Commander and those under their command;
- Should consider declaring and managing the event as a critical incident;
- 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;

- Should ensure decisions taken are recorded, where possible, to provide a clear audit trail.

## **Tactical Advisor**

### 5.24 The Tactical Advisor:

- Advises on the capabilities and limitations of the AFOs and other police resources being deployed;
- Advises the Strategic or Tactical Firearms Commander on the implication of any tactical parameters which have been set;
- Advises on the available tactical options for consideration by the Strategic and Tactical Firearms Commander within the existing strategy and any tactical parameters set;
- Advises the Firearms Commanders on the tactical considerations, contingencies and implications for each tactical option;
- Should be in a position to assist and advise the Tactical Firearms Commander at all stages of the operation;
- Provides tactical advice reflecting the existing threat assessment;
- Ensures that advice given is recorded.

5.25 The role of a Tactical Advisor is to advise and not to make command decisions. The responsibility for the validity and reliability of the advice lies with the advisor, but the responsibility for the use of that advice lies with the commander.

## Appendix E: Table of Firearms Authorities<sup>1</sup>

Date	Firearms authority	Briefing	Recorded briefing	Team left TFU
08/12/11	FA 363/11	No	No	No
12–15/12/11	FA 365/11	Yes	Yes	Yes
26/01/12	FA 27/12	Yes	No <sup>2</sup>	Yes
27/01/12	FA 27/12	Yes	No <sup>2</sup>	No
30/01/12	FA 27/12	Yes	Yes	No
31/01/12	FA 27/12	Yes	Yes	No
01/02/12	FA 27/12	Yes	Yes	No
02/02/12	FA 27/12	Yes	Yes	No
03/02/12	FA 27/12	Yes	Yes	No
01–02/03/12	FA 75/12	Yes	Yes	Yes
03/03/12	FA 77/12	Yes	Yes	Yes

<sup>1</sup> Table based on information provided by GMP, including the table at Bundle G2/692.

<sup>2</sup> Briefing not recorded owing to operator error.



# Appendix F: Letter from GMP to the Chairman, 15 March 2017



[REDACTED]

HHJ Teague Q.C.  
Chairman to the Anthony Grainger Inquiry

[REDACTED]

Date: 15 March 2017

Dear Sir

**Re: Late disclosure of two GMP policies and emails concerning X7 and Z15**

This is the first of two letters addressing the issue of GMP disclosure of information to the Anthony Grainger Inquiry. The first letter will deal with the specific documents disclosed by GMP in week 8 of the Inquiry and the steps taken to date to effect disclosure. The second letter will describe the continuing efforts to ensure that all relevant material is placed before you.

The IPCC investigation into the circumstances of the shooting of Mr Grainger began in March 2012. It was quickly apparent that this independent investigation was to be wide ranging as the subsequent report would demonstrate. GMP gave access to diverse categories of material as requested by the IPCC. The IPCC report was received in June 2013. That body then referred the matter to the CPS for consideration of criminal charges. In January 2014 the force was informed that the Chief Constable was to be prosecuted under Health and Safety legislation. The IPCC continued to act as the principle investigative body for that prosecution. All requests for further information were referred through the Operation Idris team. As the principle investigative body, the IPCC was responsible for assessing the material it requested from GMP and for collating that material into used and unused material.

During the prosecution, GMP wished to take statements from officers and to collate material to be used in the defence of the matter. The GMP legal team had restrictions not only in relation to which officers and staff we could speak to because they were prosecution witnesses but who we could disclose material to due to restrictions placed on us by IPCC, HMC and the CPS. At that stage we were not allowed to release the IPCC report, say, to Q9 let alone other relevant officers/unit heads. We are still restricted from doing so save on a need to know basis and with individual undertakings. Such additional information as GMP was able to obtain from prosecution witnesses and other officers has been disclosed. It was not considered appropriate to contact every potentially involved person in the force, copying the IPCC in, to ask if they held potentially relevant material as the focus was on addressing the criticisms set out in the IPCC investigation.

Furthermore, for a protracted period, GMP did not have a full picture of the extent of material collated by the IPCC. Whilst the Idris team had acted as the SPOC and attempted to record all material obtained by the IPCC, in fact the IPCC contacted other Units direct and obtained disclosure of material which the Idris Team was not always aware of.

cont...

After the conclusion of the criminal proceedings, GMP resumed its concentration on the Coronial proceedings. GMP's approach to disclosure has been reactive to the investigative and criminal process but also proactive in nature. A vast amount of material was generated by both the IPCC investigation and the criminal prosecution and this provided GMP with the most significant signposts for its disclosure exercise because of the width of issues identified by the IPCC and Mr Molloy and his team. Additionally, CTI have made extensive disclosure requests and this has assisted GMP in identifying previously undisclosed material such as emails etc. In relation to emails, the disclosure requests were restricted to specific witnesses in the form of Rule 9 requests and each witness responded as requested.

GMP has sought to obtain further material whenever it has been aware of its possible existence. More often than not this has been because such material has been referred to or hinted at in previously disclosed material. Generally speaking, once obtained, we have simply disclosed such material, rather than superimposing GMP's own relevance filter.

You will be aware of the very demanding timetable imposed for this Inquiry. GMP's priority has been to facilitate the requests made of it by the Inquiry team. CTI will be well aware of the volume and nature of these requests and of the time consuming efforts of GMP to respond to them. The redaction process itself has diverted valuable time and manpower and has likewise taken precedence in order to respect the timetable. It is possible that the need to adhere to the strictness of the timetable and those requests has consumed most of the time that would have been available to pause and check for gaps in disclosure with individuals. Such a pause would have been beneficial given (a) the width of the terms of reference, (b) the number of GMP witnesses, and (c) the number of Branches, police Units and IT systems involved. In making this observation, we fully recognise the critical importance of disclosure and the enduring hard work of CTI and indeed the need for this Inquiry to conclude within an appropriate timeframe.

After DCI Cousen produced documentation whilst giving evidence, the existence of which we had been unaware, we contacted all witnesses yet to give evidence. This was done on 23.2.17. We stressed the importance of ensuring that all documentation (whether evidential or unused material) was disclosed / submitted to the IPCC and we asked them to confirm by return email that they had disclosed such material. We indicated that if, for any reason, the witness had retained any material that had not been disclosed to the IPCC, they should advise the Operation Idris Team immediately.

This email was sent to Insp. Marcus Williams who sent a negative response. In his reply dated 2.3.17 Insp. Williams indicated *"I have supplied everything I have been asked to. I have no idea what other documentation there may be as I have [sic]no part in the investigation other than to answer enquiries/give professional opinions."*

On 3.3.17, DI Iain Foulkes of the Operation Idris team made a separate specific request to Insp. Williams about any notes he had about his or Mike Lawler's feedback to the two TA's (Steve Allen & Y19). This was as a result of a request from Bhatt Murphy about the reviews of both TAC's logs in the context of minimum standards. On the evening of 3.3.17, Insp. Williams sent 11 emails which included the information requested about Steve Allen and Y19 but also included the email dated 15.3.12, which contains reference to X7 attending the MPS SFO Course and failing it.

The same email from GMP legal dated 23.2.17 was sent to Mr Lawler who replied on 28.2.17 indicating that he had not retained any documentation not previously disclosed to the IPCC. Having retired in 2013, Mr Lawler would no longer have access to his GMP emails.

We suspect that one cause of the on-going difficulty is that witnesses do not know what has been disclosed (the indices to the Bundles are extremely voluminous and have not been sent to each witness). Likewise it appears that witnesses have not necessarily accessed or tried to access dated emails. Of significance is that on a phased basis from October 2011, GMP migrated from Lotus Notes to Outlook.

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The vast majority of officers and staff will not have had cause to access historic Lotus Notes email accounts for many years and many will no longer have the software on the computers. Although such emails, if retained, can be accessed on a terminal with the software or via IT services it is possible that individuals may believe that their emails no longer exist. Also, in fairness to some of the witnesses, it might be said that the prosecution of GMP caused substantial delay to the process as a whole such that witnesses might legitimately not recall that emails may exist about specific issues.

On 23.2.17 a request was made to Sgt Dave Whittle of the Force Training Unit ("FTU") in his capacity as a witness. His reply of 24.2.17 was, "*I have not retained any materials regarding the enquiry.*"

At the same time we contacted officers who may hold relevant material and who could represent the DSU, FIB and FTU. We contacted Sgt Whittle to provide a response on behalf of the FTU (on the basis he was acting Insp. and CFI at the relevant time [June 2011/July 2013]) in respect of disclosure of all relevant policies because that unit also houses, as we understand it, all of the TFU policies. Although we believed that all relevant firearms policies and protocols had been identified and disclosed, we wanted to ensure that this was the case and also needed to respond to CT's queries about policies. We attached a copy of the Index to the Policy & Procedure Bundle prepared by the Public Inquiry and asked Sgt Whittle to consider it and confirm if there were any other relevant SOP's / Manuals / Guidance relating to Firearms which were relevant and in force (locally or nationally) in 2012 which were missing from this index. We chased this on 28.2.17 and by week 8 had yet to receive a response.

As you know, whilst giving evidence, Mike Lawler referred to a SOP on Briefing a Firearms Operations and the SOP for FTU version 12. These documents had not been previously been disclosed and we were not aware of their existence. DC Paul Glover was able to access the system whilst at court and obtained copies of the documents and then redacted them for dissemination to the Core Participants.

On 9.3.17, we referred this back to the FTU since these SOP's did not appear in the Policy & Procedure Bundle. We have since become aware that that there is an electronic folder which centralises the FTU policies. We tried to gain access to this folder last week as soon as we learned of its existence. DC Glover has taken steps to ensure that we obtain access with a view to reviewing the policies which were in force at the relevant time. This work is on-going.

We wish to apologise unreservedly both for the fact that there has been late disclosure of highly relevant material and for the inconvenience that this has caused you, your team and the Core Participants. We are acutely conscious of the need to ensure that all relevant material is placed before you, regardless of whether it points to or away from criticism of GMP or any of its officers and staff. The need to place such material before you has informed our approach to disclosure to date, and will continue to do so.

It is clear that previous generalised requests for witnesses to ensure that all relevant material has been disclosed are insufficient for the Inquiry's purposes. That being so, we are in the process of taking steps to investigate whether there have been any other failures in disclosure and these steps will be explained in detail by cover of separate correspondence.

Please do not hesitate to indicate whether you require any further information from us at this stage about the contents of this letter.

Yours faithfully



