

**IN THE SURREY CORONER’S COURT**

**BEFORE HM CORONER FOR SURREY, MR RICHARD TRAVERS**

**IN THE MATTER OF THE GUILDFORD PUB BOMBINGS 1974**

**AND IN THE MATTER OF 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)**

**JUNIOR COUNSEL NOTE OF PRE-INQUEST REVIEW**

**2<sup>nd</sup> September 2020**

**1. Abbreviations**

1.1 The following abbreviations are used herein:

“CTI”	Leading counsel to the inquests, Oliver Sanders QC
“HMC”	HM Coroner for Surrey, Mr Richard Travers
“IP”	Interested Person
“MOD”	Ministry of Defence
“MPS”	Metropolitan Police Service
“PIR”	Pre-Inquest Review
“SECAMB”	South East Coast Ambulance Service NHS Foundation Trust

## **2. Attendance**

- 2.1 The hearing proceeded in person at Surrey Coroner's court, with social distancing measures in place.
- 2.2 HMC began the PIR by welcoming the attendees. The legal representatives in attendance were:
  - 2.2.1 Oliver Sanders QC and Matthew Flinn, respectively leading and junior counsel to the inquests;
  - 2.2.2 Fiona Barton QC, leading counsel for Surrey Police;
  - 2.2.3 Jude Bunting, counsel for the BBC;
  - 2.2.4 Edward Pleeth, counsel for the MOD and the Home Office;
  - 2.2.5 Frances McClenaghan, counsel for the MPS; and
  - 2.2.6 Eva Pendreich, Head of Legal Services at SECAMB.
- 2.3 Mr Christopher Stanley from KRW Law, which has provided assistance to the family of Private Ann Hamilton, was attending in the capacity of an observer. Members of the press and the public were also in attendance.

## **3. Summary note of hearing**

- 3.1. HMC invited CTI to address the court on developments in the investigation.
- 3.2. CTI summarised progress since the last PIR of 20<sup>th</sup> May 2020 by reference to the work undertaken by various IPs and entities engaging with the investigation:
  - 3.2.1. Surrey Police:

- a) On 28<sup>th</sup> May 2020 Surrey Police provided electronic access to the first tranche of evidential material. The tranche consisted of 134 witness statements made by approximately 70 witnesses, and an additional schedule summarising the contents of 712 statements (including the aforementioned 134 statements). The material was currently in the process of being reviewed by CTI and junior counsel. In broad terms, it consisted of statements provided to police shortly after the bombing in the Horse & Groom pub by people who were injured in the blast.
  
- b) On 25<sup>th</sup> August 2020 Surrey Police provided electronic access to the second tranche of evidential material. This consisted of 140 witness statements made by approximately 118 witnesses who had responded to the bombing at the Horse & Groom pub, such as emergency services personnel. A further schedule of those statements was also provided. In addition, the tranche contained a considerable quantity of other material, including documents, photographs, police messages, exhibits to statements, plans and diagrams. Those other documents have also been scheduled. This tranche of material would be reviewed by CTI and junior counsel in due course.
  
- c) Surrey Police also provided an update on their progress in relation to future tranches of material. They anticipate being able to provide a third tranche of material by 18<sup>th</sup> December 2020. It was anticipated to consist of further witness evidence from people who were in and around Guildford on the day of the bombing, and CTI noted that much of the content of that tranche was unlikely to be relevant to the enquiries being carried out by HMC.

### 3.2.2. Metropolitan Police Service:

- a) MPS provided to HMC a disclosure report dated 10<sup>th</sup> August 2020. Further to the update provided in advance of the last PIR, CTI confirmed that MPS had now reviewed everything in its possession that was potentially relevant, and provided it to Surrey Police. Surrey Police would then supply all non-duplicative material to CTI as part of the process it was undertaking in respect of the other material in its possession. Effectively, MPS had now completed its work in searching for and providing relevant material for potential disclosure.

### 3.2.3. Ministry of Defence:

- a) The MOD had written to HMC confirming that it had identified some material which was relevant to the inquests. It had confirmed to CTI that, as had been done by MPS, it would be providing that material to Surrey Police, which would then review the material for duplicative documents and provide anything additional to HMC along with the other documentation.
- b) Further to the previous PIR, CTI noted again that there had been some correspondence with the MOD identifying two individuals (explosives officers who were involved around the time of the bombings) which the MOD was attempting to track on behalf of HMC. CTI confirmed that the full names of those individuals had now been provided to the MOD to assist with those enquiries.

### 3.2.4. Other participants (non-IPs):

- a) Further to the update at the previous PIR, the Home Office was yet to provide the Sir John May Inquiry archive documents that had previously been requested by HMC following a review carried out by HMC's junior counsel. However, after clarifying with the Government

Legal Department (which is assisting the Home Office) that it was not necessary to redact those documents at this stage because they were being provided to CTI and HMC only and not for onward disclosure, the Home Office had confirmed that it should be able to provide the documents within a few weeks.

- b) Following directions circulated by HMC on 14<sup>th</sup> May 2020, the Royal Surrey NHS Foundation Trust (for Royal Surrey County Hospital) had also been carrying out enquiries with a view to identifying documentation potentially relevant to the scope of the inquests. HMC will be following up those enquiries in correspondence subsequent to the PIR. CTI noted that the Trust's enquiries had identified one relevant individual who might be able to be tracked. There were also some outstanding enquiries as to what documentation may have been transferred by the Trust's predecessor bodies to the National Archive.
  
- c) Also pursuant to the directions of 14<sup>th</sup> May 2020, SECAMB had been carrying out enquiries to identify any documentation it might hold which is relevant to HMC's enquiries. It provided some useful information about documentation from one individual who was involved on the night of the bombing and subsequently, and who had a good recollection of what happened. CTI noted that there were a few follow-up enquiries arising from that information which would be pursued by way of correspondence. Specifically: (1) enquiries were being made to locate a "Major Incident Report" which had reportedly been prepared following the bombing, but which was not the ambulance report which was in the possession of Surrey Police and had previously been provided to HMC; (2) CTI was attempting to establish the chronology of the ambulance service's corporate structure since the bombing in order to establish whether any relevant documentation had been transferred by its predecessors to the National Archive; and (3)

enquiries were being made about potentially using pension information to track a number of individuals who might be able to provide evidence to the inquests.

- 3.3. HMC noted the update and emphasised for the benefit of all in attendance that although documents were being passed by the MOD and MPS to Surrey Police in the first instance, that was solely for the purposes of efficiency and avoiding duplication in the provision of documents to HMC from different sources. No potentially relevant documents are being destroyed. Everything remains available to be reviewed by HMC should he request it.
- 3.4. CTI confirmed that was the case. He noted that Surrey Police, the MOD and the MPS had all been working together in the original investigation in the aftermath of the bombing itself in 1974. They were sharing information at that time, and accordingly there was a large amount of overlap and duplication in the material they each hold, which the process put in place with Surrey Police was intended to iron out.
- 3.5. HMC then turned to the application of the BBC for access to documents and evidence, first made by email on 10<sup>th</sup> June 2020. He noted that he had received the following written submissions/correspondence in relation to the application:
  - 3.5.1. Submissions from Surrey Police dated 4<sup>th</sup> and 28<sup>th</sup> August 2020;
  - 3.5.2. Submissions from the BBC dated 19<sup>th</sup> August 2020;
  - 3.5.3. Submissions from the MPS dated 12<sup>th</sup> and 25<sup>th</sup> August 2020;
  - 3.5.4. Correspondence from KRW Law dated 5<sup>th</sup> August 2020; and
  - 3.5.5. Correspondence from two family members of Guardsman John Hunter, dated 29<sup>th</sup> July 2020.

3.6. HMC then invited Jude Bunting, appearing for the BBC, for any further oral submissions he wished to make in support of the application.

3.7. Mr Bunting made submissions as follows:

3.7.1. He identified a number of other representatives of the media present in court. He said that, based on discussions with them, they were all supportive of the BBC's application.

3.7.2. He said there were several matters which were not in dispute between the BBC and the IPs:

- a) This is a high profile and complex inquest. In that regard Mr Bunting referred to paragraph 93 of the Chief Coroner's Guidance No. 25 ("Coroners and the Media"). The Chief Coroner there suggests that in high profile and complex cases, Coroners should consider at PIRs whether special arrangements need to be made for the media, including the provision and copying of relevant documents. This is what the BBC was inviting HMC to consider in its application.
- b) HMC has the power to provide documents to the media, pursuant to Regulation 27 of the Coroners (Investigations) Regulations 2013.
- c) The power under Regulation 27 should be exercised in accordance with the relevant authorities, which were summarised in the BBC's written submissions, and which provide that there is a strong presumption in favour of press access.
- d) Other high profile inquests and inquiries (with some similarities to the present inquests) have put in place dedicated websites to facilitate

public and press access to information e.g. the Manchester Area Bombing Inquiry and the Birmingham Pub Bombing Inquest.

- 3.7.3. He confirmed that it was not the BBC's position that authority compels HMC to set up a website, although it is a helpful way of complying with the principle of open justice. However, the BBC was inviting the implementation of some kind of mechanism which would enable the press to obtain the documents put before HMC contemporaneously. The practical benefit of that approach is that the inquest process would not be continually disrupted by a series of one-off applications by members of the press for particular documents, which would be timing-consuming and costly.
- 3.7.4. As to why it was important that the press have access to such information, Mr Bunting referred to the families of the Deceased, such as the family of Private Ann Hamilton, the family of Gerry Conlon (one of the "Guildford Four"), and Paddy Armstrong (another of the Guildford Four). The BBC had been in contact with those persons. They have no legal aid and are not in a position to attend the hearings. Such individuals have a direct interest in the progress of the inquests but cannot follow the evidence themselves and so are dependent on the media. In turn, the media is not able to keep such individuals adequately informed without access to the evidence itself. Mr Bunting noted that there were likely to be many other members of the public in a similar situation, and it was important that justice was seen to be done.
- 3.7.5. He noted that three PIR hearings have taken place in 2020, and a number of other hearings before that. Rulings from those hearings and the materials put before the court for those hearings are not publicly available without contacting HMC. As a result, the public's ability to follow the progress of these inquests, and their trust in the process to date, was undermined.
- 3.7.6. In summary, Mr Bunting noted that there was a practical, personal and legal interest in the application succeeding. He noted that no other party had



suggested that the BBC should not be granted access to material that is put before the court. For example, the MPS and Surrey Police had said they were content for the BBC to have access to the materials they had submitted to the court for the hearings to date, and other IPs were in the same boat.

- 3.8. HMC sought to explore a number of facets of the BBC's application with Mr Bunting:
- 3.8.1. First, he wanted to confirm what actual documents the BBC was seeking in its application when it sought "documents put before him" i.e. was it seeking access to skeleton arguments and rulings, or something over and above that?
  - 3.8.2. Mr Bunting said that it was not the BBC's position that it should be granted access to everything. Rather, its position was that as and when documents or a piece of evidence was put before him in open court and relied upon, whether in a PIR or the final hearings, such materials should also be made available to the BBC.
  - 3.8.3. HMC said that the BBC's position could cause difficulties in relation to evidence. He has not yet decided what material submitted by the IPs is relevant, and so there is no evidence to be disclosed at this point. As such, it was difficult to see how a decision could be taken in principle at this stage about the release of such evidence in the future.
  - 3.8.4. He also raised the example of witness statements where the maker of the statement was to be called. In such instances, the oral evidence rather than the statement would be the evidence before the court, and there could be difficulties if the press accessed and reported upon the written statement, which was not evidence.
  - 3.8.5. Addressing HMC's first point, Mr Bunting said that, as a matter of principle, if there was evidence available to the court but not adduced in open court, that

was in itself a point of public interest. However, he noted that for present purposes, what the BBC was seeking was material put before the court for the PIR hearings (along with a mechanism for accessing such documentation in the future), and so the difficulties posed by the Coroner did not arise at this point.

3.8.6. In terms of witness evidence, in practical terms it is likely that a witness would be questioned on the basis of their statement and referred to its contents to test their account. The BBC would seek access to such documentation, and there is a strong presumption that it should be provided, subject to any particular objection being made.

3.8.7. HMC noted that no decision has yet been taken as to whether the inquest hearings will proceed with a jury. If so, there could be difficulties if material is provided to the media and reported upon or published, when that material was not used in court and not provided to the jury.

3.8.8. Mr Bunting said that Parliament had put in place statutory mechanisms to deal with that issue through the Contempt of Court Act 1981, and that these problems should not arise when dealing with responsible journalists who were used to dealing with such issues. In any event, he emphasised that although the BBC would have an interest in available material not adduced in court, the actual application before HMC was for documents put before HMC and relied upon in open court.

3.9. HMC then invited submissions from representatives of any other IPs (and other participants at the hearing) who wished to address the court on the BBC's application:

3.9.1. Ms Barton QC for Surrey Police said that she did not propose to amplify on her written submissions, save to emphasise that it was a matter for HMC as to what he publishes and how he publishes it. She also confirmed that there was no dispute about the BBC being provided with copies of rulings and the

written submissions/updates from Surrey Police thus far, subject to any necessary redactions.

- 3.9.2. Mr Pleeth for the MOD confirmed that it had no objection to the documents it had submitted for the PIRs thus far being provided to the media. However, he queried whether the way in which Mr Bunting had put the application in his oral submissions went further than what was set out in paragraph 15 of the BBC's written submissions, which states:

*The BBC respectfully invites the Court to make evidence and written submissions available to accredited members of the press when reliance is placed on it in open Court...*

- 3.9.3. Mr Pleeth confirmed that the MOD did not object to the application as set out in that paragraph. He noted that Mr Bunting had spoken of media interest in materials not adduced or referred to in open court (for example, a witness statement underlying a decision to call a witness to give oral evidence). He confirmed that the MOD would object to the application to the extent that the BBC was seeking access to documents which were not relied upon in open court. He reiterated again that in respect of the documents the MOD had submitted for the PIRs thus far, it was content for them to be provided to the media.

- 3.9.4. Ms McCleneghan for the MPS said that it had no objection to rulings, hearing transcripts, skeleton arguments or its written disclosure updates being provided to the media, subject to providing it with an opportunity to propose appropriate redactions before disclosure.

- 3.9.5. Ms Pendreich for SECAMB confirmed that it was adopting a neutral position on the application.

- 3.10. HMC then invited submissions from CTI on the application:

3.10.1. CTI submitted that Chief Coroner's Guidance No. 25 ought to be the starting point, and highlighted the following paragraphs of relevance:

a) Paragraph 38:

*A coroner need not treat a request as coming from the media unless the applicant is a bona fide journalist and the request is for a proper journalistic purpose. The request must specify precisely the document sought and explain why it is required. Where any of this is unclear, the coroner may ask for clarification.*

b) Paragraph 39:

*The important distinction between disclosure to Interested Persons and disclosure to others has been set out above (see paragraphs 24-29). Media requests for access to documents will be dealt with under the discretionary power to disclose in regulation 27(2).*

c) Paragraphs 43 - 44:

*The media is not entitled to see documents not referred to in court. If a coroner holds documents which have not been relied upon and adduced in evidence, these need not be disclosed.*

*The media is also not entitled to have access to documents before a hearing, save when disclosure is necessary to enable the media itself to make representations (when entitled to be heard), for example in relation to a proposed restriction on reporting.*

d) Paragraph 46:

*The coroner should therefore normally accede to a media request unless there is a compelling reason not to. The coroner*

*must make these decisions on a case by case basis, document by document, noting the presumption of disclosure but also bearing in mind that the media are entitled to attend all inquest hearings which are held in public.*

e) Paragraph 52:

*Where possible the coroner should take into account (as a relevant factor) the views on disclosure of Interested Persons and others including those who supplied the document to the coroner and should ask if there is any objection to disclosure.*

f) Paragraph 57:

*Where a witness has given evidence, the testimony given in open court is usually sufficient for open justice purposes. The statement of the witness need not be provided; it is not evidence.*

g) Paragraph 60:

*Where a witness statement (or other document) has been referred to by the coroner and relied on for a ruling or conclusion but not read out, access should usually be provided...*

3.10.2. CTI emphasised that, considering these statements of principle, the guidance did envisage a distinction between a targeted approach and a blanket request, and that it is important to take a document by document approach.

3.10.3. Insofar as the BBC had noted that documents from previous PIRs had not been made available, CTI noted that such documents had not been requested, and could probably be made available now (and could have been available earlier). He also noted that, although he understood that HMC was not envisaging a separate dedicated website for these inquests, he was giving consideration to a page on the Surrey County Council website where

documents such as rulings could be uploaded. However, he urged caution about treating such a web page simply as a database for uploading inquest documents. Further, if the BBC was suggesting that it ought in effect to be treated as an IP and copied in to all documents circulated to IPs, that would be wrong.

- 3.10.4. From a practical point of view, CTI noted that based on the Surrey Police tranche materials the counsel team had reviewed there was unlikely to be a need for significant redaction. Accordingly, as the substantive hearings approached, it would probably be possible to identify the key documents likely to be relied upon or read out in court, and they could be made available in advance of the hearing. If other documents became of particular relevance or were read out at the hearings, they could be requested subsequently by media representatives if desired.
- 3.11. HMC noted that for present purposes, the focus had to be on documents utilised for the PIRs. Realistically, that meant the PIR agendas, written updates from IPs, written submissions and rulings where given. Until now there had not been any need for reference to primary evidence as such. Arguments about evidence used or not used in court in the future hearings could be dealt with at a later stage.
- 3.12. CTI agreed that, although there might be hypothetical problems with the BBC's application looking ahead, in practice it might well be that everything that had been utilised in court thus far could be provided to it.
- 3.13. He noted that the Chief Coroner's Guidance and the authorities emphasised the importance of reporting on proceedings, as opposed to reporting on interlocutory decisions about what formed part of those proceedings. At future hearings, documents could be referred to as part of HMC's consideration of what material was relevant for the purposes of the hearings, who the witnesses should be, and which witnesses should be called. It might well be inappropriate for such documents to be released to the media; such matters do not fall within the open justice principle in the same way.

However, it was felt that in reality it was likely to be obvious which documents it would be useful for the BBC to see. They could be provided proactively in a core bundle of public materials, and anything else could be addressed on an document-by-document basis.

3.14. In that regard, he noted that the BBC had submitted that having a default mechanism would be more efficient and less costly than dealing with ad hoc applications. However, CTI suggested that in fact the opposite could be true. Having a default position of releasing every document to the media would mean that HMC and all IPs would have to carry out an assessment/balancing exercise in respect of all the circulated documents, many of which would probably be of no interest to the media. Targeted applications could be more manageable.

3.15. HMC then provided an opportunity for Mr Bunting to respond on behalf of the BBC:

3.15.1. Mr Bunting emphasised that the Chief Coroner's Guidance does not constitute law (which is set out in the authorities), and submitted that CTI had not referred HMC to paragraph 93, on which the BBC placed particular reliance in its application.

3.15.2. He said that, realistically, at this stage what was in issue was access to the documents put before the court for the PIR hearings. Although such documents had not been requested previously, it was difficult for the BBC to make specific requests, as it had not been informed what documents there were.

3.15.3. Effectively, what the BBC sought was a ruling that as documents are relied upon in open court, there will be a presumption that the media can simply obtain them from the Coroner's officer. Then, if an IP objects to that document being provided, there can be individualised consideration.

3.15.4. He argued that in most inquests, a document-by-document approach was practicable because the size and scope of the inquest was much smaller. In a

large inquest such as this, it was not practicable. It was a high profile and complex inquest, and it was likely that the BBC would want to see everything referred to rather than make occasional, specific applications. Further, it was not for the court to play an editorial role for the press by providing only those documents which it felt the press ought to be interested in.

- 3.16. HMC indicated that he would deliver a written ruling following the hearing. He then moved on to address disclosure, inviting submissions from CTI and the IPs on that issue.
  - 3.16.1. CTI noted again that the third tranche of material from Surrey Police was anticipated to be ready in December 2020, and that by that time HMC's counsel team should be on top of the material received to date. It was felt that there was unlikely to be much material of relevance to the inquests in tranche 3, and accordingly it should be possible for CTI to revert to Surrey Police in around January 2021 as to what material HMC was proposing to disclose to IPs.
  - 3.16.2. HMC noted that Surrey Police had proposed a protocol for redacting documents for disclosure, although he felt that it could be addressed in quite a simple way without the need for a complicated protocol. Having identified what is relevant, HMC could provide a list to Surrey Police as to what is to be disclosed to the IPs, and Surrey Police (and the MPS and MOD) could then consider if they wish to submit that any redactions are required based on that list. If they propose redactions, HMC can consider them and invite submissions if necessary, before making a decision.
  - 3.16.3. He suggested that, based on the timeline set out by CTI, it could be possible to deal with disclosure in around February / March of next year, although that was subject to change.



- 3.16.4. For Surrey Police, on the issue of redactions Ms Barton QC agreed with the process envisaged by HMC, and said that there was likely to be little need for redaction in respect of tranches 1 and 2, save for redaction of personal information. Public Interest Immunity redactions were unlikely.
- 3.16.5. Counsel for the MPS and MOD noted that they would welcome the opportunity to feed into the redaction process when the disclosure process began.
- 3.17. Looking ahead, CTI proposed that the counsel team pull together a composite PDF containing all documents that had been provided to the court and utilised in the PIR hearings to date. That could then be circulated to IPs to establish if there was any objection to any parts of those documents being provided to the media. HMC welcomed that proposal, although noted that what was done with the documents would be subject to the details of his ruling, to be issued in due course.
- 3.18. HMC indicated an intention to list a further PIR hearing for December 2020, in order that all parties could be kept up to date as to the progress of this matter.

*[A further Pre-Inquest Review will be scheduled for a date in December 2020]*

**MATTHEW FLINN**

7<sup>th</sup> September 2020