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

RULING ON SUBMISSIONS RELATING TO ARTICLE 2, THE CONTENTS OF THE JURY QUESTIONNAIRES AND PFD REPORT

1. These four inquests, which are being heard together, have now reached the point at which, after some seven weeks, the jury has heard all the evidence that is to be called. It is necessary at this stage for me to make rulings on certain issues of law that have arisen regarding the determinations to be returned by the jury. I have received detailed written submissions from Counsel to the Inquests ('CTI') and from those representing all Interested Persons, for which I am very grateful. A considerable amount of court time has been saved as I have had the opportunity to consider and reflect upon all the written submissions and the authorities referred to therein in advance of the oral hearing in court on Monday 29th November. I have also taken careful note of the oral responses to the written submissions as between the IPs and CTI.

2. I propose to deal first to deal with the issue of the engagement of Article 2 in these inquests, which is not contentious.

ARTICLE 2 ECHR

3. It is agreed by all that Article 2 is not engaged in the inquest into the death of Anthony Walgate, but that it is engaged in the other three inquests concerning the subsequent deaths – that is, the deaths of Gabriel Kovari, Daniel Whitworth and Jack Taylor. It follows from this, and it is also

agreed, that in Anthony Walgate's case the jury will be directed to return a narrow *Jamieson* determination, but that in the other cases they will be asked a series of questions in order to elicit their findings on the broader circumstances of the three deaths, relating in particular to causative failings in the police investigations that preceded each of those deaths.

CAUSATION

4. This issue has crystallised into whether there is sufficient evidence for me to leave the 'probably' element of question 3 to the jury in the questionnaires relating to Gabriel Kovari and Daniel Whitworth. The question for me to consider is: ***Is there sufficient evidence upon which a jury properly directed could safely conclude that there were errors/omissions on the part of Borough officers in the Anthony Walgate investigation which probably contributed to the deaths of Gabriel Kovari and Daniel Whitworth in the sense that they made a more than minimal, trivial or negligible contribution to those deaths?***

5. Anthony Walgate's body was discovered in the early hours of 19th June 2014. Gabriel Kovari's body was found at 0900 on 28th August - that is just over 10 weeks later.

6. I have examined the evidence and decided that, in the event that the investigation into Anthony's death had remained with the Borough, there is insufficient evidence upon which a jury could safely conclude that, had the errors and omissions not occurred and had appropriate/adequate steps been taken by the Borough officers, Stephen Port would probably have been arrested for a homicide offence before the 24th August and thereafter remanded in custody, so that Gabriel Kovari's death could have been prevented.

7. The relevant alleged/admitted errors and omissions are those in the draft questionnaires, namely those relating to the PND and X3, the PNC and X1, the failure to review the 2nd interview, the failure to contact Stephen Port's employers, the failure to submit the laptop for download and the fact that DI McCarthy stepped back from the investigation. In order for Stephen Port to have been charged with a homicide offence there would need to have been a cause of death. In this context that meant that the

toxicology results were required. Those results were not in fact received until 10th September 2014. Attempts to obtain them sooner at TDC Slaymaker's request were unsuccessful and, accordingly, even bearing in mind the different course that the investigation might have taken, in my view there is not sufficient evidence for a jury to conclude that Stephen Port would probably have been arrested and remanded in custody by, say 24th August (the last day that we can be sure Gabriel Kovari was still alive) had the investigation remained with the Borough. It does, however, remain a realistic possibility that Stephen Port might have been arrested and remanded in custody had the Borough officers properly investigated the matters relating to X1, X3, the employer, the laptop etc.

8. However, the matter does not end there. There is compelling evidence from DCI Jones that had he known about the "very impactive" information on the PND regarding the incident on 4/6/14 at Barking station then MIT would, he believed, have taken primacy. Had that occurred then there is evidence that the investigation would have proceeded at pace. As Ms Mackay put it: the investigation would have been conducted "under pace and pressure" and "the totality of the evidence would have led to Stephen Port being charged". In my judgment, there is therefore sufficient evidence for the jury safely to conclude that, in those circumstances, Gabriel Kovari's death would probably have been prevented on the basis that MIT would probably have fast-tracked the toxicology, obtained a speedy and accurate report on the contents of the laptop and carried out the further necessary enquiries which, the jury would be entitled to find, would probably have led to Stephen Port's arrest for a homicide offence and his remand in custody before 24th August.

9. In conclusion, therefore, I have decided that there is both sufficient evidence and that it is safe to leave to the jury the "causation questions" on both the "probable" and "possible bases" in relation to the Borough investigations into the deaths of both Gabriel Kovari and Daniel Whitworth, but with the careful direction that the "probable" basis only arises should the jury conclude to the requisite standard that the PND check should have been done and that, had it been done, MIT would have taken primacy and the whole investigation would have proceeded much

more quickly and efficiently with the consequence that sufficient evidence would have been produced to charge Stephen Port with a homicide offence and remand him in custody before Gabriel Kovari was killed and, therefore, a fortiori, before Daniel Whitworth was killed.

10. Finally on this topic, given the narrow approach that I have taken to the issue of 'probable' causation in respect of Question 3, I have amended the wording of the questionnaires to invite the jury (on all questions) to record their findings as to possible as well as probable causes.

PREJUDICE – THE ARGUMENTS

11. The draft questionnaire in the cases of Gabriel Kovari and Daniel Whitworth includes the words ***"Whether or not the Borough investigations were affected by any form of prejudice on the part of the Borough Officers arising from the fact that Anthony Walgate was a young gay man who worked as an escort, and/or from the involvement of drugs."*** The draft questionnaire in the case of Jack Taylor also includes a similar consideration relating to prejudice affecting the investigations into the deaths of Gabriel Kovari and Daniel Whitworth, omitting the reference to escort work.

12. Strong objection is taken by the MPS and Borough officers to these questions being left for the jury's consideration on the bases that:

    (i) It is unlawful for prejudice to be left as it equates to discrimination and a finding of discrimination is a finding of civil liability or would have the appearance thereof and such a conclusion is prohibited by s 10(2) of the Coroners and Justice Act 2009 and/or

    (ii) A positive conclusion on prejudice would be unsafe and/or

    (iii) There is insufficient evidence for prejudice to be left to the jury.

    (ii) and (iii) are effectively submissions that the Galbraith plus test is not satisfied.

13. Ms Hill and Dr Van Dellen strongly support the inclusion of questions relating to prejudice in relation to the Borough officers.

14. Although the draft questionnaires appended to CTI's written submissions did include a question of this nature relating to MIT involvement in the Anthony Walgate investigation, in oral submissions CTI accepted that there was insufficient evidence to support that question being left. I did not understand Ms Hill or Dr Van Dellen to resist that view, and in any event I agree. It follows that the issue for me to decide is limited to that of whether these 'prejudice' considerations should be left in relation to the Borough investigations alone.

15. CTI submits that I should approach this topic as follows:

(i) Is this the type of issue which, in principle, should be left in an Article 2 inquest? If yes:

(ii) Is there a prohibition on a Coroner leaving such issues? If no:

(iii) Would it be fair/safe to leave the issue (i.e. Galbraith plus), taking into account directions that can be given to the jury?

16. It is further submitted that prejudice is a "secondary" cause comparable to "lack of resources" in relation to which it has been submitted that there should be an amendment to the language with which I will deal below.

17. Taking the matters in the order as put by CTI.

(i) Prejudice is clearly a matter of great concern to the families and friends of the four deceased. It has been fully aired in the course of oral evidence and the families and friends have given their views that there was or must have been prejudice in the light of the catalogue of errors made here. It is certainly arguable that prejudice is a factual issue at the heart of the case and suitable to leave to the jury. It arguably raises serious alleged failings on the part of a state agency and requires investigation and determination due, in addition to the public concern expressed in the IOPC report, the Peter Tatchell Foundation report and the 2007 IAG report. Moreover, the case of ***R v Farah, ex p HM Coroner for***

Southampton **[2009] EWHC 1605 (Admin)** supports the view that prejudice was a matter which the Coroner "was entitled if not required to investigate". That case also demonstrates that, contrary to the MPS's submissions, it is not unprecedented for an inquest to consider such matters.

(ii) Nor do I accept that it would be unlawful to leave questions relating to prejudice to the jury notwithstanding s 10(2) of the 2009 Act. The jury would not be asked to determine civil liability nor would a positive answer to the question posed about prejudice appear to determine civil liability. They would, if these questions are asked, be asked to consider factual questions, the answers to which may well approximate / equate in broad terms to some finding of civil liability but not phrased in such terms and not admissible in any such proceedings. Such determinations are made by juries in Inquests up and down the land, for example, in cases such as that referred to by CTI where there is a suicide in custody. Miss Hill QC drew my attention to ***R (Worthington) v HM Senior Coroner for the County of Cumbria and ors*** **[2018]**. In that case a finding that the deceased had been sexually assaulted in advance of and separately to any cause of death was held not to be unlawful or in breach of S10 but compliant with the duty of an Inquest to seek out and record as many facts concerning the death as the public interest requires.

(iii) The final question for me to consider is whether there is sufficient evidence of prejudice that a properly directed jury could safely provide a positive response to the 'prejudice' question as it has been drafted. In order to answer that question, I need firstly to analyse the evidence in order to assess its sufficiency and secondly to apply the "modest gloss" of safety in the overall context of fairness.

18. The evidence of the families and friends of the deceased is clearly very important as they refer to the fact that they were consistently ignored and their concerns batted away despite their repeated and continued

efforts to feed information into the investigations, to get the officers to do more work and to consider possible links between the deaths. It is the police failure to listen to the families and friends and to follow up on lines of enquiry which, it is said, points to prejudice by the Borough officers. CTI has also referred me to two documents (IPC*756 and MPS*802) which, I accept, could due to their inaccuracies arguably point to their authors being prejudiced.

19. Mr Skelton QC on behalf of the MPS submits that absent comparator and/or expert evidence there is insufficient evidence in relation to prejudice and that there are equally plausible explanations for the errors, omissions and failures such as incompetence, forgetfulness, indolence, inexperience, lack of training, stress, overwork, and lack of supervision and management. He also argues that it would not be fair to leave the question of prejudice due to the fact that only some of the officers were asked about prejudice and that the questioning was inconsistent in relation to its content. He submits that it is impossible (and would be impossible for the jury) to distinguish between failings due to prejudice and failings due to all manner of other factors. He adds that those who fall into the categories set out will make multiple mistakes and do so in groups of teams. In summary he submits that it is impossible for me to craft directions which would ensure that the jury focus on the relevant facts and that the jury would be under insuperable pressure to agree with the families/friends' assessment that there was prejudice rather than properly being able to extricate the relevant evidence from the irrelevant. Thus, he submits, to leave questions relating to prejudice would be unsafe and unfair.

20. Mr Davies QC on behalf of the Borough officers rightly points out that prejudice is an emotive word. There is, he submits, no evidence to balance that of the families and friends in the form of good character or career records/commendations. The questions as framed are wide-ranging and non-specific and risk a condemnation of all the Borough officers as prejudiced i.e. (probably) homophobic. Such a determination is not, he submits in the public interest.

21. Mr Davies further submits that there is no direction which I could give to the jury which could guarantee that they ignore the opinions expressed by the families/friends (as they would need to do). In the event that the jury answered the question concerning prejudice in the negative they would, in effect, be saying to the families "we disagree with you" and that, Mr Davies submits, would be "an almost impossible task for them to perform." As to the documents to which my attention was directed by Mr O'Connor, Mr Davies submits that they are not capable safely of demonstrating prejudice on the part of their authors (as opposed to sloppiness – my word - or genuine mistakes).

22. At paragraph 74 of his written submissions, Mr Davies refers to the "familiar funnel analogy". These inquests have heard evidence about alleged prejudice and homophobia and rightly so. However "it is perfectly proper for a matter to be investigated in an inquest but ultimately found not capable of being left for determination."

23. In conclusion, Mr Davies argues that it would be unfair to leave the question of prejudice to the jury due to the potential for permanent reputational damage to a whole class of officers who in many cases were not asked about issues for which they would be condemned.

24. Miss Hill QC submits that prejudice can be lawfully left to the jury and that there is no prohibition for the reasons I have already set out. In relation to Galbraith plus she emphasises that prejudice can be left even if it is not the main cause of the treatment in question provided it is an effective cause. She further submits that the lack of direct evidence of prejudice is not surprising and that, to quote Baroness Hale in ***R (on the application of the European Roma Rights Centre) v Immigration Officer at Prague Airport*** **[2004] UKHL 55 at 73**, it "normally has to be proved by inference".

25. She argues that there is powerful evidence from the families and friends of the deceased from which the jury could safely infer prejudice.

26. Dr Van Dellen, who acts for Ricky Waumsley, the partner of Daniel Whitworth, supported Ms Hill's submissions on this issue.

CONCLUSION ON PREJUDICE

27. Drawing together all the submissions and having considered them with great care my conclusions are:
    (i) That questions about prejudice are in principle entirely permissible for the reasons articulated by CTI, Miss Hill and Dr Van Dellen; and
    (ii) That there is no prohibition on such questions being asked; but
    (iii) For the reasons set out by Mr Skelton and Mr Davies it would not be safe or fair for the questions to be asked here because:
        (a) There is no balancing evidence.
        (b) There is no comparator evidence.
        (c) There is nothing (or at least not enough) to weigh the scales in favour of prejudice as against all the other possible explanations for the catalogue of errors – all are equally possible.
        (d) There is no safe way for me to direct the jury so that they are not pressured into a positive answer for fear of disagreeing with the families.
        (e) The consequences of a positive answer to the question would be far-reaching and unfair as we would never know on what basis prejudice was found and whether it was found against all, one or some of the Borough officers.

28. I recognise at once that my conclusion on this issue will cause considerable disappointment to the families and friends of the young men who died. I also acknowledge that they genuinely feel that at least part of the explanation for the dreadful failures about which we have heard was down to prejudice on the part of the officers with whom they dealt. In the earlier stages of these inquests, these views have, rightly, been aired by the deceased's family and friends in the course of their own oral evidence. Those views have also been explored with officers involved in the investigations. As a result, these views have been reported widely to the general public. Again, that is entirely appropriate. However, my duty now is to ensure fairness to all and only to leave questions for the jury which they can safely and fairly answer in the affirmative. In all the circumstances, and for the reasons I have given, I am not satisfied that it would be safe or fair to leave the question of prejudice in these inquests.

It will of course be open to the jury to find that the officers made very serious errors which resulted in fatal consequences and those topics will, rightly, be at the heart of the jury's deliberations.

FORM AND CONTENTS OF THE QUESTIONNAIRES

29. I now turn to a series of other points that were raised in written submissions relating to the drafting of the four jury questionnaires. I additionally heard brief oral argument on these points. These written and oral submissions were based on the draft versions of the jury questionnaires that were circulated with CTI's written submissions. The decisions that I have reached on all these points are reflected in the further (and final) drafts of the questionnaires that accompany this ruling. I will set out below, in summary form, my reasons for the decisions that I have reached on the more substantial of the points raised.

30. Question 1 on each of the questionnaires invites the jury to agree, or to amend, a draft summary of the basic facts relating to each death. Each of the draft summaries contains an assertion that Stephen Port administered the GHB to the deceased *"in order to sexually assault him"*. Dr Van Dellen and Ms Hill raised a concern that this language was inconsistent with the *mens rea* element of Stephen Port's conviction. In my view that concern is well founded. Ms Hill suggested that the problem could best be solved by removing those words, a course that others supported. I agree that that is the best solution. The words will be removed from each of the draft summaries.

31. Turning to the sections of the questionnaires that relate to the conduct of the Walgate investigation, it was submitted on behalf of the Reynolds Dawson officers that the questions should be amended to make it clear that in answering them the jury can (and should) consider the alleged failings in the investigations in combination. I agree with this, and indeed it seems to me that it is a point that is applicable in addition to questions 3, 4, 5 and 6 on the Taylor questionnaire. CTI suggested that this objective might be achieved by amending the written guidance on the questionnaire forms. As will be seen from the attached further draft

questionnaires, I have in fact amended both the drafting of the questions themselves and the written guidance to address this point.

32. In light of my decision that the jury should be directed to consider the alleged failings in aggregation, I will not address separately the points made by the MPS to the effect that some of the considerations were, viewed in isolation, only capable of supporting a 'possible' rather than a 'probable' causation finding. Given the need for the jury to consider the combined effect of these matters, it does not seem to me that it assists (indeed, it is an overcomplication) to ring-fence some of the considerations as having less causative potency than others. I will of course remind the jury of the need to reflect on the differing causative impact of each of these matters as they consider them.

33. Mr Davies submitted that the list of considerations relating to Question 3 should be expanded to add a consideration to the effect that *"the investigation was provided with no relevant information / misleading [ir?]relevant information from members of the public who knew [Stephen Port]"*. Mr Davies explained that this proposed consideration related to the misleading first statement of Mr Aldwinkle and also Ryan Edwards' failure to go to the police with his concerns about Port's treatment of X1 and, subsequently, Gabriel Kovari (in light of the latter point, it would follow from Mr Davies' submission that this consideration, or a version of it, should also appear as a consideration in relation to the Kovari / Whitworth investigation). I have decided not to add this consideration at any point in the questionnaire. The caselaw makes it clear that the matters that the jury are directed to consider should be limited to the central or crucial issues. In my judgment, this issue does not fall into that category. I agree with the point made by Ms Hill in the course of oral submissions that the failure of a member of the public to draw matters to the attention of the police is not to be equated with the failure of the police to conduct a proper investigation. I also bear in mind in this regard the fact that no IP has ever raised the possibility that a submission of this nature would be made, with the consequence that Messrs Aldwinkle and Edwards have never been invited to apply for IP status.

34. Mr Davies also invited me to remove from the questionnaire the consideration as to the appropriateness of ADI McCarthy's decision to step back from the investigation following his initial involvement in late June 2014. Mr Davies submitted that there was no evidence to suggest that this had a material detrimental effect on the investigation by 28th August 2014 – that is, the date on which Gabriel Kovari's body was found. I do not accept this submission. As both CTI and Ms Hill submitted, it will be open to the jury to conclude, it light of Ms Mackay's evidence that DI McCarthy should have either continued to lead the investigation or at least supervised it intrusively, that, had he done so, one or more of the basic errors made in the investigation (for example, the failure to review the second interview or conduct follow up actions) would either not have occurred, or would have been quickly remedied.

35. The draft questionnaires circulated by CTI contained a consideration inviting the jury to consider – in the context of Jack Taylor's inquest only – further steps that might have been taken in response to Anthony Walgate's toxicology results. Ms Hill submitted, both in writing and orally, that the jury should also be directed to consider this issue on the questionnaires relating to Gabriel Kovari's and Daniel Whitworth's deaths, on the basis that the preliminary and then the final toxicology results relating to Anthony Walgate became available, respectively, shortly before the deaths of Gabriel Kovari and Daniel Whitworth. I am not persuaded that the questionnaires should be amended in this way. Given the short time periods involved, I do not consider that there is sufficient evidence for the jury safely to conclude that the availability of the toxicology results had even a possible causative bearing on the two deaths.

36. It was submitted on behalf of the MPS that the consideration in the draft questionnaires circulated in advance of the hearing by CTI that invited the jury to consider whether or not Borough officers investigating Anthony Walgate's death should have done more to engage with the local LGBT community should be removed, on the basis that there is no evidence upon which the jury could safely conclude that such engagement would have made any difference. CTI supported the MPS submission. I agree

that this consideration should be removed, for the reasons given by the MPS. It seems to me that there is no evidence upon which the jury could safely conclude that this hypothetical further engagement would have yielded either further factual evidence going to the circumstances surrounding Anthony's death, or a deeper understanding on the part of Borough officers of, for example, chemsex that would have made a difference to their investigation. All these matters are, in my judgment, too speculative to be left to the jury.

37. For very much the same reason, I reject the submission made by Ms Hill that a further consideration should be added referring to the fact that that the police did not conduct a witness appeal naming Anthony Walgate in the period following his death. Again, there is in my judgment insufficient evidence of the possible or likely response to such an appeal to permit this matter to be left to the jury. For the avoidance of doubt, I include in that category the written submissions made by Ms Hill referring to the possibility that X2 might have responded to such an appeal – a matter which, as it seems to me, is too speculative to justify including this consideration on the questionnaire.

38. I received oral and written submissions relating to the so-called 'resources' consideration that appears on each of the sets of considerations that relate to the Borough investigations. I have considered with care the submission made by the MPS to the effect that this entire consideration should be deleted since it breaches the principle established in the caselaw (for example, the *Smith* case) that inquest proceedings should avoid considering high-level questions of policy or strategy. I have also considered smaller drafting points that were raised during the hearing. I am also mindful of the fact that matters of this nature featured heavily in the evidence given by Borough officers, and were also addressed by DAC Cundy, and it is therefore desirable, if possible, for a consideration of this nature to appear on the questionnaires. The conclusion that I have reached is that, as it is now drafted on the final draft of the questionnaires, this consideration does not breach the *Smith* principle, and therefore can and should be left to the jury.

39. Finally, with regard to the considerations that concern the investigation into Anthony Walgate's death, I have considered various points raised by the MPS regarding the draft considerations that relate to SC&O1 conduct in the context of that investigation.

40. As to the first of those considerations, which focuses on the issue of primacy, I reject the suggestion that this consideration is not needed because DCI Jones said that he would have accepted primacy had the Borough officers undertaken a PND check and provided him with the BTP intelligence about the Barking incident that would have resulted. That is one factual route by which SC&O1 might have assumed primacy, but it is not the only one. Ms Mackay's evidence was that SC&O1 should have assumed primacy even in the absence of that intelligence. For that reason, this consideration should remain on the questionnaire. A further proposal made by the MPS regarding this consideration was that its terms should be simplified so that, rather than the existing series of dates on which primacy might have been assumed, the jury are simply asked to consider a period of time between 26 June and early July 2014. CTI supported this amendment and it seems to me also that it would be appropriate to focus the consideration in this way.

41. The second of these SC&O1 considerations relates to the actions of MIT officers on Friday 27th June 2014. The MPS submitted that the first of the bullet points should be removed because there was insufficient evidence that any shortcomings in DI Kelly's review were causative. They also complained that DI Kelly was referred to, albeit not by name. CTI submitted that Ms Mackay was very clear in her criticisms of the review on that day, and that it would be open to the jury to infer that one or more of the serious flaws in the investigation at that time – for example the incomplete intelligence checks – would have been remedied had a more intrusive review been conducted. I accept this submission. I also accept that the reference to DI Kelly in the consideration is necessary in order to identify the issue with sufficient clarity to the jury. I also reject the MPS submission that the jury should not be invited to consider the failure of the MIT team to provide the Borough officers with any evaluation of the

second interview, or a list of further actions arising from it, on the ground that it is speculative as to whether DS O'Donnell would have done anything differently had this been done. In my judgment, the jury would be entitled to infer, on the evidence available, that DS O'Donnell would or at least might possibly have taken further action had he been provided with such guidance. Finally with regard to this consideration, I agree with the amendment proposed by MPS and agreed by CTI regarding the further reviews of primacy.

42. I turn now to the sections of the questionnaires that relate to the conduct of the Gabriel Kovari and Daniel Whitworth investigations.

43. Mr Davies submitted on behalf of the Reynolds Dawson officers that consideration should be given — in the context of Jack Taylor's inquest only — to permitting the jury to comment on whether advice was adequately communicated by HAT/MIT officers to the Borough officers at different points in the investigations into the deaths of Port's first three victims. Relatedly he submitted that a further issue, that of the adequacy of the recording by HAT/MIT of their specialist advice to Borough officers, should also be left to the jury. Mr Skelton in his written submissions objected that framing the first issue in this general way risked the jury finding that there was a failure in communication by HAT/MIT — but in connection with a non-causative matter, and that the second issue was, likewise, too non-specific. CTI agreed that these proposals were too generalised, and pointed out that the questionnaire already invited the jury to consider particular instances of HAT/MIT providing advice to the Borough and the adequacy of that process. I am not persuaded by Mr Davies submissions and do not propose to add these issues to Jack Taylor's jury questionnaire.

44. I received submissions from Ms Hill inviting me to permit the jury to consider whether any failings in the Gabriel Kovari investigation, in the short period of about three weeks before the discovery of Daniel's body, would or might have contributed to Daniel's death. In her written submissions Ms Hill contended that there were a number of deficiencies in the investigation into Gabriel's death during that short period that

could be said to have had a causative impact upon Daniel's death. Ms Hill explained in her oral submissions that this issue was essentially focused on the Gabriel scene and whether there was sufficient evidence to allow a jury to conclude that it should have been assessed as suspicious. Neither CTI, nor Mr Skelton, nor Mr Davies supported Ms Hill's submission. I also reject Ms Hill's submission, mindful as I am of Ms Mackay's evidence that in her opinion no criticism should be made of the treatment by the Borough police of the Gabriel Kovari scene.

45. I received a number of different submissions about the considerations listed beneath Question 5 on the Jack Taylor questionnaire. Mr Skelton submitted that the consideration concerning the Daniel Whitworth scene, which presently reads "whether it was appropriate to treat Daniel Whitworth's death as non-suspicious" should be amended to read "whether it was appropriate to treat Daniel Whitworth's death as non-suspicious but unexplained". I agree with this and have re-worded the questionnaire accordingly.

46. Dr Van Dellen made a separate and distinct submission regarding the scene which focussed on the note. He argued that the *contents* of the note — specifically the reference in the note to Daniel having taken the life of Gabriel — should have resulted in the Borough officers at the Daniel Whitworth scene assessing Gabriel Kovari's death as suspicious and designating the Daniel Whitworth scene as a crime scene. He referred to paragraphs [90] and [100] of Ms Mackay's first report in support of his submission. I am persuaded that Dr Van Dellen's submission is a good one and I have therefore amended Jack Taylor's questionnaire to accommodate it.

47. Two of the considerations listed under Question 5 on the draft Jack Taylor questionnaire circulated by CTI before the hearing concern the verification by the Borough officers of the handwriting on the note found with Daniel Whitworth's body. These attracted submissions from a number of Interested Persons, which I have considered with care, but not all of which I intend to refer to in this ruling. In broad terms Ms Hill submitted that these unfairly focused the jury's attention on Daniel

Whitworth's partner, father and step-mother; that given the way that the evidence emerged, including admissions made by Mr Davies on behalf of Reynolds Dawson officers, it was no longer necessary to ask the jury to consider whether the verification had been appropriately handled by the Borough and that the order of the handwriting considerations in the jury questionnaires should be changed. Mr Davies on behalf of the Borough officers supported Ms Hill's representations on this point. I see the force in the submissions that they have made and I have therefore amended Jack Taylor's jury questionnaire to reflect the points made to me.

48. The MPS made a similar submission about the consideration that invited the jury to consider the fact that Borough officers made no attempt to engage with the local LGBT community while investigating the deaths of Gabriel Kovari and Daniel Whitworth as was made by Mr Skelton about the same issue of LGBT engagement in the Anthony Walgate investigation. Mr Skelton, with whom Mr Davies agreed, described this consideration in his oral submissions as "a whole pile of speculation" and a "whole load of imponderables which […] don't go anywhere". CTI submitted that there was an important difference between the investigation into Anthony Walgate's death and the Kovari/Whitworth investigation in that for the latter there was in fact a member of the Barking LGBT community who did actually know Port and Gabriel Kovari. Counsel for the Families supported CTI's position. I have given this careful thought as I acknowledge the points made on behalf of the police. But my decision is that this consideration should remain in the questionnaire.

49. In her written submissions Ms Hill proposed an amendment to the wording of the consideration on the draft Jack Taylor questionnaire that invites the jury to consider "whether or not Borough officers should have done more to consider possible links between the deaths of Anthony Walgate, Gabriel Kovari and Daniel Whitworth including conducting a review in September / October 2014 to assess possible links". Ms Hill invited me to add to the end of that sentence the words "*in circumstances where family members, members of the public and the press were asking the officers in terms whether there was a link*". Mr Skelton in supplemental written submissions opposed this on the ground that

factors weighing one way or another with respect to an alleged failing are not included elsewhere on the questionnaires. Ms Hill in her oral submissions submitted that there were other instances in the draft where this sort of detail had been added to a consideration. CTI submitted that on balance he agreed with Ms Hill's proposed wording. I also agree and those changes will be made to the questionnaire.

50. Dr Van Dellen submitted that the draft Jack Taylor questionnaire should include a consideration for the jury as to whether the Borough officers ought to have read the Kent Police Merlin report which recorded Ricky Waumsley as having said that Daniel Whitworth was in good spirits (i.e. not depressed) when he left home on 18 September 2014. He argued in oral submissions that this was important information that could have cast doubt on whether the contents of the note were authentic. His submission was supported by Ms Hill. CTI's submission, which was supported by Mr Davies, was that within a matter of two days Borough officers were having face-to-face conversations with Ricky Waumsley and the information would have been known to the investigation at this point and that this was a level of detail that did not merit inclusion in what is already a reasonably long questionnaire. Mr Skelton also opposed the inclusion of this consideration, submitting that this is the sort of matter that would be covered in my summing up. Having considered the submissions carefully my decision is that this matter should be included in the summing-up but not in the questionnaire.

51. Mr Skelton made two representations regarding the consideration in Question 6 as to whether or not the HAT return of 23rd September 2014 should have recorded recommendations which Dr Swift said that he made at the Special Post Mortem, and which appear in his full post mortem report of 17 April 2015. The first was about testing the blue bed sheet and, the second, about confirming that the handwriting on the note was Daniel's. As to the blue bed sheet Mr Skelton submitted that there was insufficient evidence to leave this to the jury and referred to the evidence of Ms Mackay, arguing that she had not in terms said that this ought to have been done. In addition Mr Skelton submitted that there was a conflict of evidence between A/DI Schamberger and Dr Swift about

whether Dr Swift did indeed mention the blue bed sheet at the Special Post Mortem, and that if the consideration was left on the questionnaire it should be amended to reflect that. Having reviewed the evidence of A/DI Schamberger and Ms Mackay, I am satisfied that the blue bed sheet consideration is properly left to the jury. However, I am just about persuaded that there is a conflict between the evidence of A/DI Schamberger and of Dr Swift and have re-worded Jack Taylor's questionnaire accordingly. I will leave the word "strong" in this consideration, as this reflects the text of Dr Swift's report. Regarding the handwriting, in his written submissions Mr Skelton argued that there was insufficient evidence to leave this consideration. In his oral submissions to me CTI submitted that the issue of handwriting checks had moved on since the questionnaires were drafted, with which I agree. Therefore my decision is that this consideration will be removed from Question 6.

52. Relatedly Mr Skelton submitted that the wording of the consideration left for the jury as to whether or not the Borough officers took adequate or appropriate steps regarding the submission of evidence for forensic analysis should also be altered to reflect the factual dispute between A/DI Schamberger and Dr Swift. It follows from my decision on the earlier point that I accept this and will make the changes which Mr Skelton has invited me to make.

53. Finally, I wish to record my thanks to the advocates for their helpful and detailed written submissions and for having made oral submissions that were focused on the points of dispute. These have been of great assistance to me in formulating the questions and considerations that I will be leaving to the jury.

PREVENTION OF FUTURE DEATHS REPORT

54. Paragraphs 67-70 of CTI's written submissions set out the legal position with regard to a PFD report and the circumstances which give rise to a duty upon me to make such a report together with the relevant features which may apply and to which I would have to have regard. No submissions have been made in relation to those matters and accordingly it is unnecessary for me to rule on anything in this context at this stage.

55. No submissions have been made in relation to the proposed timetable and accordingly I direct that:
    (i) IPs who wish to invite me to prepare a PFD report should provide written submissions to STI by 4pm on 10th December 2021;
    (ii) STI to circulate all submissions received by 5pm on 10th December 2021;
    (iii) Any response by IPs to be submitted in writing by 17th December 2021 (with liberty to apply for an extension of time if reasonably required).

56. I appreciate that the timings are somewhat tight but anticipate that the jury retirement time may be usefully used for these purposes when most representatives will be here in Barking Town Hall and whilst all the relevant factors are fresh in everyone's minds.

HHJ SARAH MUNRO QC
ASSISTANT CORONER
1st December 2021