INQUEST INTO THE DEATH OF JEAN CHARLES DE MENEZES

RULING ON VERDICTS AND INQUISITION

Introduction

1. This is my Ruling on what, if any, short-form verdicts should be left to the jury and on what questions or conclusions the jury should be invited to consider in completing the Inquisition. At the outset, it is right that I should thank counsel for all Interested Persons for their detailed written and oral submissions, which have greatly assisted in clarifying the issues. It is inevitable that this Ruling cannot refer to every argument advanced or to every piece of evidence which is relevant to any issue. However, on each question, I have attempted to consider the evidence in the round.

2. The basic facts with which this Inquest is concerned can be summarised quite shortly. As is very well known, suicide terrorists attacked the London transport system on 7th July 2005. Two weeks later, on 21st July, a further group of terrorists attempted unsuccessfully to explode devices on three underground trains and a bus. The Metropolitan Police immediately launched a manhunt to find the failed bombers. This was led by Commander John McDowall, as 'Gold Commander'. By 4.55am on 22nd July, Mr McDowall had received information that two persons, Hussain Osman and Abdi Omar, might be implicated in the attacks, and he had an address associated with them: 21 Scotia Road, in the Tulse Hill area. Information about other addresses was coming in over the course of the morning. Mr McDowall set a strategy for premises to be kept under surveillance, and for those leaving the premises to be challenged and stopped. Later that morning, Commander Cressida Dick took over the conduct of the operation, supported by her firearms tactical adviser, Chief Inspector Vincent Esposito.

3. The address at Scotia Road was part of a multi-occupancy building with a communal doorway. At 9.33-9.34am, Jean Charles de Menezes, an innocent Brazilian, came out of the doorway. He was watched by surveillance officers as he walked to a bus stop and boarded a Number 2 bus. Over the course of his journey, he was kept under surveillance. He remained on the bus as far as Brixton Road, where he got off, intending to board the underground at Brixton Station. However, that station was closed due to a security alert, and he walked back to the bus stop before actually boarding the bus he had left. This innocent behaviour appears to have raised concerns that he was using anti-surveillance techniques. He travelled on the bus to a stop near Stockwell Station. As the bus was nearing the station, the officers directing the operation formed the view that he was likely to be the suspect, Hussain Osman. They directed a team of specialist firearms officers from a holding point near Scotia Road to get behind the suspect.

4. Mr de Menezes got off the bus at Stockwell and walked towards the station. At this time, there were several surveillance officers in the vicinity, and their leader offered to attempt to stop him. At first, Commander Dick gave an order that they should perform the stop, because she had been informed that the specialist firearms officers were not in a position to intervene. However, immediately after she had given the order, she was told that the firearms officers were on hand. She countermanded the initial order, and instructed the firearms officers to stop Mr de Menezes. By this time, it seems that he was inside the station and heading down to a Northern Line platform. The firearms officers followed him down onto the platform, and into a waiting underground train. There was a confrontation in which two officers, known as C2 and C12, fired a number of shots at close range into his head, killing him.

5. The issues which fall to be decided at this point are:

    (i) Should a verdict of unlawful killing be left to the jury in relation to the acts of C2 and C12?

(ii) Should a verdict of unlawful killing be left to the jury in relation to the acts or omissions of the senior officers who were directing the operation?

(iii) What other 'short-form' verdicts should be left, if any?

(iv) What questions and conclusions, if any, should be offered to allow the jury to return a narrative verdict?

The Law concerning Verdicts and the Inquisition

6. Section 11 of the Coroners Act 1988 ['the Act'] provides that, at the end of an inquest, a coroner or jury must complete and sign an inquisition. Section 11(5) states what an inquisition must contain:

> 'An inquisition –
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> (a) shall be in writing under the hand of the coroner and, in the case of an inquest held with a jury, under the hands of the jurors who concur in the verdict;
>
> (b) shall set out, so far as such particulars have been proved –
>
> (i) who the deceased was; and
>
> (ii) how, when and where the deceased came by his death.'

7. There are two important statutory limitations on the content of an inquisition. First, Rule 36(2) of the Coroners Rules 1984 ['the Rules'] provides:

> '(1) The proceedings and evidence at an inquest shall be directed solely to ascertaining the following matters, namely –
>
> (a) who the deceased was;
>
> (b) how, when and where the deceased came by his death;
>
> (c) the particulars for the time being required by the Registration Acts to be registered concerning the death.
>
> (2) Neither the coroner nor the jury shall express any opinion on any other matters.'

Secondly, Rule 42 states:

> 'No verdict shall be framed in such a way as to appear to determine any question of –
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> (a) criminal liability on the part of a named person, or
>
> (b) civil liability.'

The inquisition does not have to be in any particular form. Schedule 4 to the Rules contains a number of Forms which may be used with such amendments as a coroner wishes (see Rule 60). One of those Forms (No. 22) is an Inquisition Form, and it is usual for coroners to use that form. In that form, there is a section for the coroner or jury to record the 'time, place and circumstances of death' and a section for them to record their 'conclusion as to the death' (or 'verdict'). The notes to the Form contain a list of the 'short-form' verdicts which are familiar to practitioners and the public, such as 'accidental death', 'unlawful killing' and 'open verdict'. Those notes have no statutory force.

8. In *R v North Humberside Coroner, Ex Parte Jamieson* [1995] QB 1 at 23-26, Sir Thomas Bingham gave guidance on these statutory provisions in the form of 14 general propositions. The guidance emphasised the inquisitorial nature of inquest proceedings. The Court construed the phrase 'how the deceased came by his death' in Section 11 and Rule 36 as meaning 'by what means the deceased came by his death', a limited construction directed at the immediate means of death, rather than the broad circumstances (see general proposition (2)). The Court recognised that coroners and juries were not required to use the 'short-form' verdicts but could express their conclusion as to the death by a brief, neutral narrative statement (see general proposition (6)). However, the Court stressed that it was for the coroner alone to make recommendations with a view to preventing further fatalities, a power he enjoys under Rule 43 of the Rules.

9. It has often been recognised by the Courts that the scope of inquiry at an inquest can be broader than is necessary in order to produce a verdict. The scope of inquiry is a matter for the discretion of the coroner, whereas the

content of the verdict is more constrained. See, for instance: *R (Takoushis) v HM Coroner for Inner North London* [2006] 1 WLR 461 at 473F-476E; *R (Hurst) v London Northern District Coroner* [2007] 2 AC 189 at 203G. This inquest has received evidence on a number of matters which may not be regarded as strictly necessary for the verdict, but that is entirely in keeping with the law.

10. Article 2 of the European Convention on Human Rights imposes on contracting states an obligation to establish an effective means of investigation into deaths for which the state may bear some responsibility. In England & Wales, an inquest is the means by which the state ordinarily discharges that obligation. In *R (Middleton) v West Somerset Coroner* [2004] 2 AC 182, the House of Lords considered whether the regime for inquests met the requirements of Article 2. It concluded that the Convention required that an investigation should be capable of reaching a conclusion which resolves the central issues of fact in the case. Therefore, in those cases where a choice between traditional 'short-form' verdicts was not capable of resolving those central issues, an inquest would not meet the Convention standard. Lord Bingham, giving the opinion of the Committee, said that only one change was required to achieve compliance:

> 'to interpret "how in Section 11(5)(b)(ii) of the Act and rule 36(1)(b) of the Rules in the broader sense previously rejected, namely as meaning not simply "by what means" but "by what means and in what circumstances."'

In practice, a coroner or jury might have to return a narrative verdict in order to answer that question and resolve the central issues of fact. It would be for the coroner in each such case to decide by what means he should elicit the factual findings of a jury. See 202B-E. However, the strictures of Rules 36(2) and 42 should continue to be respected (202F). The coroner should remain solely responsible for making recommendations for remedial action by public authorities. However, in making such recommendations, he might be influenced by the conclusions reached by a jury (203A-B).

11. All counsel before me are agreed that the investigative obligation under Article 2 clearly arises in this case, and that the 'Middleton' approach to construction of the statutory provisions should be followed. I shall consider below what that approach requires by way of narrative questions and conclusions.

12. The Courts have also given guidance on what test a coroner should apply in deciding what short-form verdicts to leave to a jury. That guidance is contained in the cases *R v HM Coroner for Exeter, Ex Parte Palmer* [1997] (CA; unreported; 10 December), *R v Inner London Coroner, Ex Parte Douglas-Williams* [1999] 1 All ER 344 at 349a-b and *R (Bennett) v HM Coroner for Inner South London* [2007] EWCA Civ 617. In *Palmer*, the Court of Appeal said that a coroner should apply the 'Galbraith' test which is used in the criminal courts for determining submissions of 'no case to answer': *R v Galbraith* [1981] 1 WLR 1039 at 1042. A verdict should be withdrawn if there is no evidence to support it or if the evidence is so weak, vague or inconsistent with other evidence that, taken at its highest, it is such that a jury properly directed could not properly return that verdict. By contrast, if the strength or weakness of the evidence depends upon the view to be taken of a witness's reliability, then the verdict should be left. In *Bennett*, the Court of Appeal reviewed the authorities and said that the test to be applied was slightly different from that in *Galbraith*. At paragraph 30, Waller LJ said:

> 'I would understand that the essence of what Lord Woolf was saying is that coroners should approach their decision as to what verdicts to leave on the basis that the facts are for the jury, but they are entitled to consider the question whether it is safe to leave a particular verdict on the evidence to the jury, i.e. to consider whether a verdict, if reached, would be perverse or unsafe and to refuse to leave such a verdict to the jury.'

My decisions in this case do not depend on whether the test is expressed in the classic 'Galbraith' formula or in this slightly modified version.

13. Most verdicts and conclusions which are considered in coroners' courts only need to be established according to the civil standard of proof; the balance of probabilities. However, a verdict of unlawful killing can only be returned if a

coroner or jury conclude, beyond reasonable doubt, that one or more persons unlawfully killed the deceased. Of course, in compliance with Rule 42, the verdict will not name the person considered to have committed the offence. Before a verdict of unlawful killing can be returned, every element of the homicide offence must be established to the criminal standard of proof. See: *R v West London Coroner, Ex Parte Gray* [1988] QB 467. Where a verdict of unlawful killing is to be left to a jury, the coroner should direct the jury to consider that verdict first, followed by any other substantive verdicts, followed by an open verdict (if appropriate). See: *R v Wolverhampton Coroner, Ex Parte McCurbin* [1990] 1 WLR 719.

14. In *R (Sharman) v HM Coroner for Inner North London* [2005] EWHC 857 Admin, at paragraph 13 Leveson J recommended the following direction for the case before him, which concerned a fatal shooting by police firearms officers:

> '(i) unlawful killing: a finding beyond reasonable doubt that the firearm was not discharged in the belief that one of the officers was under imminent threat of being shot…;
>
> (ii) lawful killing: a finding on the balance of probabilities, that [the officer] believed, albeit mistakenly that he or [another officer] was under imminent threat of being shot…;
>
> (iii) open verdict: a rejection of the proposition that [the officer] may have believed that he or [the other officer] was under imminent threat of being shot… but an inability to conclude, beyond reasonable doubt, that such was not the case.'

That suggested formula clearly expresses the possibility that a jury may not return a verdict of unlawful killing to the criminal standard, but may not conclude on the balance of probabilities that the killing was justified by self-defence or defence of others. In that case, an open verdict is the proper outcome.

The Effect of Previous Proceedings

15. Before I turn to consider the verdicts and conclusions which should be left in this case, I should make some remarks on two matters. First, the decision of

the Director of Public Prosecutions not to prosecute any individual officer in relation to the death of Mr de Menezes was challenged in judicial review proceedings, and the decision was upheld: *R (Da Silva) v DPP* [2006] EWHC 3204 Admin. It appears to be common ground that I can have regard to that decision, subject to a number of qualifications. The question which the Director had to answer was whether a conviction was more likely than not, which is a different test from the modified 'Galbraith' test set out above. In the judicial review proceedings, the Court had to determine whether the decision was unreasonable in the *Wednesbury* sense, although Richards LJ did add this, at paragraph 58:

> 'Our consideration of the decision letter and the review note, together with the IPCC report, leaves us satisfied that the decision was a reasonable one. Indeed, though it is not necessary for us to go this far, we see no reason to disagree with the decision.' (emphasis added)

Nevertheless, further evidence has emerged since the decision of the Court, both in the 2007 trial and in this inquest. The conclusions of the Court have to be viewed in the light of that further material. I expressed that view in the course of argument, and it was not disputed by anyone. Secondly, the Office of the Commissioner of Police of the Metropolis was prosecuted and convicted of an offence under Section 3 of the Health and Safety at Work Act 1974. The jury in that case added a rider in the following terms:

> 'in reaching this verdict, the jury attach no personal culpability to Commander Dick'.

Section 16(7) of the Coroners Act states:

> 'Where a coroner resumes an inquest which has been adjourned in compliance with subsection (1) above –
>
> (a) the finding of the inquest as to the cause of death must not be inconsistent with the outcome of the relevant criminal proceedings.'

In this case, the 'relevant criminal proceedings' is a reference to the 2007 trial, because the adjournment under Section 16(1) related to those 'relevant criminal proceedings'. In my judgment, there is no real scope for any inconsistency between the findings in this Inquest and the verdict or rider in the criminal trial. The verdict was simply a conclusion that the Commissioner had failed to minimise risk in any one of a number of respects. No finding of

the jury as to cause of death could conflict with that verdict. As the jury in this case cannot make any finding of civil or criminal fault against Commander Dick, there is no scope for their finding to be inconsistent with the rider, even if one assumes that the rider is part of the 'outcome' of the trial, for the purposes of Section 16(7)(a).

Unlawful Killing Verdict in relation to C2 and C12

16. Mr Mansfield QC, counsel for the family of Mr de Menezes, submits that a verdict of unlawful killing should be left to the jury on the basis of the acts of C2 and C12 in the carriage. He argues that the jury could properly conclude, beyond reasonable doubt, that the officers did not act in lawful defence of themselves and others when they fired their weapons. Mr Stern QC, counsel for the officers, submits the contrary. There is no doubt that the officers intended to kill Mr de Menezes when they fired. Therefore, if their contention that they were acting lawfully in defence of themselves or others could be disproved, they would have committed the offence of murder.

17. There is agreement between all Interested Persons as to what test I should apply in determining whether the officers acted lawfully in defence of themselves and others. The test has two limbs:

    (i) Did the officer honestly and genuinely believe that it was necessary for him to use force in defence of himself and/or others? This is a question of subjective belief. Even if the belief was mistaken, and even if the mistake was unreasonable, the defence can still run. The reasonableness of the belief is only relevant in helping the jury to decide whether the belief was honestly held.

    (ii) If the officer did hold the necessary belief, did he use no more force than was reasonably necessary in the circumstances as he believed existed at the time? This is an objective test, but it is applied realistically. Where a person faces a threat, the Courts will not judge with too precise a measure the degree of force he uses.

See *Palmer v R* [1971] AC 814 at 831-2 (as to self-defence); Section 3 of the Criminal Law Act 1967 (as to defence of others). It is also significant for present purposes that a person under threat is not required to wait passively for the blow to fall. A pre-emptive strike can be justified by the circumstances. See: *Beckford v R* (1987) 85 Cr App R 378 at 385.

18. The legal test is no different when the person facing the threat is a police officer or a soldier. However, as Waller LJ said in *Bennett* at paragraph 15, the tribunal is entitled to take account of the person's training when applying the two limbs of the test to the facts of a given case. The same must apply to specific briefings as well as general training.

19. Mr Mansfield accepts that the two officers, C2 and C12, honestly believed that the man in front of them in the carriage was Hussain Osman, the person who was strongly (and rightly) suspected of having attempted to explode a bomb in an underground station the day before. In my judgment, Mr Mansfield was right to accept that. It has been the consistent evidence of all the firearms officers that they had been told that the person under surveillance had been positively identified as Osman, and that they were being deployed for that reason. They were then told with some force to stop the man getting on the tube, an order which can only have reinforced their belief. Although none of the surveillance officers had gone further than saying that the man they were watching was a 'good possible' for Osman or was thought to be Osman, it is easy to see how the message could have been changed in transmission. There is one clear example of a message being altered in transmission during the course of this operation. It is apparent that none of the surveillance officers ever ruled out the possibility that their subject was Osman, but the command team at 9.48am plainly believed that he had been ruled out, because they sent an unarmed arrest team to detain him.

20. As well as believing that the man in front of them had attempted to explode a bomb on the underground system on the previous day, the officers had received some significant information in briefings earlier that morning. They

had been told that the suspects were ‘deadly and determined’. They had been told that explosive devices could be concealed about the body and detonated with a range of devices, some of which required only a small movement with one hand. They had been instructed that they might have to consider using ‘unconventional tactics’, which they all understood to mean the possibility of firing a critical shot. In addition to that briefing, the officers had heard reports over their ‘Cougar’ radio that Mr de Menezes was acting nervously, reports which appear to have increased their suspicions. All those influences need to be borne in mind when assessing the state of mind of the officers. Having said that, it must be observed that both C2 and C12 said that they entered the tube station with no preconceived idea of how they would confront the suspect. They believed that their orders were to intercept and detain the suspect. Despite suggestions which have been made in the past, neither they nor any of the other firearms officers believed that they had been given an order to fire a critical shot without warning.

21. It is submitted on behalf of the de Menezes family that, at the critical moment in the underground train carriage, the officers did not honestly believe that Mr de Menezes represented an imminent, mortal threat to themselves and others. The principal argument advanced is that their account of events in the carriage is at odds with those of certain members of the public who witnessed the confrontation, and is not supported by the accounts of some of the other officers in the vicinity. C12 gave evidence that, on entering the carriage, he shouted the words ‘Armed police’ and simultaneously raised his gun, whereupon Mr de Menezes got up from his seat and advanced on him, holding his hands slightly ahead of his body. C12 says that he was surprised by this behaviour and convinced that the man in front of him was about to detonate a bomb. A nearby surveillance officer, ‘Ivor’, then moved forward and grabbed Mr de Menezes in a ‘bear hug’ before pushing him back onto his seat. C12 advanced and reached over the surveillance officer before firing. C2 says that he also saw Mr de Menezes stand up and that he also shouted the words ‘Armed police’, but after ‘Ivor’ took action. It is said that this ‘cameo’ is not supported by the other evidence and that C12 and C2 are deliberately lying to give credence to their account that they believed Mr de Menezes was acting in

a ‘non-compliant’ manner. The de Menezes family point to the fact that none of the bystanders specifically recalls an officer shouting ‘Armed police’ before firing, and that none specifically recalls Mr de Menezes moving towards the officers.

22. As Mr Stern submits, there are several answers to this argument. First, the bystanders could be mistaken, or could have forgotten parts of the story. Their accounts are inconsistent with each other and in many cases are obviously wrong. None gives an accurate account of ‘Ivor’ tackling Mr de Menezes, although the expert assessments based on physical evidence support the evidence of the police officers on that point. One of the bystanders tells of shots being fired from the platform, another of shots being fired into the ceiling of the train. Many of them accept that they recall ‘snapshots’ or focussed images, rather than a moving sequence of events. Many do recall the words ‘Armed police’ and similar words being shouted at one point or another. I am sure that all the members of the public who have given evidence have done their best to help, but they witnessed a very fast-moving and distressing sequence of events. Errors are almost inevitable.

23. Secondly, the officers themselves could be honestly mistaken on one or more points. In *Da Silva* at paragraph A17, the Court commented that the officers could have made an honest mistake about the stage at which they shouted the words ‘Armed police’.

24. Thirdly, even if the jury were to conclude that either or both officers had lied, that would not of itself logically prove that they did not genuinely believe there was a threat. Any lie could have been told to bolster an honest belief, rather than with a guilty conscience. This consideration was regarded as important in both *Da Silva* (at paragraph A17) and in *Sharman* (at paragraph 42).

25. Each of Mr Stern’s arguments has force. In my judgment, the jury could not properly conclude to the criminal standard of proof that the two officers did not honestly believe that Mr de Menezes represented a mortal threat to them

and those around them. I am fortified in that view by two further considerations. First, the Divisional Court in *Da Silva* said that the decision of the Director not to prosecute the officers was not only reasonable but 'manifestly the correct one in all the circumstances of this case' (paragraph A19). Although this inquest has received additional evidence, including the oral evidence of the officers and of those members of the public who saw events most directly, those witnesses mainly adhered to their statements, and the overall weight of the evidence has not changed greatly in this regard.

26. Secondly, in the course of argument, I asked Mr Mansfield what was the state of mind of the officers when they fired their shots, if they did not honestly believe they were facing a threat. I also asked him why the officers fired, if they did not hold that belief. He very fairly said that he could not answer either question. This is significant, even though his clients do not have to put a case and even though questioning as to the state of mind of another person is always problematic. It is difficult to see why C2 and C12 acted as they did if they did not truly believe Mr de Menezes represented a threat.

27. If the officers honestly believed that Mr de Menezes represented a mortal threat to themselves and those around them, it could not be said that they used more force than was reasonably necessary. An argument was made in the written submissions of the de Menezes family to the effect that C2 used excessive force because he fired too many times. That argument was not pressed with any great vigour in oral submissions. In my judgment, it has no merit. The events took place in a few seconds, and one cannot fairly say that some of the shots to the head constituted reasonable force and some did not. In any event, the officers had been trained to fire until the threat was neutralised.

28. Therefore, I shall not be leaving to the jury the option to return a verdict of unlawful killing in relation to the actions of C2 and C12. However, I have decided that the jury should be given the opportunity to return either a lawful killing verdict or an open verdict. I propose to direct them, in accordance with the guidance in *Sharman's* case, that they should return a verdict of lawful

killing if they are satisfied, on the balance of probabilities, that C2 and C12 honestly believed that Mr de Menezes represented an imminent, mortal threat to themselves and/or others. If they are not so satisfied, they should return an open verdict. Mr Stern for the officers, and Mr Horwell QC for the Commissioner, both submitted that those two verdicts should be left, and that either verdict could properly be returned by the jury. I agree. While the jury could not safely say that they are sure that C2 and C12 did not honestly believe that Mr de Menezes represented a threat, the jury could safely say that lawful defence is not established on the different threshold of the balance of probabilities.

29. As a matter of form, Mr Mansfield submits that, rather than leaving alternative short-form verdicts of lawful killing and open verdict, I should invite the jury to answer a number of questions, one of which should be whether the officers' use of lethal force was justified by an honest belief that Mr de Menezes posed an imminent threat. He argues that, to leave the short-form verdicts would give this issue undue prominence over other important issues in the case. In my judgment, the issue of the officers' belief and the justification for the shots is of particular importance, and can properly be resolved through the use of short-form verdicts which are well-understood. In any event, Mr Mansfield's concern is over-stated. I do propose to leave other questions and conclusions to the jury. Both the short-form verdict and the jury's other conclusions will appear in section 4 of the Inquisition.

Unlawful Killing in relation to the Senior Officers

30. It is also necessary for me to consider whether a short-form verdict of unlawful killing should be left to the jury in relation to acts or omissions of senior officers who bore responsibility for the operation as a whole. The only ground on which such a verdict could be left would be a conclusion that one or more specific officers had committed the offence of manslaughter on the basis of gross negligence. As all counsel submitted, the law requires the offence to be proved against a particular officer, on the basis of that officer's own acts or omissions. One cannot aggregate the failings of different people and leave the

verdict on that footing. The de Menezes family contend that this verdict ought to be left on the basis of the conduct of each of Mr McDowall, Ms Dick and Mr Esposito. I agree that the verdict certainly could not properly be left in relation to the acts or omissions of any other particular officer.

Gross Negligence Manslaughter

31. The ingredients of the offence of gross negligence manslaughter are clearly established. The leading modern authority is *R v Adomako* [1995] 1 AC 171. At 187B-E, Lord MacKay LC said:

> '[In] my opinion the ordinary principles of the law of negligence apply to ascertain whether or not the defendant has been in breach of a duty of care towards the victim who has died. If such breach of duty is established the next question is whether the breach of duty caused the death of the victim. If so, the jury must go on to consider whether the breach of duty should be characterised as gross negligence and therefore a crime. This will depend on the seriousness of the breach of duty committed by the defendant in all the circumstances in which the defendant was placed when it occurred. The jury will have to consider whether the extent to which the defendant's conduct departed from the proper standard of care incumbent upon him, involving as it must have done a risk of death to the patient, was such that it should be judged criminal…
>
> The essence of the matter which is supremely a jury question is whether having regard to the risk of death involved, the conduct of the defendant was so bad in all the circumstances as to amount in their judgment to a criminal act or omission.'

32. There are thus four matters which a prosecutor must prove in order to establish that this offence has been committed:

(i) the defendant must have owed a duty of care to the victim;

(ii) the defendant must have breached that duty;

(iii) the breach must have caused the death;

(iv) the breach must be characterised as 'gross'.

As to the requirement of causation, it must be proved that the breach actually made a more than minimal causal contribution to death. Increasing the risk of death is not enough. In directing a jury, a judge or coroner must identify the content of the duty alleged. He must direct the jury to consider each particular alleged breach. The verdict can only be properly returned if the jury regards one or more particular breaches as causative of death and as grossly negligent. The threshold of a 'gross' breach of duty is a high one. The Courts have approved strong epithets, such as 'heinous', 'flagrant' and 'truly exceptionally bad'. If a defendant is not subjectively reckless as to death, that can tell in his favour. See: *R (Rowley) v DPP* [2003] EWHC 693 Admin at paragraphs 22-40. Importantly, the breach in question has to be a serious one having regard to the risk of death. See: *R v Misra* [2004] EWCA Crim 2375. I accept that the question of whether a breach of duty is 'gross' is supremely a jury question, that does not absolve me from having to consider whether a jury could safely conclude that any particular conduct alleged was grossly negligent.

Duty of Care Owed by Police Officers

33. The one truly contentious question of law raised in submissions was whether any of the officers could have owed a duty of care to Mr de Menezes. Mr Horwell submits that none of the officers involved in the operation on 22nd July 2005 could have owed a duty to him at any point. He puts forward two complementary arguments. First, he says that the requisite relationship of proximity does not normally exist between police officers and a person who is a suspect or otherwise the object of a police operation. Secondly, he says that there is an objection of public policy to police officers owing a duty in these circumstances. According to his submission, that objection is firmly founded in authority. Mr Perry QC, appearing for the three senior officers concerned, supports Mr Horwell's submissions, but makes the secondary submission that, 'if the facts are capable of giving rise to a duty of care… any such duty could only arise at the time that a decision was taken to carry out an armed intervention on the subject of the surveillance.'

34. Mr Mansfield contends for a duty of care of much wider ambit. He submits that, from the point that Mr McDowall made a strategic decision at 4.55am to mount an operation against 21 Scotia Road which would involve the deployment of firearms officers, he and other senior officers owed a duty of care in the direction of that operation. According to Mr Mansfield, the duty was owed to any persons coming out of the block in question.

35. I have decided that a duty of care could exist, but that Mr Mansfield's formulation is too broad. In my judgment, a police officer can owe a duty of care in directing other police officers to perform an armed interception. The content of the duty here would be to take reasonable care to ensure that such an interception took place in such a location and at such a time as to minimise, so far as reasonably practicable, the risk of unnecessary injury to the subject of the intervention, to the officers concerned and to others in the immediate vicinity. In this case, the duty would not arise before the point at which firearms officers were ordered to move through with a view to performing an interception. As I shall explain, I have concluded that the jury could not safely conclude that any officer breached that duty.

36. Even if I had accepted Mr Mansfield's formulation of the duty of care, I would still have concluded that the verdict of unlawful killing should not be left to the jury on the basis of gross negligence manslaughter. That will be apparent from my reasoning in relation to each of the specific officers. Nonetheless, it is only right that I should first explain my reasoning on the duty of care question.

37. When considering an issue of this kind, it is helpful to begin with the general principles articulated by the House of Lords in *Caparo Industries Plc v Dickman* [1990] 2 AC 605. At 617-18, Lord Bridge reviewed a number of authorities concerning the criteria for establishing a duty of care in negligence:

> 'What emerges is that, in addition to the foreseeability of damage, necessary ingredients in any situation giving rise to a duty of care are that there should exist between the party owing the duty and the party to whom it is owed a relationship characterised by the law as one of "proximity" or "neighbourhood" and that the situation should be one in

> which the court considers it fair, just and reasonable that the law should impose a duty of a given scope upon the one party for the benefit of the other. But it is implicit in the passages referred to that the concepts of proximity and fairness embodied in these additional ingredients are not susceptible of any such precise definition as would be necessary to give them utility as practical tests, but amount in effect to little more than convenient labels to attach to the features of different specific situations which, on a detailed examination of all the circumstances, the law recognises pragmatically as giving rise to a duty of care of a given scope.'

Thus, there are guiding principles in determining the scope of duties of care in novel situations, but the law often moves incrementally and by analogy.

38. In examining the duty of care owed by the police, the starting-point is the decision of the House of Lords in *Hill v Chief Constable of West Yorkshire* [1989] 1 AC 53. The estate of a victim of the 'Yorkshire Ripper' argued that the Chief Constable could be liable for failing to arrest the serial killer and so prevent the murder. The House of Lords upheld an order striking out the claim. Lord Keith said that a duty to protect an individual against the criminal acts of a third party would only normally arise in special circumstances and thus the police owed no general duty of care to protect victims of crime. But His Lordship also said that the appeal could be dismissed on another ground – that of public policy. To impose such a duty would not be fair and reasonable because it might lead to police officers acting in a defensive manner with a view to potential liability and because it might divert resources from combating crime to defending civil claims. However, Lord Keith recognised (at 59) that a police officer could be liable in a variety of torts, including negligence. His Lordship cited *Knightley v Johns* [1982] 1 WLR 349 and *Rigby v Chief Constable of Northamptonshire* [1985] 1 WLR 1242 as examples.

39. The principle in *Hill* has been applied so as to preclude various types of claim being brought. For example, in *Alexandrou v Oxford* [1993] 4 All ER 328 it was held that the police do not owe a duty of care to prevent a crime even after being summoned to the scene. In *Calveley v Chief Constable of the Merseyside Police* [1989] AC 1228, it was held that a chief constable cannot

be liable in negligence in pursuing disciplinary proceedings against officers. In *Elguzouli-Daf v Commissioner of Police of the Metropolis* [1995] QB 335 and in *Kumar v Commissioner of Police of the Metropolis* [1995] CA (unreported), the principle of policy stated in *Hill* was used to justify a finding that the CPS does not owe a duty to those whom it prosecutes. In *Heagren v Chief Constable of Norfolk* [1997] EWCA Civ 2044, the Court of Appeal applied the principle in *Hill* to hold that a police force does not owe a duty of care to make reasonable enquiries to check that information from an informant is reliable before initiating an armed search of premises.

40. *Brooks v Commissioner of Police for the Metropolis* [2005] 1 WLR 1495 concerned a claim by a witness to a homicide who alleged that the police had owed him a duty of care in providing support and assistance to him. The House of Lords rejected the proposed duty, relying upon the policy considerations identified in *Hill*. Lords Bingham, Nicholls and Steyn all expressed caution as to the breadth of the principle in *Hill*. However, Lord Steyn made clear (at paragraph 32) that the principle did not only preclude claims for failure to protect a person against the criminal acts of others.

41. In the recent case of *Van Colle v Chief Constable of Hertfordshire Police* [2008] 3 All ER 977, the House of Lords re-asserted the 'core principle' in *Hill* so as to reject a claim by the victim of a serious assault. The claim was based on the failure of the police to deal with his repeated expression of specific fears. As Mr Horwell submits, the facts of the case were very strong indeed. On the other hand, it is worth noting that Lord Philips defined the principle in *Hill* quite narrowly: 'that in the absence of special circumstances the police owe no common law duty of care to protect individuals against harm caused by criminals' (paragraph 97). Lord Hope observed at paragraph 79, 'There are, of course, cases in which actions of the police give rise to civil claims in negligence in accordance with ordinary delictual principles.' Like Lord Keith in *Hill*, he referred to *Rigby* and *Knightley* in this class, and added reference to *Gibson v Orr* 1999 SC 420. It is plain from that passage that Lord Hope did not regard *Rigby* and *Knightley* as anomalies, but as instances of a wider principle.

42. *Rigby* is an important case, not least because it was recognised in *Hill* and in *Van Colle* as a case in which a duty was owed. It was alleged that the police had been negligent in the conduct of a siege of premises. During the course of the siege, they had fired a CS gas canister into the premises which had caused a fire. In particular, it was said that they should have purchased and used an alternative CS gas device which presented a lower risk of fire, and that they should have had fire-fighting equipment on hand. Taylor J accepted that a duty of care existed. This suggests that the police do owe a duty of care in directing the use of dangerous equipment against a particular address.

43. In *Knightley*, a police motorcyclist was injured after being directed by his superior to ride the wrong way down a tunnel after an accident. *Gibson* concerned a failure by police to erect barriers around a section of road which they knew to be affected by a serious flood risk. Although these both concerned direction of traffic on the highway, I do not think that they can simply be regarded as instances of the general duty of police as motorists.

44. Another category of case in which the police can owe a duty of care is that where a firearm is entrusted to an officer who is not suitable. In *A-G v Hartwell* [2004] 1 WLR 1273, the Privy Council accepted the existence of such a duty. At paragraph 31, Lord Nicholls distinguished *Hill's* case on the following basis:

> 'This case does not fall on the "omissions" side of the somewhat imprecise boundary line separating liability for acts from liability for omissions. In a police case this distinction is important. Here the police are not sought to be made liable for failure to carry out their police duties properly. This is not a case such as *Hill* where liability was sought to be imposed on the police in respect of an alleged failure to investigate the Sutcliffe murders properly. In the present case the police authorities were in possession of a gun and ammunition. They took the positive step of providing PC Laurent with access to that gun.'

His Lordship later said that the law had long recognised the special dangers associated with dangerous articles, such as firearms and explosives (paragraph 33). It should also be noted that the Court of Appeal of Northern Ireland had

previously decided that the police owed a duty not to provide an unsuitable officer with a firearm: *O'Dwyer v Chief Constable of the RUC* [1997] NI 403.

45. As Mr Horwell submits, *Hartwell* and *O'Dwyer* do not address directly the question of whether a police force or officer can owe a duty of care in directing a firearms operation, beyond the particular duty to ensure that firearms are in the hands of suitable and proficient officers. However, if the police have a duty to keep firearms out of the hands of unsuitable officers, it would seem to be anomalous to hold that they cannot owe a duty in directing an officer how to use a firearm against a member of the public.

46. Having particular regard to the decisions in *Rigby* and *Hartwell*, I consider that a senior officer can owe a duty of care in directing an armed intervention. It is noteworthy that the existence of a duty of care in the conduct of an armed raid was conceded by the defendant police force in *Ashley v Chief Constable of Sussex Police* [2008] 3 All ER 573. Similarly, in *Da Silva*, the Divisional Court did not question the premise of the Director, that the officers directing the operation against Mr de Menezes could owe him a duty of care. I also remind myself that the policy considerations identified in *Hill* may be outweighed by other policy considerations, as May LJ said in *Costello v Chief Constable of Northumbria Police* [1999] 1 All ER 550 at 564. In this case, there is an argument of public policy that the police ought to owe a duty of care when directly deploying armed officers against a member of the public. The existence of such a duty is unlikely to make the police more defensive, since they already know that such deployments are likely to be carefully scrutinised by the IPCC and may result in claims for trespass to the person or breach of the Article 2 right to life.

47. Some bounds need to be set in defining the scope of the duty. The early stages of the operation led by Mr McDowall were, in essence, an investigation to find and watch suspects. The planning of such an investigation and the surveillance of suspects plainly comes within the general functions of the police in investigating crime, just as the checking of the informant's information did in *Heagren*.

48. For those reasons, I have concluded that a duty of care could exist on the facts of this case, and that the scope of that duty is as outlined in paragraph 35 above. I appreciate that difficult lines have to be drawn in identifying where the police do and do not owe any duty.

The Senior Officers

49. The de Menezes family make a number of allegations against Mr McDowall, Ms Dick and Mr Esposito. On behalf of those officers, Mr Perry maintains (i) that none of the complaints is founded on a valid duty of care; (ii) that no breach could be made out; (iii) that none of the alleged failures was, on analysis, causative of the death; and (iv) that none of the alleged failures could possibly be fairly described as grossly or criminally negligent. In considering each allegation, I shall therefore need to consider successively the questions of duty, breach and causation. Having done so, I shall consider whether any of the alleged failures could be characterised as gross negligence.

Commander John McDowall

50. The de Menezes family argues that Mr McDowall, when setting a strategy for the operation at 4.55am on 22nd July, should have stipulated that a suspect coming out of any of the addresses under suspicion must not reach public transport. It is said that, shortly thereafter, he should have taken steps to ensure that surveillance officers and specialist firearms officers were deployed to Scotia Road as soon as possible, with a view to ensuring that any suspect could be watched closely and stopped quickly. It is said that he should then have kept himself updated with the progress of the operation and ensured that his strategy was being followed. I should note at the outset that the Divisional Court in *Da Silva* concluded that the Director had been right to concentrate on officers below the rank of Mr McDowall, because, as Gold Commander he had been entitled to delegate tasks to others (see paragraph A27-28).

51. The first complaint made is that Mr McDowall should have set a strategic plan such as to ensure that suspects were stopped in the 'window of opportunity' between them leaving the premises and reaching the public transport system.

In my view, no duty of care arose at the stage that Mr McDowall was formulating his strategy. Even if there were such a duty, it was no breach of that duty for Mr McDowall not to dictate the tactics suggested. As Mr Perry says, the Gold Commander was setting a high-level strategy which was to be used at a number of premises, not setting tactics for every scene. Indeed, Mr Mansfield accepted that the strategy resulted in the correct tactics being used at the second address kept under surveillance. In any event, it might not be feasible or appropriate to stop all suspects in the window of time referred to. It might not be possible to make an identification in that window. If the firearms officers began stopping anyone who could not be ruled out, as Mr Mansfield suggested might be appropriate, then the covert status of the operation would probably have been compromised at a very early stage. Even if a breach of duty could be established in this regard, the operational decisions of Ms Dick would probably break the chain of causation between Mr McDowall's high-level strategy and the events on the ground.

52. The second allegation is that Mr McDowall did not ensure that firearms officers were deployed sooner. I cannot see that a police officer owes a positive duty of care to the occupants of an address to send armed officers to their neighbourhood quickly with a view to stopping them. In any event, Mr McDowall did ask a Chief Inspector in Special Branch, known as 'Alan', to arrange for deployment of firearms officers to Scotia Road. It may be that, in following those instructions, there was a failure of communications on the part of Alan or a specialist firearms officer, Inspector 'ZAJ'. However, even if there were, an officer of Mr McDowall's rank in a hierarchical organisation was entitled to delegate to a subordinate and to assume that his orders would be acted upon. Furthermore, any delay in the despatching of firearms officers to the area of Scotia Road cannot be established, to the requisite standard of proof, to be a cause of the death of Mr de Menezes, having regard to two matters. First, when he emerged from the block, there were probably six firearms officers at the holding point very nearby, who could have performed a stop if they had been ordered to do so. Secondly, it is clear from the evidence of Ms Dick that she would not have ordered the firearms officers to

leave the holding point at any time earlier than that at which she actually gave the order (probably around 9.55am).

53. The third allegation is that Mr McDowall failed to keep himself informed and to ensure that his orders were being followed. Once again, I cannot see that Mr McDowall owed a duty to Mr de Menezes as suggested. Neither can I see that a senior commander committed any failure by not, as it has been put, 'micro-managing' every action of his subordinates. He chaired a key meeting at 6.40am and was careful to check with Ms Dick that she had all she needed. Even if he did commit some error, it did not result in the death of Mr de Menezes.

Commander Cressida Dick

54. The allegations against Ms Dick may be distilled into three areas of complaint. First, Mr Mansfield argues that she failed to ensure that the block on Scotia Road was kept under careful surveillance control and that tactics were employed to ensure that all suspects could be identified and stopped before reaching a bus stop. As it happens, the nearest bus stop was on Upper Tulse Hill, only a few minutes' walk from the block. The first obstacle to Mr Mansfield's argument is the difficulty of constructing a positive duty of care at that stage to stop Mr de Menezes close to his home. In my judgment, no such duty could exist. Even if it could, I consider that it would not have been practicable to implement this as a fixed and inflexible tactical plan, for the reasons given in paragraph 51 above. In any event, the surveillance control was good: Mr de Menezes was kept continually under surveillance but the covert status of the operation near Scotia Road was maintained. The failure to stop him at an earlier stage was based on an inability of officers to say whether he was identifiable with the suspect. Therefore, his death was not caused by any failure of surveillance control at Scotia Road.

55. Secondly, it is alleged that Ms Dick failed to keep herself informed of where surveillance and firearms officers were as Mr de Menezes was travelling from Tulse Hill towards Stockwell. Again, I do not think that a police officer owes a duty to a person under surveillance to ensure that he is informed of the

movements of other officers, at least before any intervention is immediately in prospect. If there were such a duty, it would only be to keep oneself reasonably well-informed, since it would not be practicable to keep note of the precise position of every officer and car. The thrust of the evidence is that Ms Dick did keep herself reasonably well-informed. She was aware, through the surveillance monitor in the control room, that surveillance officers were following Mr de Menezes and of what they were saying. In any event, as Mr Mansfield accepts, nothing could have been done to stop Mr de Menezes between his getting on the bus at Tulse Hill and his alighting at Stockwell. Ms Dick had firearms officers at the proper holding point at the time she wanted to deploy them. In the minutes before she ordered the intervention, she was relying upon information from Mr Esposito as to the position and readiness of the firearms team. In my judgment, she was entitled to rely upon that information. In all those circumstances, any failure on her part to keep herself informed was not causative of the fatal events in the carriage.

56. Thirdly, it is submitted by Mr Mansfield that Ms Dick failed to exercise proper judgment in her decisions in the last critical minutes, after Mr de Menezes left the bus at Stockwell. In my judgment, she probably did owe a duty of care to him at this stage in making decisions and giving directions for an armed stop. However, she cannot fairly be said to have breached that duty. When she became aware that the subject of surveillance had left the bus, she ordered the firearms team to perform an armed stop. Upon hearing that they were not in a position to make the stop, she instructed the surveillance officers to do so. That order cannot be characterised as negligent. If there were any slight delay in giving the order, that can probably be explained by the need to take thought before ordering a suspected suicide bomber to be stopped by officers who were not trained for such situations. Once she was told that the firearms officers were in position, she countermanded the earlier order. It might be possible to say that she made the wrong decision at that point, given where Mr de Menezes was known to be, but these were fast-moving events and her decision cannot be described as negligent. Mr Mansfield says that using specialist firearms officers gave rise to a particular risk that lethal force would

be used. However, there were obvious advantages to using officers who had the training and experience to perform armed interventions in a public place.

Chief Inspector Vincent Esposito

57. Mr Esposito was Ms Dick's firearms tactical adviser. It is not suggested that he actually took any of the decisions which resulted in the tragic death of Mr de Menezes. Therefore, it is inherently more difficult to establish any negligence against him.

58. The first charge against Mr Esposito is that, upon arriving at New Scotland Yard at around 6am, he failed to take steps to expedite the despatch of a firearms team to the Scotia Road area. For the reasons already given, I do not consider that he would have owed a duty of care to Mr de Menezes in this regard. In any event, when he started work, all the critical decisions had been taken in relation to the firearms team deployments. It would probably not have been safe or sensible to try to expedite the deployments at that stage. As explained in paragraph 52 above, I do not think it can be established to the necessary standard of proof that any delay in deploying firearms teams was causally relevant to the death of Mr de Menezes.

59. The second allegation is that he failed to devise a tactical plan to ensure that any suspect coming out of the block was stopped before reaching a bus stop. This is, in essence, the same as one of the allegations made against Ms Dick. For the reasons I have given in paragraph 54, this argument fails at every stage.

60. The third point made in criticism of Mr Esposito is that he failed to pass on to Ms Dick accurate information about the position of the firearms officers in the minutes after it became apparent that Mr de Menezes was leaving the bus. However, Mr Esposito was reliant for his information on the tactical adviser who was with the team on the ground, 'Trojan 84'. That officer initially told Mr Esposito that his team were 'not in contention' because they were behind the wrong bus. Mr Esposito duly passed on that information. Even if it were incorrect, it is difficult to criticise him for passing it on.

Gross Negligence

61. For the reasons I have given, I have concluded that it could not be shown, to the necessary standard of proof, that the death of Mr de Menezes was caused by any negligent act of any of these three senior officers. If, contrary to that assessment, any of the allegations were made out, none approaches the level of gross or criminal negligence. The jury could not be properly asked to consider a verdict of unlawful killing based upon any of them.

Narrative Conclusions

62. I now turn to consider what, if any, further questions or conclusions should be offered to the jury. The following principles and guidance need to be borne in mind.

(a) As is clear from the decision in *Middleton*, the most important consideration is that the Inquisition should resolve the key issues of fact in the case, at least to the extent that I have not already done so in this Ruling.

(b) All Interested Persons have agreed that, in all the circumstances, I should only invite the jury to consider questions or conclusions directed at eliciting matters which are causally relevant to death.

(c) The questions or conclusions offered should be simple. The risk of internally inconsistent answers should be avoided. Long questionnaires dealing with complex and abstract questions of policy and procedure have been deprecated by the Courts. See: *R (Clayton) v South Yorkshire Coroner* [2005] EWHC 1196 Admin; *R (Scholes) v SSHD* [2006] EWCA Civ 1343 at paragraph 70.

(d) The questions or conclusions should be drafted to avoid any answer breaching Rule 36(2) or Rule 42.

(e) There is no principle or rule that the jury should be directed to use neutral or non-judgmental language. *R (Cash) v Northamptonshire Coroner* [2007] 4 All ER 903 at 921b-922c. The word 'failure' can be used, as can other expressions which may be suggestive of fault. See: *R (Smith) v Asst Deputy Coroner for Oxfordshire* [2008] EWHC 694 Admin at paragraph 45. However, the vocabulary of civil negligence is inappropriate, as Lord Bingham said in *Middleton* at paragraph 37.

63. Counsel have assisted me greatly by their submissions. Mr Mansfield and Mr Perry have both prepared draft jury questionnaires. Mr Hilliard has suggested a number of possible questions and optional conclusions. Mr King, appearing for the IPCC, commends a narrative verdict as a sensible way of eliciting the views of the jury on the complex questions raised by this case.

64. Having considered those submissions carefully, I intend to put the following questions to the jury:

	Question	**Answer**
1.	Did officer C12 or officer C2 shout the words 'Armed police' at Mr de Menezes before firing?	YES / NO
2.	Did Mr de Menezes stand up from his seat after the officers entered the tube carriage?	YES / NO
3.	Did Mr de Menezes move towards officer C12?	YES / NO
4.	Do you consider that any of the following caused or contributed to the death of Mr de Menezes. *[Answer 'yes' only if you find that the sentence accurately describes something which happened and which made some causal contribution to the death of Mr de Menezes.]*	
(a)	The suicide attacks and attempted attacks of July 2005 and the pressure placed upon the Metropolitan Police in	YES / NO

	responding to the threat.	
(b)	The fact that better photographic images of the suspect, Hussain Osman, were not obtained and provided to the surveillance team.	YES / NO
(c)	The general difficulty in providing an identification of the man under surveillance (Mr de Menezes) in the time available and in the circumstances after he had left the block at Scotia Road.	YES / NO
(d)	The innocent behaviour of Mr de Menezes which increased the suspicions of some officers.	YES / NO
(e)	The fact that the views of the surveillance officers regarding identification were not accurately communicated to the command team and the firearms officers.	YES / NO
(f)	The fact that the position of the cars containing the firearms officers was not accurately known to the command team as the firearms officers were approaching Stockwell Station.	YES / NO
(g)	The fact that surveillance officers were not used to perform a stop on Mr de Menezes after he had got off the bus at Stockwell.	YES / NO

65. It will be apparent to all Interested Persons that some of those questions are based on the questionnaire of Mr Mansfield, some on that of Mr Perry, and some on the submissions of Mr Hilliard. By answering those questions, the jury will be able to express their view on a number of important issues in the case.

66. Mr Gibbs QC, who appears for the surveillance officers, and Mr Stern, both submit that questions should not be asked regarding the events which took place in the carriage. As will be clear from the questionnaire above, I have decided to reject those submissions. Mr Stern argues that the choice between

short-form verdicts will resolve the issues. I disagree. The jury could properly conclude that the officers acted in self-defence but that they are wrong in some aspect of their description of events. Mr Gibbs submits that Ivor was not challenged in his account that Mr de Menezes got up before he grabbed him. I am not persuaded that I should give overriding weight to that consideration. This is not a trial, and there is no obligation on Interested Persons (or on the coroner and counsel to the inquest) to put a case forward. See the classic statements of principle of Lord Lane CJ in *R v South London Coroner, Ex Parte Thompson* [1982] 8th July (CA, unreported). It is not necessary for a witness to be challenged on a point before a question can be asked going to an aspect of his account. In any event, in the particular case of Ivor, I do not consider that any particular answers would suggest that he was lying, rather than mistaken.

67. Mr Mansfield submits that the jury should be provided with a further question inviting them to make any other finding which they consider relevant, subject to a number of limitations. I cannot accept that submission. The questions and conclusions set out above have been carefully selected to follow the principles and guidance under paragraph 62. In my judgment, they represent the best way of eliciting the conclusions of the jury without infringing the Rules or the guidance of the Courts.

Conclusions

68. In summary, I have decided that a verdict of unlawful killing should not be left to the jury, either on the basis of murder by C2 and C12 or on the basis of gross negligence manslaughter by one of Mr McDowall, Ms Dick or Mr Esposito. This is not to be taken by anyone as a conclusion on my part that nothing went wrong in the police operation which resulted in the death of Mr de Menezes. However, I could only leave one of those verdicts if I were satisfied that a jury could safely conclude beyond reasonable doubt that one of those five officers committed a very serious crime. Despite all Mr Mansfield's skilful arguments, I cannot be satisfied of that.

69. The jury will be given the option to return a verdict of lawful killing or an open verdict. In addition, the questionnaire set out under paragraph 64 above will form part of the Inquisition. I intend to provide a short set of written directions on the law relating to the two short-form verdicts. That will be provided to Interested Persons for their consideration before I begin my Summing-up to the jury.

Sir Michael Wright
Assistant Deputy Coroner for Inner South London

24th November 2008