

**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 – 20<sup>TH</sup> NOVEMBER 2020**

*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. I conducted the 5<sup>th</sup> Pre-Inquest Review on 20<sup>th</sup> November at the Central Criminal Court. Most of the participants appeared remotely via the Cloud Video Platform (CVP). Junior Counsel to the Inquests and the Solicitor to the Inquests (STI) were present as were representatives of the police. Leading Counsel to the Inquests (CTI), Mr Andrew O'Connor QC, took me thorough the revised agenda in the order set out below.

**Det Supt Hamer's application for IP status**

2. I have dealt with this application in a separate ruling.

**Hearing arrangements and the Witness Timetable: Annex C**

3. I begin by joining in the tribute to my team and those at the London Borough of Barking and Dagenham in their superlative efforts to arrange for these Inquests safely to take place at Barking Town Hall during the current pandemic.
4. A comprehensive document, dated 13th November, setting out the arrangements for the hearing has been prepared and served on all Interested Persons and other relevant parties by the STI. Having visited the

venue at Barking Town Hall, I am entirely satisfied that the accommodation and planned safety measures will allow for effective participation whilst complying with current COVID 19 guidance and 2 metre social distancing. In these difficult times the arrangements are bound to require some compromise and mutual co-operation. I urge all participants to do their bit to ensure that the arrangements work and to find solutions rather than problems. I am confident that the Inquests can be conducted safely and fairly to all within the arrangements put forward.

5. In addition, technical arrangements have been made for remote attendance for interested persons and their legal representatives. I would recommend that those who do not have an active part to play in the Inquests (either at all or on certain days) make use of that facility rather than increasing the footfall (and with it the risk) by attending in person.
6. I understand that the technology for remote participation by Interested Persons' (IPs') legal representatives is also likely to be available.
7. If there are any questions about the Hearing Arrangements please refer them to my team.
8. CTI have prepared an updated witness list with running order– Annex C.
9. Mr O'Connor rightly points out and I repeat that efficient case management is even more important than usual due to COVID. These Inquests must be concluded within the time estimates. The timing and attendance of witnesses has been carefully planned. Repeated or unnecessary journeys for witnesses must be avoided. In order for the timetable to be robust and adhered to it is necessary for CTI and IPs to have liaised in order to reach agreement upon the timetable well in advance of the hearing date. Annex C is the first draft and a basis for discussion. Observations by IPs will be considered and I encourage discussion and cooperation from all IPs in order that I can be confident that a final version can be adhered to as far as possible. To that end I have proposed that there is a single point of contact (SPOC) from each team who will ensure that this objective is achieved.

10. In order to assist in the task, CTI confirmed that they will conduct the bulk of the questioning of all witnesses and explore the important causative issues which arise, having regard to the conclusions of the IOPC and Julie Mackay, the expert. CTI will also elicit relevant matters of police policy from the witnesses of fact and Julie Mackay, and take witnesses through the relevant documents. Therefore, an appropriate starting point for the division of time is, I agree, 2/3rd (CTI)/ 1/3rd (IPs). In the case of most witnesses, there will be supplementary questions by the families and one police team. There must be liaison between IPs to ensure that there is no repetition of questioning. A short amount of time will also need to be allowed for jury questions.
11. My team will prepare a list of evidential documents which are to be put to the witnesses by 4th December 2020. I direct that IPs (via the SPOCs) should agree between them the apportionment of time available with each witness set out on Annex C and identify witnesses who are likely to require more time than that allocated by **4pm on 11 December 2020**. A tight timescale is necessary in order that witnesses can be given the dates and the witness timetable finalised before Christmas.
12. Mr Skelton QC and Mr Davies QC on behalf of the MPS and the Reynolds Dawson officers and those representing other police IPs support that approach. To adopt Mr Davies' phrase "repetition is the enemy of progress".
13. CTI acknowledges the validity of Mr Clarke's submissions on behalf of the families (supported by Dr Van Dellen on behalf of Mr Walmsley) that IPs would be assisted by a list of topics/documents to be raised with each witness in advance so that they can then accurately predict the length of time required for supplementary questions. I commend that approach without seeking to formalise it.
14. I am going to ensure that these Inquests are the opportunities for the Families to receive full, clear and effective answers to the relevant questions which are to be raised. In order that this objective is achieved and in the context of a jury inquest, it is imperative that the Inquests conclude within the timetable. It is therefore vital that all IPs turn their

minds to the timetable NOW and liaise with one another and STI with any comments so that, where necessary, adjustments can be made to the timetable in advance. Time estimates must be provided and should those differ from those anticipated in the timetable, reasons must be provided as to why longer (or shorter) time is required. The final timetable will be adhered to and any duplicative questioning curtailed by me in order to avoid any overrunning. This requires strict discipline by CTI and among the Interested Persons and advance planning. It follows that I will insist upon compliance with the timetable.

15. The mantra for all must be prepare in advance and prepare now. It is only with that approach that I can ensure that these inquests can take place successfully and to time, and therefore that the families do not endure any further delay.

#### **Jury question issue**

16. Prior to the last PIR, it was submitted on behalf of the families and Mr Waumsley that potential jurors should also be asked whether they have:

*“beliefs (religious or otherwise) that entail a (negative) moral judgment of gay sex or homosexuality generally in any respect.”*

17. Having heard brief arguments I directed that written submissions be served in order for me to determine the issue at the final PIR. I am grateful to Messrs Thomas and Clarke, Dr Van Dellen, Messrs Skelton Berry and Barth, Mr Morley and CTI for their helpful and focused submissions.
18. At the PIR I directed that any submissions in reply from the families and/or Mr Waumsley on this topic should be made in writing by 27th November 2020. I have now received and considered those further submissions.
19. I have the power under section 8(5) of the Coroners and Justice Act 2009 to ask questions of a potential juror to establish whether they are qualified to serve and to refuse to swear a potential juror.

20. The submission of the families is that the question should be asked in order to ensure that the jurors are impartial and that there is no appearance of/actual bias.
21. There are a number of relevant authorities to which I have helpfully been referred.
22. The families crystallise their argument into 3 submissions:
  - a. That the question is not directed at the juror's own sexuality but to their beliefs;
  - b. That the concept of bias is not limited to close personal connection see R v Pouladina-Kari [2013] EWCA Crim 158; and
  - c. That the key consideration for me is whether there is a specific risk of bias: see para 873 of R v Ford [1989] QB 868 and such an issue is to be decided upon a case by case basis.
23. Dr Van Dellen puts the matter in this way:
  - a. Is the holding of such a view (as that posed by the question) an "extreme view"?
  - b. Does the holding of such an extreme view prejudice the weighing of the evidence relating to it? And
  - c. Does such prejudice give rise to the risk of a perverse conclusion?
24. I have stressed throughout these proceedings that questions will be asked which relate to possible "unconscious bias" which could have led to assumptions about the lifestyle of young gay men and the use of drugs during sex. That issue is included within the scope/provisional list of issues.
25. I have concluded that it would not be appropriate to ask the potential jurors the question proposed for the following reasons;
  - a. A jury should be selected at random. I should only interfere if actual or apparent bias is made out. The authorities are clear that the mere fact of matters such as holding a particular religious belief, for example, does not of itself give rise to apparent bias: see R v Bridge (Nicholas) [2019] EWCA Crim 220.
  - b. It is not necessary to ask such a question because there are sufficient safeguards in the coronial process to protect against any potential

prejudices held by any juror (see R v Abdroikov [2007] UKHL 37). Those safeguards include the guidance I will give them as to how to approach their task and to relay any concerns they may have about their own inability or that of another juror to comply impartially with their oath to “diligently inquire into the death of the deceased and make findings of fact and come to a true conclusion according to the evidence” and not according to any religious or moral belief.

- c. S29 of the Equality Act does not apply to the questioning of a potential juror by a coroner. Indeed, it might be discriminatory to ask such a question in so far as it relates to religious beliefs. It is not permissible for a potential juror to be excluded on the ground of their religious beliefs. The statutory changes to those eligible for jury service in s 321 and Schedule 22 of the Criminal Justice Act 2003 reflect the trust in jurors to act impartially, and to recognise and put aside their prejudices: see Lord Carswell @para55 in R v Abdroikov. The proposed question assumes that those who might answer the question in the affirmative would be unable to comply with the oath. That is an impermissible and unjustifiable presumption.
  - d. Those truly biased would, in any event be very unlikely to answer the question honestly and therefore the asking of the question would be unlikely to prevent the perceived mischief about which concern has been expressed. The jury system is such that any concern about bias can and will be raised by a fellow juror or jurors and they will be directed by me to raise any concerns including any concerns that a juror is not complying with their oath.
  - e. The random selection of the jury means that there will be 11 individuals from diverse backgrounds and sections of the community thus ensuring a balanced approach to the evidence.
26. Having considered with care the submissions and authorities I have concluded that it would be improper, unnecessary and potentially unlawful to ask potential jurors about their religious or moral beliefs concerning homosexuality or gay sex. The coronial process has built-in safeguards with regards to jurors and the questions to be asked and guidance given will avoid any risk of the jury determining the answers to the questions which they are to be asked on the grounds of bias (actual or apparent; conscious

or unconscious). In any event the proposed question is unlikely to elicit the existence of any bias.

### **Disclosure Assurance**

27. The MPS has now provided the disclosure assurance. In addition, they have provided further disclosure which has been reviewed by my team and which will be disclosed as soon as practicable.

### **Witnesses and Expert Evidence**

28. The statement of Ryan Edwards has now been disclosed and I rule that he will be called as a live witness.

29. I have previously directed that the statements of the witness Aldwinckle should be read. Concerns have been raised about this witness by those representing the Reynolds Dawson officers but I am confident that having noted those concerns, they concerns can be addressed in discussion with my team without the need for further intervention by me.

30. Miss Mackay's final short statement will be disclosed soon.

### **Outline Proposals re jury bundle**

31. I note and endorse the proposals with regard to the Jury Bundle. I direct that a draft index be circulated by 4th December with any additions to be notified by IPs by 11th December so that the bundles can be printed before Christmas and the need to add documents during the hearings kept to the absolute minimum due to the COVID restrictions.

HHJ Munro QC

3 December 2020

**Table of directions (chronological order)**

1.	CTI to circulate a revised Annex B, with a list of the documents that they consider each witness will need to be referred to and the key issues for the witness.	4.12.20
2.	CTI to circulate a draft index for the Anthony Walgate section of the jury bundle.	4.12.20
3.	Interested persons to agree between them the apportionment of time available with each witness set out on Annex C and identify witnesses who are likely to require more time than that allocated.	11.12.20