IN THE EAST LONDON CORONER'S COURT

BEFORE HER HONOUR JUDGE MUNRO QC

INQUESTS INTO THE DEATHS OF ANTHONY WALGATE, GABRIEL KOVARI, DANIEL WHITWORTH and JACK TAYLOR

RULINGS – PRE-INQUEST REVIEW (4)

The numbering below reflects those on the revised agenda.

A table setting out the directions in chronological order is set out at the end of this ruling

1. **Applications for Interested Person Status**

   a. I have granted IP status to Mr John Sweeney and DI Anthony Kirk. They are represented by Mr Morley and Mr Atchley.
   b. There are no new or renewed applications before me today.

   I direct that any new/renewed applications for Interested Person ("IP") status are made by **15/10/20**. I would only countenance applications after that date in exceptional circumstances.

2. **Disclosure**

   I note that the bulk of the disclosure to me and to the IPs was made some months ago. The disclosure process is very nearly complete. A number of topics in relation to disclosure have been raised.

a. **Disciplinary records**

   Submissions are made on behalf of the families that officers' disciplinary records should be disclosed to the IPs in the light of the fact that a number of the officers have set out in their statements "commendations, awards and recognition of good policing" by them. The disclosure is sought in order to balance such assertions with any disciplinary proceedings etc.

   In my view, such disclosure is not required as this time. It is not suggested on behalf of any of the officers that his "good policing record"

is relevant to any issue which I or the jury need to consider. Accordingly the disciplinary records are not relevant.

Mr Skelton on behalf of the MPS submits that there is a possibility that an individual officer may wish to draw attention to (eg) a commendation if his/her ability or competence as a police officer is challenged; however, in general he agrees that such evidence is not relevant. Miss Dobbin on behalf of 14 officers agrees that accolades etc will not be adduced in chief. The only possibility of such matters being adduced, she submits, would be as rebuttal evidence but that is "very unlikely to arise." Mr Shaw stated that Mr Sweetman will not be relying on any commendations and it is "inconceivable that any disciplinary issue could be relevant" in his case. Mr Morley and Mr Atchley for Messrs Sweeney and Kirk agree with Mr O'Connor's submissions which I summarise below. Mr Atchley also agrees with Miss Dobbin's analysis.

Mr O'Connor points out that disclosure records of most of the relevant officers have already been disclosed to me and reviewed for relevance. I am confident that my team will keep this process under review.

In my view it is highly unlikely that any officer will seek/be permitted to rely on his/her good policing record and therefore no disclosure of private disciplinary records is required at this stage. It is remotely possible that the records might be "put into play". If any record does become relevant it can be re-reviewed and disclosed on a case by case basis.

b. Outstanding Assurances

At the last PIR I directed that all IPs and stakeholders should provide assurances that all potentially relevant documents identified following reasonable and proportionate searches have been disclosed. Those assurances have, in the main, been received. The only difficulties arise in relation to:

(i) MPS and
(ii) DS Sweetman, Mr Sweeney and DI Kirk.

(i) In relation to the MPS, I am aware of the technical difficulties which the MPS has had in carrying out the necessary final checks

before giving assurances. I am grateful that there has been liaison with the Inquest team in this context. The MPS has not quite reached the position where they are able to give assurances but I am confident that the relevant assurances can be given in the very near future. I express the serious hope that I will not have to address this topic again with the MPS.

(ii) Mr Shaw is convinced that he had already provided an assurance on behalf of Mr Sweetman. He undertook to re-send his assurance by email today and he has done so.

Mr Morley can provide the required assurance on behalf of Mr Sweeney by **15/10/20**.

I am grateful to Mr Atchley for agreeing to provide the required assurance on behalf of DI Kirk by **15/10/20** despite the fact that he is, so far, without funding and acting pro bono.

I therefore direct that assurances by and on behalf of Mr Sweeney and DI Kirk be provided by **15/10/20**.

3. Listing and Hearing Arrangements

There were no submissions from the IPs on the proposals made by CTI in oral submissions.

a. I direct that a final PIR will take place (if necessary via CVP) on 20th November 2020 at the Central Criminal Court. The families will, as always, be afforded the opportunity to attend that hearing subject to COVID restrictions and their ability to join remotely.
b. The hearing of the inquests will take place at Barking Town Hall. The Central Criminal Court had been the preferred venue but it is now not possible to hold the Inquests here due to the ongoing pandemic, the number of IPs and representatives and the continuing need for social distancing. It is inevitably going to be necessary for IPs and their representatives to make compromises in order to comply with the COVID restrictions. My team and I will do all we can to ensure that everyone who needs to see and hear the

proceedings can do so. I do not intend to get involved in the minutiae of those arrangements (though I do intend to visit the venue in the near future in order to see the layout and possible arrangements at first-hand). I would ask, therefore, that the IPs and their teams work with the STI in order to make it work without me having to make rulings on this subject.

c. The hearing will commence on 7/1/21 with a time estimate of 8-9 weeks. I will ask the jury to be prepared to be available for 10 weeks as a matter of caution.

4. Jury questions

There was only one contentious issue in relation to the jury questions. Before dealing with that I direct that

a. The Inquests will be conducted with 11 jurors summoned form a pool of at least 20.
b. There will be 2 reserve jurors sworn. Those 2 jurors will stay until the end of the opening lest there be any difficulty which arises once the facts are opened fully to them.
c. The potential jurors will be asked the questions set out in paragraph 12 (a) to (f) of CTI's submissions with additional of "any member of their immediate family" added to questions (a) to (e).

It is submitted on behalf of the families that potential jurors should also be asked whether they have "beliefs (religious or otherwise) that entail a moral judgment of gay sex or homosexuality generally in any respect." Mr Clarke, on behalf of the families, argues that such a question is necessary in order to ensure compliance with "the Equality Act in the context of public service" and the question of "unjustified material differences in the treatment of gay people by police officers." Dr Van Dellen, on behalf of Mr Waumsley, supports this submission.

Mr Skelton on behalf of the MPS objects. He cites Leveson LJ in *KC v The Queen* [2009] EWCA Crim 2458. In that case, after the appellant's conviction for Murder, it was discovered that the foreman of the jury was a columnist for The Sun newspaper; he was described as an "outspoken polemicist who holds strong and well-publicised views on

issues such as law and order, soft judges, knife crime, drugs and immigration which could be characterized as populist and tendentious". It was argued, on appeal, that the foreman was partial to the prosecution and that there was a real possibility or danger of bias so as to render the trial unfair and the conviction unsafe. The appeal was dismissed. At paragraph 21 Leveson LJ quoted Lord Bingham in *R v Abdroikov* [2007] UKHL 37 who stated *"I would accept …that the safeguards established to protect the impartiality of the jury, when properly operated, do all that can reasonably be done to neutralize the ordinary prejudices and predilections to which we are all prone"*. At paragraph 24 Leveson LJ said:

"It is important to provide the context for this case. The right of peremptory challenge has long since been lost and this country has not adopted the practice of permitting a voire dire of all potential jurors in order to determine their views prior to selection for jury service: in specific cases, judges might direct specific questions to potential jurors to avoid particular problems but such a course is exceptional and case specific rather than general and unfocussed."

Miss Dobbin agrees that a question such as that proposed here is not appropriate. Those representing other IPs are also minded to object to such a question.

I direct that this matter must be argued fully at the next PIR. There is likely to be further relevant case law on the topic of what can/cannot be asked of juries. The case of *KC* is, however a good starting point.

I direct that IPs should set out, in writing, any submissions on this issue, by **15/10/20** together with any supporting authorities. I direct CTI to respond to those submissions in writing by **30/10/20**.

5. Witnesses

I listened with care to submissions made by IPs on the timing of outstanding evidence. Having considered the overall timetable and the need for the expert, Julie Mackay, to have sufficient time to prepare her supplemental report, I direct that:

a. All outstanding witness statements be served by **2/10/20** including MPS Policies statement and statements from DCI Chris Jones and DCI Cliff Lyons (ret'd). I note that the Policies and Procedures statement was requested by my team back in March and it forms a vital part of the jigsaw. The luxury of time is no longer with us and these matters must be given absolute priority.

   The statement relating to changes in policy, which will assist me in my duty to consider whether to make any Report on Action to Prevent Future Deaths pursuant to Schedule 5(7) of the CJA 2009, exercised under Regulation 28 of the Coroners (Investigations) Regulations 2013 must be served by **23/10/20.**

b. Rather than going through each witness in respect of whom there is not agreement in relation to whether he/she should be called or read, I agree with CTI's submission that IPs should reduce into writing and on **Annex B** the witnesses' evidence in relation to whom they disagree with CTI's proposals and reasoned arguments as to why that is the case. They should also set out in writing any other witness who they argue should be called/read and the reasons why they so argue.

   I direct that all final witness submissions on Annex B should be reduced into writing and served by **8/10/20** subject only to amendment following service of outstanding statements and any matters arising which could not have been anticipated from the disclosure made by that date. CTI must respond in writing by **15/10/20.** I will thereafter provide a final written ruling as soon as possible.

c. My Inquest Team will, as I direct, provide an updated **running orde**r (currently Annex C of CTI's submissions for this hearing) within 7 days of my written ruling on witnesses and I direct that 7 days thereafter IPs must put in any submissions or objections. I agree with CTI's proposals as to the calling of **DI Richards** on 4 (rather than 5) occasions which is welcomed by the MPS.

d. In relation to Policies and Procedures: first, the statement/s need to be served and I have directed its/their service by **2/10/20**. Second, having read the written submissions and listened to oral argument, I have concluded that the correct way forward is for CTI to introduce the topics to the jury to give them a general idea of the territory to which the evidence will relate. I note Mr Gibbs' concern about potential issues of contention but am confident that Mr O'Connor can avoid any such issues. The relevant officers will deal in their evidence with their understanding of the relevant policies and procedures and they can be questioned from the main Policy and Procedures statement/s. Thereafter a decision can be taken on whether it is, in the final event, necessary to call the maker/s of that/those statement/s.

   I direct that the IPs should indicate by **30/10/20** any areas of contention in the Policy and Procedures statement/s**.**

6. Expert Evidence

a. I direct that any points of clarification for Miss Mackay should be served by **15/10/20.**
b. Miss Mackay will thereafter provide a single supplemental report following final disclosure and in response to any further issues/questions by IPs.
c. I do not consider that it is necessary or appropriate for Miss Mackay to deal with the adequacy of current policies. That is not her area of expertise and I am of the view that little would be gained from her addressing that issue. Having heard all the evidence and considered the changes to be articulated by Deputy Assistant Commissioner Cundy, I will be well-placed, if I decide it appropriate to do so, to determine the adequacy of the current policies in the context of regulation 28 and prevention of future deaths.

7. Rule 22

Firstly, may I endorse Mr O'Connor's gratitude to Dr Van Dellen for his helpful written and oral submissions on this topic in relation to DI Schamberger. I intend no disservice to the submissions when I attempt to take them shortly.

Dr Van Dellen argues that there is a real and appreciable risk of prosecution for misconduct in public office in the case of DI Schamberger. He points out that "wilful neglect" of duty incorporates omission. He relies upon:

(i) the failure to respond to the "strong recommendation" by the Home Office Pathologist, Dr Swift, at the Special Post Mortem of Mr Whitworth, that the bed sheet be further examined (see CTI's submissions paragraph 36a and Dr Van Dellen's submissions for the last PIR at paragraph 29);

(ii) the fact of his lack of training and inexperience set out in paragraph 36(c) of CTI's submissions as rendering his failure to adopt Dr Swift's recommendations as the more culpable.

(iii) the lack of note about the bedsheet (as set out at (e) of the same paragraph)

(iv) the reason given by DI Schamberger (at the first Inquest) for not having the sheet examined (i.e. *"the circumstances at the time indicated towards no other external parties being involved at the time"* see paragraph 31 of AVD's submissions) as being incorrect since there was evidence of bruising to both Mr Whitworth's arms which may have occurred as a result of manhandling.

(v) the following passages from Julie Mackay's report:

(a) paragraph 106: *"I would have expected forensic recovery of the bedsheet".*

(b) paragraph 108: *"The forensic review should still discuss all exhibits".*

(c) paragraph 119: *"A briefing document …failed to mention the bruising to DW demonstrating that its significance had not been recognised."*

(d) paragraph 121: *" There is no evidence that the bruising gave any cause for concern when it should have done."*

(e) paragraph 122: *"The recommendation of Dr Swift…was …either ignored or discounted (there is no recorded rationale for the decisions made)."*

(f) paragraph 127:*"There are comments on the CRIS report … that all actions were complete when, in fact, they had not been"* and

(g) her summary at paragraph 128 which I do not intend to repeat here but which I have re-read.

Dr Van Dellen submits that the significant "elephant in the room" is "bias and discrimination" and that "had DI Schamberger done what it was strongly recommended that he should do, Stephen Port would have been caught and Jack Taylor's death would have been avoided."

Dr Van Dellen indicated that he would be happy for me to declare that there is no real and appreciable prospect of prosecution as, in those circumstances, DI Schamberger would not decline to answer questions. He concedes that the issue can be revisited when the officer gives evidence but that I could make the determination now that rule 22 is or is not engaged on the material currently before the court.

CTI argues that I should not make any determination on this issue now as it is premature and that, in any event, it is highly unlikely that such a warning will be required for the reasons set out in his written submissions. Mr Skelton (for the MPS and Miss Dobbin (for the 14 officers) agree. Miss Dobbin argues that the decision is fact-sensitive and to be determined at the time at which a question is asked and not a matter for a pre-order.

I have concluded that it would be wholly inappropriate for me to seek to anticipate the evidential position in relation to DI Schamberger (to whom this application is limited) and that the proper time to consider it is when he gives evidence.

8. Scope/Assurances

I deal finally with Mr Clarke's submission in relation to assurances as set out in paragraphs 9-12 of his submissions. Mr Clarke points ought out that at the last PIR I sought confirmation from Mr Skelton and Mr Gibbs that there was no intention on the part of any of their clients to cast blame for any shortcomings upon either the coronial investigation nor on the CPS. They each gave me a firm assurance to that effect. Mr Clarke is concerned that officers may attribute their failures to take certain steps to the fact, for example, that those matters were not raised by the Coroner or her officers as opposed to specifically blaming her or them for the failures. Thus he submits at paragraph 11: "The bereaved families respectfully submit that, in order to properly address the concerns such assurances need to be somewhat broader or differently framed. There is, of course, a possibility that officers could offer an explanation of their actions/inactions which involves reliance upon decisions made by the coroner without making any "criticism". It is respectfully

submitted, therefore, that the appropriate assurance would be that officers will not seek to account for any potentially flawed decision, act, or omission, by reference to reliance upon acts/omissions of the Coroner's service. It is further submitted that such assurances will necessarily be required from any new police IPs, and that it is important that their legal representatives have sufficient time to take instructions before responding in this regard."

In his oral submissions Mr Clarke clarified that he was seeking an assurance that no one will seek to "account for acts/omissions by reliance on the previous colonial investigation".

Dr Van Dellen supports those submissions

Mr O'Connor submits that the assurances given are sufficient. The relevant disclosure had been made and no further assurance is required. Nor is any assurance required by the "new" IPs as those officers were not charged with the day to day conduct and would be unlikely to be casting such blame.

Mr Skelton repeated his assurance that the MPS does not seek to criticise the Coroner or her service. However it is, he submits, important to recognise that the facts of the officers' interaction with the Coronial Service may be relevant as it may influence decisions. Further, he argues, the court cannot prohibit witnesses seeking to blame other people when giving evidence but points out that I am bound to "foreclose irrelevant questions and answers" and were such blame to be cast he submits that I would so prohibit.

He goes on: "the jury need to consider the decisions made by the police officers in relation to their professional responsibilities which, whilst they may have been influenced by others, are essentially their own."

Miss Dobbin repeated that on behalf of those she represents she repeats that it is not their intention to cast blame. However she cannot go further as that would "fetter the giving of relevant evidence".

Mr Shaw confirmed that "Mr Sweetman will not be blaming anyone."

Mr Morley and Mr Atchley agree with Mr O'Connor's submission in relation to their clients.

Mr Clarke responds that the giving of the assurance he seeks does not fetter the evidence.

I have concluded that the assurances already given are entirely adequate and that no further assurances are appropriate or required. The disclosed evidence, once examined and studied will, I am confident allay any further fears that there will be any attempt to "account for" acts/omissions by police officers to the Coroner or her service in an attempt to blame her or them.

HHJ Munro QC

25th September 2020

Table of directions (chronological order)

	Direction	Date
1.	All outstanding witness statements to be disclosed with the exception of the MPS regulation 28 witness statement	2.10.20
2.	All Interested Persons' final witness submissions on Annex B reduced into writing	8.10.20
3.	CTI response in writing to witness submissions	15.10.20
4.	DI Kirk and Mr Sweeney to provide the required disclosure assurance	15.10.20
5.	Any new or renewed application for Interested Person Status to be made	15.10.20
6.	Interested Persons should set out, in writing, any submissions relevant to the question of whether a question should be asked to jurors as to whether they have beliefs (religious or otherwise) that entail a moral judgment of gay sex or homosexuality generally in any respect ("the jury question issue")	15.10.20
7.	Interested Persons to serve any points of clarification for Ms Mackay in respect of her report	15.10.20
8.	MPS Regulation 28 witness statement to be disclosed	23.10.20
9.	Inquests' Legal Team to produce an updated witness running order (Annex C)	Within 7 days of HMC ruling on witnesses
10.	Interested Persons to put in submissions or objections in respect of the witness running order	7 days from receipt of Annex C
11.	CTI to respond to IP submissions on the jury question issue	30.10.20
12.	Interested Persons to indicate any areas of contention in the Policies and Procedures witness evidence	30.10.20
13.	Final Pre-Inquest Review	20.11.20