



CORONER'S INQUEST TOUCHING THE DEATH OF MR SERGII KUZMENKO

BEFORE MISS K J GOMERSAL, HM ACTING SENIOR CORONER

AT THE CORONER'S COURT IN COCKERMOUTH

JUDGMENT ON ANONYMITY

1. This is my Ruling on:
 - 1.1. The application for anonymity and other special measures made by Officer C.
 - 1.2. The application for anonymity and other special measures made by Officer L.
 - 1.3. The applications for anonymity by the Constabulary for Officers B, D, P and M to reduce the prospect of Officers C and L being identified.
2. This Judgment will be emailed to all Interested Persons' legal representatives and to the attendant members of the Press directly after this hearing. This Judgment will be made available to any other person requesting it. In the interests of open justice, a copy will be published on HM Coroner Cumbria's website once all concerned have received copies and had time to review the Judgment.
3. This Judgment will also be translated into Ukrainian.

Introduction

4. I heard the applications at the Second Pre-Inquest Review Hearing ("PIRH") on 25 November 2024.
5. I had previously heard submissions on anonymity / screening, including from the press, at the first PIRH on 11 September 2024. However, I asked for consideration to be given to whether Officers B, D, P and M being named would increase the prospect of Officers C and L being identified (if I granted them anonymity). The applications were therefore "refreshed".
6. Prior to the PIRH, I received:

- 6.1. Updated written applications for anonymity and screening from Mr Green (Counsel for Officer C).
- 6.2. Updated written applications for anonymity and screening from Mr Davies (Counsel Officer L).
- 6.3. Written submissions in support of Officer C's and Officer L's applications from Ms Collier (Counsel for Cumbria Constabulary) together with a supplemental statement of Inspector Peter Godden. It is submitted on behalf of the Constabulary that if Officers C and L are granted anonymity, Officers B, D, P and M should also be granted anonymity to reduce the prospect of Officers C and L being identified.
- 6.4. Further written submissions from Mr Matthew Taylor of ITV opposing the applications, initial submissions having been made at the PIRH on 11 September 2024.
- 6.5. Mr Simon Armstrong of the BBC had previously made oral submissions (then put in writing) opposing the applications at the PIRH on 11 September 2024.
7. I was also provided with both open and closed evidence on behalf of Officers C and L. I refer in this judgment only to the open evidence.
8. The submissions and open evidence were circulated to the representatives of the Interested Persons and to the press in order that all could consider the submissions and evidence to make any further representations.
9. At the PIRH in November, I received oral submissions from:
 - 9.1. Ms Bronia Hartley (instructed by Ms Abigail Gowland of Watson Woodhouse Solicitors) for Ms Luidmyla Hedley and Mr Kuzmenko's family. The Family submit that the officers should be named. Further, that Mrs Hedley (who saw the officers at the scene) should have the option of seeing the officers at the inquest.
 - 9.2. Mr Samuel Green KC (instructed by Mr Darren Cook of Govins Solicitors) for Officer C. Mr Green made no submissions about Officers B, D, P and M being granted anonymity.
 - 9.3. Mr Hugh Davies KC (instructed by Mr Darren Cook of Govins Solicitors) for Officer L. Mr Davies made no submissions about Officers B, D, P and M being granted anonymity.
 - 9.4. Ms Beatrice Collier (instructed by Mr Andrew Dobson of Cumbria Constabulary Legal Services) for the Chief Constable of Cumbria Constabulary.

- 9.5. Ms Vicky Garland for the Director General of the Independent Office for Police Conduct. The IOPC adopt a neutral position in relation to the applications.

And in relation to the applications for anonymity and screening:

- 9.6. Mr Matthew Taylor (ITV).
9.7. Ms Frederica Bedendo (BBC).
9.8. Mr Darren Shield (Newsquest).
9.9. Mr Craig McGlasson (freelance journalist).

All representatives of the press opposed the applications. Mr Taylor's submissions were adopted by Ms Bedendo, Mr Shield and Mr McGlasson.

10. For the reasons I will outline below, the applications for anonymity for all 6 officers and screening of C and L at the inquest are granted.
11. In addition to myself, Counsel to the Inquest, Counsel for the Interested Persons and the Jury, Ms Luidmyla Hedley is to be able to see C and L giving live evidence (should she wish to do so) as will the Court appointed translator.

Brief Outline of the Events of 19 December 2022

12. The following is a brief outline of the events of 19 December 2022. No findings of fact have been made in relation to the events which lead to Mr Kuzmenko's death.
13. On 19 December 2022, police attended 80 Borland Avenue in Carlisle, following reports of concerns about Mr Kuzmenko, who lived at that address, making threats.
14. The first police officers to attend 80 Borland Avenue were uniformed officers R and T. Officer T was equipped with a taser. Those officers called for firearms support having encountered Mr Kuzmenko. Those officers feared for a child's safety.
15. Authorised Firearms Officers C, L, P and M travelled to 80 Borland Avenue in one vehicle.
16. Officers C and L deployed their firearms whilst within 80 Borland Avenue. Mr Kuzmenko was shot several times. Officers P and M did not discharge firearms.
17. Authorised Firearms Officers P and D arrived shortly thereafter in a separate vehicle. They did not discharge firearms.
18. Mr Kuzmenko died at the scene. The medical cause of Mr Kuzmenko's death offered to me is 1(a) multiple bullet wounds.

The Law

19. Rule 11 Coroners (Inquest) Rules 2013 (“the Rules”) requires that:

.....

(3) An inquest hearing and any pre-inquest hearing must be held in public unless paragraph (4) or (5) applies.

(4) A coroner may direct that the public be excluded from an inquest hearing, or any part of an inquest hearing if the coroner considers it would be in the interest of national security to do so.

(5) A coroner may direct that the public be excluded from a pre-inquest hearing if the coroner considers it would be in the interests of justice or national security.”

20. Rule 18 of the Rules requires that:

(1) A coroner may direct that a witness may give evidence at an inquest hearing from behind a screen

(2) A direction may not be given under paragraph (1) unless the coroner determines that giving evidence in the way proposed would be likely to improve the quality of the evidence given by the witness or allow the inquest to proceed more expediently.

(3) In making that determination, the coroner must consider all the circumstances of the case, including in particular –

(a) any view expressed by the witness or an interested person;

(b) whether it would be in the interests of justice or national security to allow evidence to be given from behind a screen; and

(c) whether the giving of evidence from behind a screen would impede the effectiveness of the questioning of the witness by an interested party or a representative of the interested person.

21. I am grateful to all Counsel, ITV and BBC for their helpful and succinct submissions on the law.
22. The Principle of Open Justice and Article 10 (the freedom of expression) require hearings to take place in public. Witnesses are required to declare their name at the outset of their evidence. There must be good reason to depart from those principles.
23. It is recognised that, as part of the Court’s general case management powers, a Coroner has the power to order that a witness be granted anonymity. There is no inconsistency between that power and Rule 11¹.
24. There is no presumption for or against anonymity for any individual or group. There is no precedent that Authorised Firearms Officers, or any specially qualified police officer, should be granted anonymity. Each case is highly fact specific.

¹ *R v HM Coroner for Newcastle upon Tyne, Ex Parte A (1998) 162 JP.*

25. Since the PIRH, the Chief Coroner's Guidance to Coroners on the Bench ("the Bench Book") has been issued. Chapter 9 deals with anonymity of witnesses and reporting restrictions. I remind myself that I should not depart from Chief Coroner's Guidance without good reason. Paragraph 1 states that:

Coroners can grant anonymity and impose reporting restrictions to prevent the dissemination of certain information from an inquest. However, coroners' powers are limited in law and can only be exercised in a way that balances the need for the restriction against the importance of open justice.

26. There are three tests by which a Coroner can grant a person anonymity²:

26.1. Article 2 protection where there is a "*real and immediate risk to life*"³. Case law provides that if refusing anonymity would create, or materially increase, risk to a person's life, and that risk would be "*real and immediate*"⁴, then the Coroner (on behalf of State) owes a positive duty under Article 2 to protect the person by reasonable means. In those circumstances, the Coroner:

*"would ordinarily have little difficulty in determining that it would be reasonable in all the circumstances to give the witness a degree of anonymity"*⁵.

26.2. Article 8 protection where the right to respect for private and family life is engaged.

26.3. By application of the common law principles, balancing the factors for and against anonymity, to assess whether the procedure is fair. This involves the Court recognising:

26.3.1. The subjective fear of the witness;

26.3.2. The degree to which those fears are objectively justified; and

26.3.3. The effect of anonymity on the witnesses and the inquiry itself.

27. The current evidence is that there is no known risk to Officer C's or Officer L's life if they were not afforded anonymity. In particular, there is no evidence that Officer C or Officer L may be at risk from Mr Kuzmenko's family.

28. This Court is therefore only required to consider the Article 8 / common law test. Henceforth, that is the focus of this Judgment. The common law test is broader than the "Article 2 test". In determining the applications, I must carry out a balancing

² Paragraph 12

³ The threshold of "real and immediate risk" derives from *Osman v UK* (1998) 29 EHRR.

⁴ A risk is "real" if it is substantial and significant, rather than remote. It is "immediate" if it is present and continuing - *Rabone v Pennine Care NHS Trust* [2012] 2 AC 72 37-40.

⁵ *Re Officer L* [2007] 1 WLR 2135

exercise. I must consider all competing factors for and against anonymity. I must consider the subjective fears of the witness and the objective reasons for and against anonymity.⁶

29. Sir Peter Thornton KC, the first Chief Coroner, sat as the Coroner in the Birmingham Pub Bombings inquests. He produced a guidance note for anonymity applications. Sir Peter's guidance is referenced in Chapter 9 of the Bench Book.

30. In paragraph 10 of his guidance, Sir Peter sets out, with reference to the common law duty:

(a) The test is whether the procedure adopted is fair: the coroner's duty of fairness towards witnesses.

(b) This is a different test to the Article 2 test; it is broader, not limited to risk to life

(c) It is sometimes expressed that a ruling in favour of anonymity is part of the coroner's inherent power of control of the proceedings (first recognised in 1995): see Jervis 12-23.

31. Sir Peter sets out that⁷:

***"Subjective** factors which may be considered include (amongst others):*

- fears for life or harm to self and/or family (even if not well-founded). Fears for safety and well-being; Irrational fear is no basis for anonymity, nor are vague or unspecific threats*
- seriousness of the fear and its impact upon the witness*
- reason for the fear*
- likely effect if anonymity is granted in removing/reducing that fear*
- the effect on the witness of giving evidence with or without special measures (including anonymity)*
- effect on the public's perception of the impartiality of the inquiry if anonymity is granted*
- likely effect on the inquiry's ability to arrive at the truth, if it refuses or grants the application for anonymity in whole or in part."*

32. Further:

***"Objective** factors which may be considered include (amongst others):*

- whether subjective fear is objectively justified; whether objective reason for anonymity is established*
- the weight of the subjective fear*

⁶ Bench Book paragraph 16.

⁷ In paragraph 12 of the guide replicated in paragraph 17 of the Bench Book

- *any previous incidents of relevance*
- *external evidence re harm and safety*
- *the views of others in a similar position (eg siblings, relatives)*
- *the evidence of the witness in context and the role of the witness in the wider case*
- *the evidence of other connected witnesses”*

33. In *Re Officer L*⁸ the Court was concerned with an application for anonymity and screening. The decision makes clear that subjective fears are a relevant consideration in the common law test of fairness to a witness, the more so if that has an adverse impact on health. Risks of harm which fall short of Article 2 or 3 may be relevant⁹.

34. In paragraph 15 of his guide, Sir Peter sets out that:

In the end the Coroner must consider and weigh all factors in the light of the countervailing principles and rights:

(1) the fundamental principle of open justice any departure from it must be stringently regulated: Bedfordshire Coroner case (2000)
Article 10 rights (freedom of expression)
Rule 11: inquest hearings to be held in public (with limited exceptions)

(2) the risk factor(s): deciding whether there is a need for anonymity on an objective basis:

Article 2, Article 8 rights; and common law fairness
‘An intense focus on the comparative importance of the competing rights being claimed in the individual case is necessary.’ - In Re Officer L (2007).
There must be justification for interfering with or restricting any Convention right

35. Courts have recognised that giving names and personalities to witnesses is an important aspect of openness in the justice system¹⁰.

36. In the Bench Book, the Chief Coroner states the legal position¹¹:

Where a witness seeks to justify anonymity by reference to his/her rights to private and family life under Article 8 of the ECHR, the court usually has to perform a balancing exercise which weighs those rights against the free speech rights of media organisations under Article 10... This balancing exercise is “highly fact-specific” and “must take into account the evaluation of the purpose of the principle of open justice as applied to the facts of the case and the potential value of the information in question in advancing that purpose, as against the harm the disclosure might cause

⁸ [2007] UKHL 36

⁹ *Sunday Newspaper Ltd’s application (Judgment no2) (2012) NIQB at paragraph 17.*

¹⁰ *Re Guardian News and Media Ltd [2010] 2 AC 697 at [63].*

¹¹ paragraph 21 of the Bench Book

*the maintenance of an effective judicial process or to the legitimate interests of others*¹².

37. The importance of the principle of open justice cannot be understated. Case law is highly supportive of the requirement to take account of the fundamental principle of open justice¹³. The administration of justice should generally take place in the public as a safeguard and to maintain public confidence¹⁴. This principle applies to the Coroner's jurisdiction¹⁵.
38. In the *Bedfordshire*¹⁶ case, it was held that the fundamental principle is open justice and any departure from this must be stringently regulated. *Bedfordshire* also confirmed that, in an application for anonymity by a police officer who does specialist work, a relevant factor may be that identification of the officer would prevent them continuing in their current role and would deprive the force of a valuable resource. The mere fact that the witness was a police officer was not sufficient. However, the public interest requires that special care be taken not to reveal the identities of members of sensitive units (such as the armed response group within a small police force) lest they be subjected to risk of injury and danger.
39. As stated in paragraph 22 of the Bench Book:

*Whilst in general terms the open justice principle applies with full force to inquests, coroners should note that some of the considerations which apply to applications for special measures in criminal cases do not apply to inquests (e.g. the point that the defendant has a right to confront his accuser, including by investigating the accuser's background). So when considering the question of fairness, regard should be had to the fact that in inquisitorial proceedings it is generally easier to justify granting anonymity than it is in a criminal trial*¹⁷

40. And in paragraph 23:

In the end the coroner must consider and weigh all factors in the light of the countervailing principles and rights (including Articles 2, 8 and 10 ECHR) in the context of the fundamental principle of open justice, deciding whether there is a need for anonymity on an objective basis. The coroner should bear in mind that any exception to the open justice principle ought to be kept to a minimum.

¹² *R (T) v West Yorkshire (Western Area) Coroner* [2018] 2 WLR 211 at 63.

¹³ *R (A) v Inner South London Coroner* [2005] UKHRR 44 at 20.

¹⁴ *Scott v Scott* [1913] AC 417 at 437-39 and 476-78; *A-G v Leveller Magazine Ltd* [1979] AC 440 at 449-50.

¹⁵ *Re LM (Reporting Restrictions: Coroner's Inquest)* [2007] CP Rep 48 at [26]-[40].

¹⁶ *R v Bedfordshire Coroner, Ex Parte Local Sunday Newspapers* (2000) 164 JP 283.

¹⁷ *R v Davis* [2008] 1 AC 1128, [2008] UKHL 36

Submissions

41. I am aware that there may be people in Court who did not have the benefit of attending the PIRH on 25 November 2024 and therefore did not hear the submissions made by the Interested Persons and by the press. Further, it is my intention to place a copy of this Judgment onto HMC Cumbria website. In order not to disadvantage those who have not had the benefit of seeing or hearing the submissions, the following is a summary of the submissions made. It is a summary only and I confirm that I have taken all submissions into account.

Submissions on behalf of Officer C

42. In support of their application, Officer C's statement include:
 - 42.1. They have 3 children. Officer C fears that their children would become distressed and fear for Officer C's welfare if Officer C's identity were to become known.
 - 42.2. Members of Officer C's family own a local business. A relative of Officer C, who lives with Officer C, works for that business. Officer C fears that revelation of their name would potentially and unjustifiably compromise their family's business interests and stigmatise their children.
 - 42.3. Officer C remains an operational firearms officer and is now qualified as a close protection officer. This is a covert role. C fears that revealing their name is likely to compromise their usefulness to the Constabulary and frustrate their professional ambitions. In terms of their role as a close protection officer, Officer C's role (and career progression) would be frustrated as they would struggle to be covert. Mr Green submitted, that it was "inevitable", not just "likely" that Officer C's professional ambitions would be frustrated if they did not receive anonymity. This is a waste of public money. In their witness statement, Officer C outlines their distress about potentially having to give up those roles having engaged in specific training for many years.
 - 42.4. There is a real possibility that if Officer C does not receive anonymity, it will impact on the recruitment and retention of AFOs
43. Officer C's supporting statement also draws reference to the fact that they live in a small community within Cumbria. They have not told their immediate family about their involvement in the incident which lead to Mr Kuzmenko's death.
44. In applying the common law test, it was submitted on behalf of Officer C that:
 - 44.1. If their application for anonymity were refused, it is probable that Officer C's name and photograph will be published widely. This prospect is distressing for Officer C and causes them to fear for their wellbeing and for stigma / hostility for them and their loved ones.

- 44.2. Identifying Officer C poses serious risks of impairing their effectiveness as a AFO. That the risk was “serious” was stressed by Mr Green in oral submissions.
- 44.3. Identifying Officer C would deprive the Constabulary of fully utilising Officer C’s skills at a time when officers are much needed. There is also a risk to future recruitment if officers become concerned that their identity could be made public.
- 44.4. Refusing anonymity would cause Officer C’s privacy to be invaded to a significant extent [although no further explanation was given in this respect].
- 44.5. The granting of the orders sought would not impair the inquiry. Officer C would be heard and would give evidence about relevant matters including experience and training.
- 44.6. The fairness of the Inquest would be enhanced as Officer C is likely to give their best evidence if the requested Order is made.
- 45. Counsel for Officer C acknowledged that the Orders sought intrude on the principle of open justice.
- 46. It was submitted on behalf of Officer C that balancing their Article 8 rights against the media’s Article 10 rights produced the same outcome. Identifying Officer C would cause them fear, overturn their reasonable expectation of privacy, disrupt their career and could interfere with their family life. However, Article 10 rights would only be limited as the key facts could still be examined and reported on.
- 47. Counsel for Officer C submitted that screening of Officer C at the inquest was sought whatever the outcome of the anonymity request. It was submitted that this would be likely to improve the quality of the evidence and allow the inquest to proceed more expeditiously in a manner more conducive to the interests of justice. It would not have any adverse effect on the questioning of Officer C during the inquest.
- 48. In terms of the submissions made by the Press (to which I turn later in this Judgment), Counsel for Officer C submitted that:
 - 48.1. The Press giving examples of cases where firearms officers who have fired the fatal shot(s) does not begin to provide justification for officers being named in subsequent cases.
 - 48.2. The balancing exercise requires the Court to aggregate the points made by the Officer in order to determine where the balance lies after that exercise has been conducted.
 - 48.3. Use of polemic language about an officer’s rights being “*extremely limited*” because they are public servants and there being a strong public interest in

police officers “*being subject to scrutiny and held to account*” actually begs the question of where the balance lies rather than answer the question.

Submissions on behalf of Officer L

49. In their witness statement, Officer L outlines that:
 - 49.1. At their own election, they are not presently working as an authorised firearms officer but that is not their settled position. They wish to have the option of returning to that role as it was a role they enjoyed. Officer L will review their position when this inquest is over.
 - 49.2. At the same time, Officer L includes the possibility of taking on covert sensitive roles.
 - 49.3. Officer L lives in a very small community.
 - 49.4. Officer L has told a number of close family members and a few close friends of their involvement in the incident. Officer L does not want their involvement to become public knowledge.
 - 49.5. Officer L is concerned for their safety and the safety of their family.
50. Officer L’s application is based on:
 - 50.1. The specialist role they were performing and may continue to perform.
 - 50.2. The loss of potential of Officer L performing other covert roles. Officer L wishes to preserve the possibility of extending their specialist capabilities.
51. The submissions made on behalf of C were adopted to some extent. It was also submitted on behalf of Officer L that the fact they are not presently performing a role does not affect the “balancing act”. Officer L wishes to preserve the possibility of returning to their previous role of an AFO and also keeping open the possibility of other covert roles. Further, it was submitted orally, that if Officer L is not granted anonymity, they are unlikely to return to that specialist role.
52. It was also submitted that not granting anonymity to Officer L would represent a significant breach of their and their family’s Article 8 rights. Their specialist role as an AFO is not widely known. The effect of it being known that Officer L was involved in a fatal shooting would have adverse impact. It was submitted orally that the media have failed to grasp the family’s Article 8 rights.
53. In terms of screening, this is a separate test to that of anonymity. It is submitted that screening Officer L will improve the quality of their evidence.

54. At the PIRH, Counsel for Officer L drew my attention, following the acquittal of Officer Martyn Blake (re his involvement in the fatal shooting of Chris Kaba) that there is stated government intention to legislate in favour of presumption of anonymity until conviction of any operational firearms officer. Whilst not yet law, it was submitted that this demonstrates where the balance of public interest already lies.
55. In oral submissions, Counsel for Officer L observed that the BBC's opposition was generic and non-specific, it did not engage the points made.
56. In terms of ITV's application, and specifically in relation to paragraph 25 of the written submissions dated 10 October 2024, Mr Davies submitted that these to cases in the criminal as opposed to coronial jurisdiction. Mr Davies specifically drew my attention to paragraphs 31 – 33 of ITV's submissions and the *Trinity Mirror* case cited by ITV's Counsel. *Trinity Mirror* concerned an order made to withhold the identify of a Defendant convicted of indecent images offences on the basis that his children would suffer significant harm from being identified. Mr Davies submitted that this inquest was not in the "territory" of dealing with identities becoming known as consequence of crime. The Officers had not been accused of a crime and were not subject to misconduct proceedings. The Officers had attempted to perform their roles. Where there has been a conviction, the convicted can expect their identities to become known. However, in inquest proceedings, the balance is the other way.
57. Further, I should treat ITV's reference to the Dean Joseph inquest with caution; the decision was in 2015 and reflected the law at the time.

Submissions on behalf of Cumbria Constabulary

58. Ms Collier, Counsel for the Constabulary, confirmed that Constabulary maintained support for the applications by Officers C and L.
59. In support of Officer C's and Officer L's application, I received a witness statement (dated 10 September 2024) from Inspector Peter Godden of the Firearms Support Unit of Cumbria Constabulary. Inspector Godden states that:
 - 59.1. AFOs are critical in the response to high-risk threats in Cumbria. There is a regional requirement that 3 Armed Response Vehicles are available 24/7. This requires a minimum of 18 AFOs to be on duty every 24 hours.
 - 59.2. The role of an AFO is a voluntary one but a specialist one. Inspector Godden outlines the time and cost involved in training and maintaining competence as an AFO. Officers C and L represent a significant specialist resource.
 - 59.3. Losing Officer C and L from their roles / potential future roles would have a detrimental impact on the ability of the Constabulary to protect Cumbria.
60. Further, the Constabulary sought Orders that Officers B, D, P and M be referred to by those pseudonyms and their names and identifying details be withheld.

61. At present, my intention is that those Officers' evidence is dealt with under Rule 23. However, if those Officers are required to give live evidence, I am invited to make Orders similar to those for Officers C and L.
62. Inspector Godden provides a second statement supporting the Constabulary's request for anonymity of Officers B, D, P and M. He states:
 - 62.1. Cumbria Constabulary has 1388 police officers, 46 of which are AFOs. The Authorised Firearms Team is relatively small.
 - 62.2. There were 12 AFOs on duty, 6 who attended the incident.
 - 62.3. If B, D, P and M are named, that will allow staff and officers to work out who discharged their weapons.
 - 62.4. In essence, the risk of "jigsaw identification" is well founded.
63. Counsel for the Constabulary submitted that:
 - 63.1. Unless Officers B, D, P and M remain anonymous, there is a risk of "jigsaw identification" of Officers C and L. Although it is well known which team attended the incident, it is not known who discharged their weapons. It is a potential consequence of not granting B, D, P and M anonymity that it is possible to identify Officers C and L despite them having the putative protection of an anonymity order.
 - 63.2. It is conceded that, in theory, naming B, D, P and M makes the process more open, but their names do not advance or improve the Coroner's investigation. As against that should be balanced the risk of Officers C and L being identified and the quality of their evidence compromised.
 - 63.3. There is a "community context". It is submitted that the AFOs all live and work in relatively small area, different to a city of 9 million people. People are more likely to have connections to each other.
64. In terms of the submissions made by ITV, Counsel for the Constabulary submitted that the Chief Constable would take measures to manage any "internal" risk to C and L if they were identified. But this would be difficult to control.
65. In Ms Collier's submission, given B etc were not being required to give oral evidence, given the limited benefit of their names being made public and given their role in the incident, the factors in favour of anonymity outweigh the public interest.

Submissions on behalf of the IOPC

66. The IOPC is neutral to the applications.

Submissions on behalf of the Family

67. Ms Hartley, Counsel for the Family made oral submissions that the Family wish for the Officers to be named and there be no special measures. It was submitted that Mrs Hedley saw the Officers at the scene and should have the option of seeing the Officers in Court. It may also be helpful to have the interpreter able to see the Officers.

Submissions on behalf of ITV

68. The submissions on behalf of ITV in opposition of the applications are as follows:

- 68.1. There is a strong public interest in the freedom of expression under Article 10. Any restriction on freedom of expression must be necessary and proportionate and limited to the minimum required.
- 68.2. There is a very strong presumption in favour of open justice. The presumption in favour of open justice should only be rebutted in exceptional circumstances.
- 68.3. Open justice can be more important in the Coroner's Courts than other Courts. The investigation is the means by which the state is held to account.
- 68.4. Giving names and personalities to witnesses is an important part of open justice. It is a crucial part of reporting. Anonymity reduces the benefits of open justice.
- 68.5. Whilst ITV recognised that there have been cases where firearms officers have been granted anonymity, I was referred to several cases where officers had not been granted anonymity.
- 68.6. Officers C and L do not have a reasonable expectation of privacy; they are public servants performing a public role for a public institution funded by public money.
- 68.7. Alternatively, any expectation of privacy is outweighed by the strong public interest in the police and its officers being held to account. There is a strong public interest in confidence being maintained by the police. This confidence would be undermined if the officers were not identified.
- 68.8. In the absence of any threat of safety to their families, the fact that Officers C and L have families is not relevant *per se*. The fact that the families may be distressed or worried about Officers C and L if they are named should carry little weight. Neither officer has presented specific or cogent evidence of the impact on their family life.
- 68.9. The impact on family business interests is not a compelling reason to give the officers anonymity.

- 68.10. Neither officer has made out a compelling case that they should give evidence behind a screen. Their submissions contain little detail of how the quality of their evidence will be improved.
- 68.11. It is for the individual making the application to justify the interference with open justice with reference to objective evidence. This has not been done.
- 68.12. In terms of Counsel for Officer L's submission that it is the Government's intention to legislate in favour of presumption of anonymity for firearms officers in criminal trials, this is not yet law and may never be.
- 68.13. ITV opposes the applications re anonymity for Officers B, D, P and M. If the Court grants C and L anonymity, this does not justify granting anonymity to B, D, P and M. The risk of the identification of C and L within the police should be managed by the Constabulary. That is more proportionate and less restrictive.
- 68.14. The Chief Constable has not set out clear and cogent evidence of the risk of jigsaw identification in the wider community. It seems unrealistic that any members of the public will know the identity of all 6 officers so that if 4 are identified, the public can identify the remaining 2.
- 68.15. In oral submissions, Mr Taylor submitted that it seems that the 6 names are already widely known in the police and appear not to have been widely disseminated. This demonstrates that the names of the two who discharged their weapons would similarly be contained.

Submissions from the BBC

- 69. The submissions on behalf of the BBC in opposition of the applications are as follows:
 - 69.1. There is an overwhelming public interest in this inquest being fully accessible to the public.
 - 69.2. Open justice is a constitutional principle which protects public confidence in an investigation.
 - 69.3. Any anonymity order requires cogent justification and should only be justified where strictly necessary in the interests of justice.

Submissions from other representatives of the media

- 70. The submissions made on behalf of the BBC and ITV were supported by Ms Bedendo, Mr Shield and Mr McGlasson.

Decisions - Anonymity

71. In making my decisions, I have considered the 3 applications separately and on the specific basis on which anonymity is requested. I have then considered the cumulative effect of my decisions.
72. I have assessed the applications by reference to common law principles and the qualified rights under Article 8. My assessment is made in the context of this being an Article 2 inquest and not a criminal trial.
73. I have had in the forefront of my mind the fundamental importance of open justice, the Article 10 rights and maintaining public confidence in the procedure. I appreciate that most witnesses do not relish their details being made public. I also bear in mind that this inquest may be the only hearing at which Mr Kuzmenko's death and police actions will be publicly explored.
74. An Article 2 compliant inquest requires a sufficient element of public scrutiny of the investigation or its results to secure accountability, maintain public confidence and prevent any appearance of malpractice. Granting anonymity is not a wholesale incursion into the principle of open justice. Even where witnesses are anonymised, they still give their evidence in public, will still be heard by the public and will be seen by the Coroner, Jury and Counsel.
75. It is for me to decide where the balance lies, applying the law outlined above, having heard submissions both in writing and orally. The decision is highly fact specific. I have had the benefit of the closed statements of C and L in making my decisions.
76. Whilst I appreciate why ITV drew my attention to cases where anonymity was not granted in inquests (see paragraph 6 of submissions), I was not greatly assisted by this submission. There are instances where anonymity has been granted, not least in the *Fishmonger's Hall inquest* referred to in the Bench Book. No case creates a legal precedent and each case is highly fact specific.
77. By way of background and context to these decisions, I have already decided that the bodyworn video from Officers R, T and C will be shown at the inquest; not just the transcripts of that footage. Similarly, the audio recording of the 999-call made by Ms Hedley should be played in Court. As I have previously indicated, the videos will be played so as to pixelate the face of the child involved. That child's identity is not, in my judgment, relevant to the inquiry. That footage shows the actions of officers R and T (who have not requested anonymity) at Mr Kuzmenko's home, the exchanges with Mr Kuzmenko, the arrival of Officers C and L and the actual shooting.
78. There can be therefore little dispute about what happened. This is not a case which is likely to turn on one witness' account of events over another. Officers C and L will undoubtedly be asked to account for the reasons for discharging their weapons. They will give their evidence in open Court.

79. I have considered whether there could be concerns of a perception of partiality by the granting of the anonymity orders requested. However, given the evidence that will be seen and heard, as outlined above, including the presence of Officers C and L in Court, I am satisfied that there should be no such concerns when my reasons are considered. In my judgment, there must be no impediment on this inquisition's ability to arrive at the truth and the granting of anonymity will secure this.
80. In terms of context of the area in which the officers live and in which Mr Kuzmenko died, I place some weight on Ms Collier's submission that living in a small community in a county such as Cumbria (with a total population of around 500,000) is very different to living in a city with a population of circa 3 million, such as Manchester.
81. In making my decision, I confirm that I have considered the decision of the former Chief Coroner His Honour Judge Lucraft KC in the *Fishmonger's Hall* inquests, as suggested in paragraph 24 of the Bench Book. I stress that I have not taken this decision as precedent or authority but as a useful reference.

Decision re Officer C

82. My assessment is that the application for anonymity is justified on an application of the common law principles of fairness (including the public interest) and Article 8 protection as set out in paragraph 12b and c of the Bench Book.
83. Officer C has given written evidence supporting their request for anonymity. I have not been provided with any objective evidence such as statements from C's family. This does not defeat C's application, that is clear from Sir Peter's guidance. The law is clear that I should take each subjective ground and assess whether it is objectively justified. Each ground should be considered as part of the balancing exercise.
84. Mr Kuzmenko's inquest will be a high-profile inquest with significant press attendance. If anonymity is not granted, there is a high probability that photographers will take photographs of witnesses as they arrive or leave – demonstrated at a recent high-profile Cumbria inquest. There is a limit to the extent I can reasonably set the precinct of the Court. If the application is refused, I consider that Officer C is very likely to have their name and probably any photograph publicised
85. Officer C is still working as an AFO. They are now also involved in close protection work. C wishes to continue to do so and has career aspirations. Officer C outlines how their name being made public would possibly compromise their professional roles and also frustrate their professional ambitions. This was a point considered by HHJ Lucraft in the *Fishmonger's Hall* attacks. For example, at paragraph 38 of his Ruling, HHJ Lucraft considered the effect that giving evidence may have on future career progression.
86. The Constabulary effectively concurs with Officer C's concern. In my judgment, it is understandable why neither Officer C nor the Constabulary would want Officer C's identity made public for those reasons. Both are disadvantages and, in my assessment,

carry weight. This was the position in *Bedfordshire* where it was found that special care must be taken not to reveal the identities of members of sensitive units eg AFOs within a small police force. The point is repeated in footnote 9 of the Bench Book.

87. Whilst not made explicit in Officer C's evidence or in submissions, in my assessment, it stands to reason that if Officer C's role in close protection becomes compromised (by their identity being known), so does the safety of those C is assigned to protect - potentially defeating the purpose of a close protection officer engaged in a covert role. That, in my assessment, is a disadvantage and carries weight in the balancing exercise.
88. Inspector Godden states that Officer C represents a significant specialist resource to the Constabulary. Losing C from their role would have a detrimental impact on the ability of the Constabulary to protect Cumbria – and possibly outside of Cumbria (in my assessment). Inspector Godden has given evidence about the small number of AFOs in the Constabulary. It stands to reason that police forces must have highly trained officers with a range of skills. It is understandable how losing C's skills would be a real disadvantage to the Constabulary (as well as C). So too would be the limitation of Officer C's career prospects. Both of those factors are justifiable and carry weight.
89. Whilst not explicit from Inspector Godden's evidence, potentially losing a resource such as an AFO risks operational effectiveness in the current risk climate creates a justifiable concern, both regionally and nationally, and engages public safety considerations.
90. Officer C has provided evidence of their personal circumstances and their fears for incursion on their and their family's Article 8 rights. Those fears are subjective, not extensively particularised but are not irrational, particularly in the context of the closed evidence. As Sir Peter sets out, these subjective factors do not need to be well founded. C gives reasons for their fears which are not, *per se* irrational. Those fears are part of the balancing act.
91. Neither Inspector Godden nor Officer C can say what will happen if they are not given anonymity; they outline their fears if anonymity is declined for their privacy and potentially their safety.
92. Officer C has outlined how they have not told all of their immediate family or friends about their involvement in the incident because of their concerns about being identified as involved in a fatal shooting. In my judgment, that demonstrates a certain level of concern about being identified. Whilst that level of intrusion is not in my assessment sufficient in itself to outweigh the interests of open justice, those concerns are understandable and should be taken into account in the balancing exercise.

93. I was not assisted by ITV's submission¹⁸ that the officers do not have a reasonable expectation of privacy being public servants performing a public role for a public institution funded by public money and should be subject to public scrutiny. I prefer, and therefore adopt, the rationale of HHJ Lucraft¹⁹ that whilst even armed officers generally do their work in public and can expect to give evidence in public, a hearing such as this takes it away from the norm. It involves a fatal shooting and the engagement of the Article 2 duty on the State not to take life.
94. The inquest will be heavily reported as will Officer C's identity being made very public if they are not anonymised. Officer C may not necessarily become a target for terrorists but will have been very publicly identified as an AFO who has discharged their weapon against an individual with fatal consequences.
95. I have not taken into account the submission that the government has indicated a proposal to pass legislation in favour of automatic anonymity of armed officers. It would be improper of me, in my assessment, to place weight on this in the absence of any form of formal proposal.
96. Taking all of Officer C's evidence into account, my assessment is that granting Officer C anonymity is likely to improve the quality of their evidence. I consider that Officer C is more likely to give better evidence without the "weight of anxiety"²⁰.
97. As those representing ITV remind me, I am cognisant that *"giving names and personalities to witnesses is an important aspect of openness in the justice system"*. However, Officer C's actions will be seen (to some extent) and heard from the BWV. C will be heard giving evidence. Their evidence will be tested. They will need to explain the reason for discharging their weapon. They will be seen by me, the Counsel and the Jury. I accept that the inability of the press to use Officer C's name (and photograph) may make reporting perhaps less compelling, but it will not prevent the media reporting on the substance of the evidence.
98. The principle of open justice has been at the forefront of my mind and I am grateful for the submissions, particularly from ITV. However, having considered the statement of Officer C, my assessment is that the common law / Article 8 rights outweigh the Article 10 rights / principle of open justice. In essence, my decision is made by balancing the difficulties for the Constabulary, C's ability to perform a specialist role, potential issues for those who C protects, likely press intrusion, the quality of evidence and the fear of reprisal against the principle of open justice / Article 10 in the context of an inquest in which BWV will show relevant events and where C will give account for their actions. I have balanced the need for restriction against the importance of open justice. My assessment is that the judicial process will still be fair, evidence will be tested and the witness will be placed in a position to give their best evidence. There should be no real compromise to the reporting of the inquest. Therefore, the balance is tipped in favour of anonymity for Officer C.

¹⁸ in paragraph 9 of the first written submissions

¹⁹ at paragraph 50 of his *Fishmonger's Hall* judgment

²⁰ HHJ Lucraft at para 54

Decision in relation to Officer L

99. As with Officer C, my assessment is that the application for anonymity is justified on an application of the common law principles of fairness (including the public interest) and Article 8 protection as set out in paragraph 12b and c of the Bench Book.
100. Officer L gives similar reasons to Officer C. However, Officer L, of their own volition, is not currently working as an AFO but wishes to have the option of returning to that role once the inquest is over. Officer L also wishes to consider covert roles. Officer L is concerned as to whether they would be able to return to their role as an AFO or to take up a covert role if their involvement in Mr Kuzmenko's death were made public.
101. Some of Officer L's close family and friends are aware of their involvement in the incident but Officer L does not wish for this to go further. Officer L is concerned about the effect on their family if their involvement is made known.
102. Officer L lives in a small community. They are concerned about their safety and their family's safety.
103. Inspector Goddard supports Officer L's application and makes no distinction between Officer C and Officer L in his reasons for supporting their applications. Both are described as significant resources / future resources. No distinction is made by L not being presently engaged as an AFO.
104. My reasoning for granting Officer L anonymity is very similar to my reasoning for Officer C. However, I feel it important that all are aware that I have considered the requests separately and applied the balancing exercise to their individual requests. As much of my reasoning is the same, I have tried to avoid repetition in this reasoning.
105. As with Officer C, my assessment is that there is a high probability that photographers will take photographs of witnesses as they arrive / leave. If the application is refused, Officer L will have their name and probably any photograph publicised.
106. Even though Officer L is not currently working as an AFO, it is clear from both their and Inspector Godden's evidence that return to that work is a possibility, as is extending that role to other areas eg covert roles. Inspector Godden has given evidence about the small number of AFOs in the Constabulary and how losing that resource would have a detrimental impact on Constabulary. The effect of a specially skilled officer not returning to work, or engaging in similar work carries weight, in my assessment.
107. I bear in mind what was said in *Bedfordshire* about the special care required when considering identities of those in special units.
108. The limitation of Officer L's career prospects if anonymity is not granted also carries weight.

109. As I have outlined with Officer C, whilst not explicit from Inspector Godden's evidence, potentially losing a resource such as an AFO in the current risk climate creates an understandable concern and public safety considerations.
110. Whilst Officer L appears to have made their involvement in the shooting known to more close family and friends than Officer C, they have concerns that their involvement goes no further than those with whom they have chosen to share the information. Whilst that level of intrusion is not, in my assessment, sufficient to outweigh the interests of open justice of themselves, those concerns are still understandable, they are not irrational and should be taken into account in the balancing exercise.
111. What I say in paragraphs 93-95 and 97 above applies to Officer L as it does to Officer C.
112. Taking all of Officer L's evidence into account, my assessment is that granting Officer L anonymity is likely to improve the quality of their evidence. As with Officer C, I consider that Officer L is more likely to give better evidence without the "weight of anxiety".
113. Having considered the statements of Officer L, my assessment is that the common law / Article 8 rights outweigh the Article 10 rights and principle of open justice. As with Officer C, I have balanced the need for restriction against the Principle of Open Justice. The inquest hearing will still be full and fair, evidence can be tested in way in which L can give their best evidence. There should be no real compromise to the reporting of the inquest. Therefore, the balance is tipped in favour of anonymity for Officer L.
114. In summary, given the difficulties expressed on behalf of the Constabulary, L's ability to return to their specialist role, potential expansion of the role into more specialist work, the quality of their evidence, press intrusion and fear of reprisal balanced against the principle of open justice / Article 10 in the context of an inquest in which BWV will show relevant events and where L will give account for their actions, the balance is in favour of anonymity for L. I have balanced the need for restriction against the importance of open justice.

Decision in relation to Officers B, D, M and P – Jigsaw Identification

115. There is no direct application by B, D, M and P for anonymity. The application for anonymity is made by the Constabulary as an ancillary application to support the applications of C and L for anonymity.
116. I consider this to be an unusual application – albeit one that I asked the Constabulary to consider. The Constabulary submits that the risk of "jigsaw identification" is well founded.
117. The officers have all provided statements and are witnesses. At present, their evidence is to be given under the provisions of Rule 23. B and D play a relatively

“minor” role – they arrived on scene after the incident took place. My assessment is that their evidence should be admitted even if not strictly required to ascertain the matters set out in Section 5. My judgment is that this is required given this is an Article 2 compliant inquest.

118. Officers M and P did not discharge their weapons. They are therefore not as critical to the central issues as C and L, in my assessment.
119. All relevant submissions have proceeded on the basis that I can make anonymity orders for B, D, P and M despite their being no direct application by them. Paragraph 4 of the Bench Book refers to Coroners having an inherent power to make an order “*anonymising witnesses or other persons within an inquest*²¹”. The Coroner has a power to manage the inquest and a power under Section 11 Contempt of Court Act to impose reporting restrictions.
120. I must ensure that any incursion into the principle of open justice is limited. The requirement is that I ensure that proceedings are fair bearing in mind the concerns expressed by C and L and the concerns about jigsaw identification.
121. At the forefront of my mind is the principle of open justice, The question I ask myself is whether, in exercising my inherent powers to control proceedings before me, departure from this very important principle is necessary in order to meet the requirements of justice.
122. ITV makes a worthy submission as summarised in paragraph 68.13; that the risk of the identification of C and L within the police should be managed by the Constabulary. However, this does not detract from my obligation as a Judge to manage the proceedings, ensure fairness and ensure the quality of the evidence. It is not a responsibility that I consider that I should abrogate by relying on the Constabulary. The responsibility is mine and mine alone.
123. I need to consider the evidence and roles of B, D, M and P in the context of the evidence of C and L *i.e.* the final points in Sir Peter’s list. B, D, M and P are not “central witnesses” or central to scope. The focus of the inquest will be on C and L as the officers who discharged their weapons. In my assessment, the names of B, D, M and P do not undermine the inquiry.
124. Further, the principles in *Bedfordshire* cover the public interest in not revealing the identities of members of sensitive units particularly within a small police force. There is a public interest and a special need for care when considering members of an armed response group.
125. I place some weight on the submissions of the Constabulary that there are 46 AFOs employed by the Constabulary and that the AFO Team is relatively small. AFOs are a

²¹ *R (A) v HM Coroner for Inner London South*

critical resource to the Constabulary. There are real concerns if those resources are lost. Those are matters that I should take into account in themselves.

126. In my assessment, naming B, D, M and P increases the risk of C and L being identified. Giving B, D, M and P anonymity supports the anonymity that I have given to C and L. Not granting B, D, M and P anonymity risks undermining the order made re C and L.
127. It is my judgment that granting B, D, M and P anonymity is ancillary to but a necessary consequence of the orders in relation to C and L.
128. My judgment is therefore that there is a good and objective reason to give B, D, M and P anonymity to guard against the risk of jigsaw identification. Whilst it is a further incursion into the principle of open justice, in my judgment, the reporting of the proceedings will not be impeded any further than is required in order to obtain fairness.
129. Therefore B, D, M and P will remain known by their ciphers. All other officers other than C, L, B, D, M and P will be identified.

Reflection

130. I have considered the effect of my three separate decisions cumulatively to ensure that the inquest procedure will still be fair, that the correct balance is struck between the competing Article 8 / 10 rights and the fundamental importance of the principle of open justice. Having stepped back and reflected, my assessment is that the inquest will still be fair. Officers C and L will give their best evidence. The inquiry will still be full, fair and fearless. The incursion into the principle of open justice is limited to the extent necessary for fairness.

Decision - Screening

131. I have given screening under Rule 18 separate consideration. I have questioned whether to screen C and L in light of the anonymity protection granted goes above and beyond what is necessary. I have challenged myself as to whether a further incursion into open justice is required, particularly given the concerns expressed by C and L. Screening does not necessarily follow anonymity. I have borne in mind all the evidence (including the closed evidence) and the context in which the inquest will be heard – including the body worn video.
132. For the same reasons that I have granted anonymity to C and L, I will order that their evidence is to be given from behind a screen.
133. I do not wish to repeat myself but my assessment is that it will improve the quality of their evidence if they are screened as it will diminish their concerns so far as is practicable. It will not impede questioning as the officers will be seen by the advocates, the Jury and myself. Screening is appropriate and in the interests of justice in order to ensure fairness and a full enquiry.

134. For the reasons relating to anonymity and as outlined above, my assessment that it is in the interests of justice that the officers be screened. Having weighed up the factors for and against, the balance is in favour of screening.
135. Clearly this does not apply to B, D, M and P whose evidence is to be given under Rule 23. If they are to give live evidence, the issue of screening will need to be revisited.
136. In addition to myself, Counsel to the Inquest, the jury and the advocates, my decision is that Mrs Hedley should also be able to see the officers. She has, of course, already seen them, albeit fleetingly. I am confident she will comply with the relevant orders. I consider that it is fair that she be able to see those officers give evidence. I know that Mrs Hedley speaks good English but it is not her first language. From a practical perspective, seeing the officers speak is likely to be beneficial to her in understanding their evidence.
137. For the same reason, the Court interpreter will be able to see C and L in order to assist interpretation. Interpretation is more effective when the witness can be observed speaking. Practically, the interpreter will also need to sit next to Mrs Hedley.
138. I did not observe any objection to these proposals when they were advanced at the PIRH.

Order

139. The following and attached Order will be drawn up and circulated to all concerned. It will also be placed on HMC website and displayed prominently around the building where the hearing will take place.



Miss K J Gomersal
HM Acting Senior Coroner - Cumbria
6 June 2024