

IN THE SURREY CORONER'S COURT

BEFORE HM SENIOR CORONER FOR SURREY, MR RICHARD TRAVERS

IN THE MATTER OF THE GUILDFORD PUB BOMBINGS 1974

AND IN THE MATTER THE INQUESTS TOUCHING AND CONCERNING THE DEATHS OF:

(1) MR PAUL CRAIG (DECEASED)

(2) GUARDSMAN WILLIAM FORSYTH (DECEASED)

(3) PRIVATE ANN HAMILTON (DECEASED)

(4) GUARDSMAN JOHN HUNTER (DECEASED)

(5) PRIVATE CAROLINE SLATER (DECEASED)

SUBMISSIONS ON BEHALF OF COUNSEL TO THE INQUESTS

For Hearing: Friday 14 January 2022 at 10:00

For a list of abbreviations - see Annex A below.

Save where otherwise indicated, references to numbered rules refer to the provisions of the Coroners (Inquests) Rules 2013.

1. Introduction

1.1 These submissions are intended to assist HMC and the IPs at the upcoming PIR on 14 January 2022 and are subject to any other submissions made and decisions taken at or pursuant to that hearing.

1.2 The last PIR was on 8 October 2021, the next PIR is listed for 25 March 2022 and the substantive inquest hearings are scheduled to take place between 6 June and 15 July 2022.

2. Update

2.1 Professor Hennessey has confirmed receipt of his instructions dated 12 October 2021, but has also indicated that he will not be able to produce a first draft report by 7 January 2022. HMC has therefore agreed an extension until March 2022 and has requested that the report be submitted by the 14th so that it can be circulated in advance of and considered at the PIR on 25 March 2022.

- 2.2 As trailed at the last PIR, a copy of the Surrey AHA “Report on the Implementation of the Major Incident Plan following the Explosion of two bombs in Guildford on 5 October 1974” dated 24 October 1974 has been obtained from the London Metropolitan Archive and will be disclosed via Caselines.
- 2.3 Following correspondence with the GLD, redactions which MOD had made to or proposed for the army personnel files of the four deceased members of the armed forces have been withdrawn and unredacted copies have been disclosed via Caselines accordingly.
- 2.4 SP is continuing to assist with witness-tracing and HMC has also sought assistance from the NHS Pensions Authority tracing possible healthcare witnesses, including some named in the abovementioned Surrey AHA report. Following correspondence with the Pensions Authority, a notice under CJA 2009, Sch.5, para.1 in support of the request for assistance was served on 14 December 2021.
- 2.5 Batch 3 of HMC’s disclosure to IPs (the final substantive batch) will be disclosed via Caselines as soon as possible over the coming weeks and will comprise a selection of relevant materials from Tranches 4-7 of the SP disclosure plus a handful of other additional and outstanding items as follows:
- (1) instructions to Professor Thomas Hennessey dated 12 October 2021 as sent (draft discussed and approved at last PIR);
 - (2) Surrey AHA major incident report dated 24 October 1974;
 - (3) evidence going to the time of the explosion, i.e. a small number of additional witness statements from Tranches 1-3 of the SP disclosure, contemporaneous SP control room communication logs and a witness statement of Charles King, father of the late Robert King (journalist) dated 15 January 2018 (minus contact details / address);
 - (4) further set of contemporaneous photographs of HGPH;
 - (5) contemporaneous SP incident room messages and actions - only to the extent both relevant and about a witness whose evidence will be heard or read;

- (6) for completeness / context only - a small number of more peripheral witness statements from Tranches 4-7 of the SP disclosure;
- (7) email from former PC Jeremy Spindlove to HMC dated 1 February 2019 (minus contact details / address);
- (8) correspondence with SECAMB about the recollections of former ambulance service personnel William Edwards and Clive Morris (minus contact details / addresses);
- (9) SP timeline prepared by Op IGIL analysts.

2.6 CTI are also progressing work on the following:

- (1) offering to assist families with the preparation / taking of “pen portrait” statements in relation to each of the deceased;
- (2) reviewing and obtaining a copy of a 1989 Thames Television documentary “Guildford’s Other Victims” - which may contain useful evidence about or from deceased and living witnesses (see <https://www2.bfi.org.uk/films-tv-people/4ce2b82fa4295>).

3. Art.2 of the ECHR

3.1 These inquests have thus far proceeded on a traditional *Jamieson* basis, that is to say, with a view to ascertaining who the deceased were and when, where and how (i.e. by what means) they came by their deaths (CJA 2009, s.5(1); *R v HMC North Humberside & Scunthorpe, ex p. Jamieson* [1995] QB 1 (CA)).

3.2 If the positive procedural investigative obligation conferred on the state by art.2 is or were engaged, the inquests should instead proceed on a *Middleton* basis, that is to say, with a view to ascertaining who the deceased were and when, where and how (i.e. by what means *and in what circumstances*) they came by their deaths (CJA 2009, s.5(2); *R (Middleton) v HMC West Somerset* [2004] UKHL 10, [2004] 2 AC 182, per Lord Bingham at [35]-[37]). Following *In re McKerr* [2004] UKHL 12, [2004] 1 WLR 807 and *In re McCaughey* [2011] UKSC 20, [2012] 1 AC 725, the art.2 obligation to investigate only arises under HRA, s.6 in connection with deaths occurring before the Act’s entry into force in limited circumstances - which are not relevant in this case -

but inquests into such deaths which are nevertheless begun or continue thereafter do have to comply with the jurisprudence on art.2.

- 3.3 It is therefore submitted that HMC should revisit the engagement of art.2 in conjunction with his consideration of the scope the inquests.
- 3.4 In this regard, art.2 is engaged in an inquest where it can be said that the death of the deceased was arguably caused or contributed to by a breach of the state's substantive obligations under art.2, i.e. the negative obligation "not to take life without justification" or the positive protective obligation "to establish a framework of laws, precautions, procedures and means of enforcement which will, to the greatest extent reasonably practicable, protect life" (*Middleton*, per Lord Bingham at [2]-[3]).
- 3.5 In this case, there is nothing to suggest that any public authority or other state agent had any involvement in the GPB and so there is no arguable breach of the state's negative substantive obligation under art.2.
- 3.6 So far as concerns the state's positive substantive obligation under art.2, this has two limbs - a systemic limb (general duty to put in place a legislative and administrative framework which will deter risks to life) and an operational limb (specific duty to take reasonable preventative steps in certain circumstances where authorities know or ought to know of the existence of a real and immediate risk to the life of an identified individual or individuals) (*Smith v MOD* [2013] UKSC 41, [2014] 1 AC 52, per Lord Hope at [72]-[73] and [99] and per Lord Mance at [103]).
- 3.7 We can see no basis for suggesting the UK's police and criminal justice mechanisms were inadequate to deter PIRA activity in 1974 in a way that could be said to have breached the systemic limb of art.2. Accordingly, the key question is whether that activity arguably created a "real and immediate" risk of death, particularly to service personnel, which the authorities, particularly MOD, knew or ought to have known about and which they failed to take reasonable steps to counter.
- 3.8 The "real and immediate risk" trigger test has been variously described as "high", "stringent", "stiff", "not easily or readily satisfied" and "more difficult to establish than negligence" (e.g. *Rabone v Pennine Care NHS Trust* [2012] UKSC 2, [2012] 2 AC 72, per Lord Dyson at [37]). That said, a 5% risk of suicide was found to have been "real

and immediate” in *Rabone* (per Lord Dyson at [35] and [38]-[41]) and the question for HMC is whether there was *arguably* a breach.

- 3.9 In this regard, some - including the Hamilton family - have questioned whether the general level of PIRA activity in 1974 and the group’s view that the military were legitimate targets meant the GPB was foreseeable and/or that military personnel should have been “locked down” or confined to barracks for their own protection.
- 3.10 In our submission, the evidence we have seen does not suggest an arguable breach of the operational limb of the state’s positive substantive obligation under art.2 for the following reasons: there is no evidence of any advance intelligence about the GPB and PIRA did not give any advance warning; the attack was the first of its kind, i.e. against civilians and military personnel mixing in a civilian social setting; the attack was the first in a new wave of attacks; the risk was too general and non-specific to be considered “real and immediate” in the requisite sense; and, in any event, a finding that art.2 was breached would depend on it being shown that the general risk of a PIRA attack made a nationwide “lock down” of all military establishments throughout, at least, 1974-1975 reasonable and mandatory. (We have come to this conclusion without exploring whether art.2 confers obligations on the state in connection with *off-duty* service personnel or the extent of MOD’s powers to confine such personnel to barracks or forbid them from socialising with civilians elsewhere.)
- 3.11 Accordingly, it is submitted that the inquests should continue to proceed on a traditional *Jamieson* basis and on the understanding that art.2 is not engaged unless and until evidence emerges to suggest otherwise, a matter which can itself be kept under review.

4. Scope of the inquests

- 4.1 Given the above, it is submitted that the following points provisionally made by HMC in his “Ruling on Resumption” dated 31 January 2019 hold good:

- (1) the purpose of the inquests is to ascertain and record: (a) who the deceased were; (b) how, when and where they came by their deaths; and (c) the particulars (if any) required to be registered under the Births and Deaths Registration Act 1953 (CJA, ss.5(1) and 10(1));

- (2) the “how” question must be taken to mean “by what means did each deceased come by their death” (*R v HMC North Humberside & Scunthorpe, ex p. Jamieson* [1995] QB 1 (CA));
- (3) HMC and/or any jury must not express any opinion or make any determinations or findings on any other matter or frame any determination in such a way as to appear to determine any question of criminal liability (on the part of a named person) or civil liability (on the part of any person, named or unnamed) (CJA 2009, ss.5(3) and 10);
- (4) the inquests cannot culminate in a conclusion which is inconsistent with the “not guilty” outcome of the criminal proceedings against the Guildford Four (CJA 2009, s.10 and Sch.1, para.8(5));
- (5) the inquests therefore cannot investigate the identities of the PIRA terrorists who carried out the attack, any evidence pointing towards or away from any particular perpetrators or any questions relating to the conduct of the original police investigation or prosecution;
- (6) the inquests should investigate the time of the explosion, the respective locations of the bomb and its victims, who was with them at the time, whether each died immediately and, if not, how long they survived for, whether they said anything to anybody prior to their deaths and the response of first aiders and the emergency services.

4.2 Given these parameters and the evidence reviewed and disclosed to date, it is submitted that the following issues should be treated as falling within scope and HMC is invited to direct accordingly:

- (1) The deceased: family pen portrait evidence

As already mentioned, CTI will assist the families with this.

- (2) The Northern Ireland Troubles: historical and political context

This will be addressed by Professor Hennessey.

(3) Official security alerts, advice and warnings

There is no evidence that these were inadequate but limited evidence has been obtained to date and it is submitted that HMC should explore this issue, particularly given its connection with the arguments about the engagement (or not) of art.2 mentioned above. To be discussed further at the PIR in the light of comments made in part 4 of the CTI Evidence Overview note referred to below.

(4) The Horse and Groom Public House

The layout, staff and clientele of the pub.

(5) Ann Hamilton & Caroline Slater trips into Guildford afternoon 5 October 1974

It would appear that both went shopping in Guildford earlier on the day in question. It is proposed that brief evidence be read on this issue.

(6) The Burns party - in HGPH

It would appear that Paul Craig, Ann Hamilton and Caroline Slater were with this group at the time of the explosion.

(7) The Forsyth and Hunter group - in HGPH

It would appear that William Forsyth and John Hunter attended the pub with a group of other young soldiers from the barracks at Pirbright.

(8) Time and nature of explosion

It should be noted that the overwhelming majority of the evidence points to the explosion occurring at around 20:50 with occasional indications that it was earlier or later. It appears that doubts about this stem from comments made in the trial and appeal of the Guildford Four (SJM, para.2.2 and fn.9) and/or a focus on time-dependent features of Carole Richardson's alibi. Neither of these matters will be investigated in the inquests, but it should be possible to make conclusive findings as to the time of the explosion.

(9) The bomb and the damage caused

The experts who investigated the makeup and position of the bomb at the time are deceased and one matter for discussion at the PIR is whether someone from MOD's DSTL (successor to RARDE) would be able to assist with the science by speaking to their reports and statements.

(10) The emergency response - service personnel

Soldiers in the pub were inevitably the first to try and assist the victims.

(11) The emergency response - the police

It would appear that the police were next on the scene.

(12) The emergency response - ambulance service, doctors, fire brigade, nurses

It would appear that the ambulance service and fire brigade and a number of doctors and nurses followed and the local Major Incident Plan was implemented. Depending on progress tracing living healthcare witnesses, some evidence from the ambulance service and/or RSCH about the Major Incident Plan would be helpful. This and the best means to turn the information obtained from William Edwards - see above - into a witness statement can be discussed at the PIR.

(13) Identification of the deceased

The process whereby each of the deceased was pronounced dead and their bodies were prepared for examination.

(14) Post-mortem evidence

The medical cause of each death.

5. Evidence

5.1 These submissions are accompanied by a document headed "Guildford Pub Bombing Inquests - CTI Evidence Overview - v1 - 23/12/21 - Confidential to IPs". This sets out a list of general background documents (part 1) and then outlines the evidence which it is proposed HMC should hear in connection with each of the 14 issues identified above

(parts 2-15). Further re-numbered and re-dated versions of the Evidence Overview will be produced as and when necessary in the light of submissions from the IPs and directions from HMC.

- 5.2 Solely for ease of reference and accessibility, the deceased are referred to in the Evidence Overview by their initials and in alphabetical surname order.
- 5.3 The issues to be dealt with are in a broadly chronological order and have been organised with a view to eliciting a reasonably comprehensible narrative of events, although it is inevitable that some witnesses will need to deal with more than one issue and some later matters will need to be trailed earlier on.
- 5.4 The witnesses named in the Evidence Overview are primarily, but not exclusively, derived from those provisionally colour-coded green and amber in the Batches 1-2 disclosure exercise and it will be recalled that witness-tracing efforts have been concentrated on these individuals. (The green / amber / red categorisations can be disregarded going forward.)
- 5.5 So far as possible, the Evidence Overview indicates the following in connection with each named witness:
 - (1) “Cat.” - civilian, emergency service, military, police, healthcare or other background (col.3);
 - (2) “Alive” - alive or deceased - name in green if alive or blue if deceased - a question-mark and name in black indicates that witness-tracing enquiries are ongoing (col.4);
 - (3) “Refs” - reference numbers for relevant witness statements and disclosure documents (col.5);
 - (4) “Notes” - additional information about status, evidence, capacity etc. (col.6);
 - (5) “Ev” - whether it is proposed that their evidence be called (“C”) or read under r.23 (“R”) - the use of “C / R” or “R / C” indicates a provisionally favoured option followed by a fall-back option (col.7).

- 5.6 IPs are invited to make submissions on the proposed Evidence Overview at the PIR and indicate any witnesses or documents considered unnecessary and/or any additional witnesses or documents.
- 5.7 It is proposed that the following should be done by the end of January 2022 in connection with each witness marked “C”, “C / R” or “R / C” following the PIR: contact the witness, provide them with copies of the documents identified as relevant for them and (where possible) photographs of those referred to in their statement(s) from D785 and ask if they will be able to give live evidence during the scheduled inquest hearing window. The precise mechanics and logistics of this exercise and the question whether and when contact should be made by HMC or IPs are best addressed at the upcoming PIR.
- 5.8 Depending on the outcome of this exercise, it is likely that some reclassification of “C”, “C / R” or “R / C” witnesses will be needed before a clearer idea of total numbers of “C” and “R” witnesses and a hearing time estimate can be ascertained. In this regard, it is inevitable that:
- (1) some living witnesses will be unable or unfit or (if overseas) unwilling to give useful live evidence;
 - (2) some evidence may need to heard by live video link under r.17;
 - (3) HMC will need to bear in mind any Covid restrictions in place at the time.

6. Empanelment of a jury

- 6.1 Subject to any submissions on the part of the IPs, particularly the families of the deceased, it is submitted that the question whether there is a “sufficient reason” for empanelling a jury under CJA 2009, Sch.1, para.11 is ultimately one for HMC’s judgment.
- 6.2 In this regard, it is submitted that HMC should consider whether he thinks there is a *positive* reason for departing from the default of a non-jury inquest. If HMC is neutral or considers the scales evenly balanced, it is submitted that this would tend to indicate the absence of a “*sufficient* reason”.

7. Admission of May Inquiry findings under r.24

- 7.1 On the face of it, r.24 confers a broad power to admit findings made by Sir John May's *Inquiry into the circumstances surrounding the convictions arising out of the bomb attacks in Guildford and Woolwich in 1974* if HMC considers them relevant for the purposes of the inquests.
- 7.2 However, it is right to note that no such power existed at the time of the GPB or the May Inquiry itself. A similar but narrower power was first conferred on coroners with effect from 1 January 2000 by the former Coroners Act 1988, s.17A and Coroners Rules 1984, r.37A in connection with the findings of judicial inquiries into events surrounding a death or deaths. Findings of Sir John May's Inquiry could not have been admitted under these provisions.
- 7.3 Given the above and the different terms of reference of Sir John May's Inquiry, it is submitted that a cautious approach should be taken to the admission of his findings.
- 7.4 The only finding we would propose for possible admission on this basis is in his "Final Report" dated 30 June 1994 (HC 449), para.14.1, "The Guildford bombings were the first in a new wave of Provisional IRA attacks in England". There can be no doubt that the GPB was carried out by members or supporters of PIRA on its behalf and with its approval. Sir John May considered more extensive evidence about its activities in the early 1970s and the admission of this finding would provide the inquests with a sound starting point from which to proceed.

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23 December 2021

ANNEX A: ABBREVIATIONS

“AH”	Private Ann Hamilton;
“AHA”	Area Health Authority;
“art.2”	article 2 of the European Convention on Human Rights;
“CJA 2009”	the Coroners and Justice Act 2009;
“CS”	Private Caroline Slater;
“CTI”	Counsel to the Inquests;
“DSTL”	the Defence Science and Technology Laboratory;
“GLD”	the Government Legal Department;
“GPB”	the Guildford Pub Bombing 5 October 1974;
“HGPH”	the Horse and Groom Public House;
“HMC”	HM Senior Coroner for Surrey, Mr Richard Travers;
“HRA”	the Human Rights Act 1998;
“IG”	the Irish Guards;
“IP”	interested person;
“JH”	Guardsman John Hunter;
“MOD”	the Ministry of Defence;
“MPS”	the Metropolitan Police Service;
“PC”	Mr Paul Craig;
“PIR”	pre-inquest review hearing;
“PIRA”	the Provisional Irish Republican Army;
“RARDE”	the Royal Armament Research and Development Establishment;
“RSCH”	the Royal Surrey County Hospital;
“SECAmb”	South East Coast Ambulance Service;
“SEME”	the School of Electrical and Mechanical Engineers;
“SG”	the Scots Guards;
“SJM”	Sir John May;
“SJM1”-“SJM3”	the 1 st -3 rd reports of SJM;
“SP”	Surrey Police;
“SSPH”	the Seven Stars Public House;
“TBC”	to be confirmed;
“WF”	Guardsman William Forsyth;

“WG” the Welsh Guards;
“WRAC” the Women’s Royal Army Corps.

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