



H.M. CORONER FOR THE INNER SOUTH DISTRICT OF
GREATER LONDON

HM Assistant Deputy Coroner, Sir Michael Wright

Inquest into the death of Jean-Charles de Menezes

Rule 43 Report

Introduction

1. This report is prepared pursuant to Rule 43 of the Coroners Rules 1984, as amended by the Coroners (Amendment) Rules 2008. In essence, it contains my views on which Metropolitan Police systems and practices have been shown by the evidence in this Inquest to call for review.

2. Rule 43(1) provides as follows:

‘Where –

- (a) a coroner is holding an inquest into a person’s death;
- (b) the evidence gives rise to a concern that circumstances creating a risk of other deaths will occur, or will continue to exist, in the future; and
- (c) in the coroner’s opinion, action should be taken to prevent the occurrence or continuance of such circumstances, or to eliminate or reduce the risk of death created by such circumstances,

the coroner may report the circumstances to a person who the coroner believes may have power to take such action.'

It should be noted that the Rule enables a coroner to draw attention to circumstances which did not actually cause the death of the particular deceased person with whom his inquest is concerned.

3. As required by Rule 43(3), I made an announcement at the end of the Inquest that I intended to make a Rule 43 Report to the Commissioner of Police of the Metropolis and to the Metropolitan Police Authority ['MPA'], and that I intended to copy it to the Home Secretary. This Report is also being sent to the Lord Chancellor and to all those who were recognised as Properly Interested Persons within the meaning of Rule 19. It will be for the Lord Chancellor to decide whether to publish the Report and whether to send a copy to any other person. At the end of the Inquest, I expressed the opinion that the Report should be published at some stage. At present, this Report is provided to Properly Interested Persons on a confidential basis.
4. Within 56 days of the date of this Report, the Commissioner and the MPA are required to 'provide a written response containing (a) details of any action that has been taken or which it is proposed will be taken in response to the report or otherwise; or (b) an explanation as to why no action is proposed'. See Rule 43A(1). An application can be made to me to extend that deadline. Within the same 56-day time-scale, the Commissioner and the MPA are entitled to make representations to me as to whether their response(s) should be published to Properly Interested Persons.
5. In preparing this Report, I have had regard to all the evidence given in the course of the Inquest. I have also considered further material which was provided to me by the Metropolitan Police Service ['MPS'] concerning how their practices have developed since the events under investigation at the Inquest (July 2005). In particular, Commander Stewart prepared an extremely thorough statement with extensive supporting materials. Those documents were provided to all other Properly Interested Persons. As well as the

evidence and those additional materials, I have taken into account the conclusions of the Jury. They answered a number of questions, and some of their answers suggest that systemic failures occurred.

6. It is the purpose of this Report to identify points of concern, not to prescribe specific solutions. That is best done by those who have the difficult task of overseeing policing in general and anti-terrorist operations in particular. This Report addresses the practices in use in July 2005. It is apparent from Commander Stewart's statement that the MPS has made efforts to resolve a number of the problems which are identified in this Report, but also that some matters remain to be addressed. I am in no position to comment on the likely effectiveness of any reforms which have been, or are to be, implemented.

(1) Command Structure

7. The Command Structure adopted for the operation on 22nd July 2005 was repeatedly criticised as lacking clarity and being open to misunderstanding. In part, this was probably because the MPS was facing an unprecedented situation; a series of unsuccessful attempts at suicide attacks on the transport system. There were three strands to its operations: (i) the investigation of the crime; (ii) the operation to catch the bombers; and (iii) the effort to prevent further detonations by the suspects or others.

(a) Gold / Silver / Bronze Structure

8. As in most major operations, the Gold / Silver / Bronze command structure model was used. However, in this case, it was unclear precisely to what extent the Gold Commander was required to supervise the operation after setting his strategy. There was also argument in the Inquest as to the freedom of the Silver Commander to adjust or refine the Gold strategy. The ACPO Manual on Police Use of Firearms (at Ch.4, para. 3.6) lists a series of duties for the Gold Commander, including a duty to keep the strategy under review and a duty to document any changes. The MPS might usefully review the command structure and the Manual, and consider whether there can be further

clarification of the continuing role played by the Gold Commander after setting his strategy.

(b) *Maintenance of Chain of Command*

9. On the night of 21st / 22nd July 2005, there was a period when the Gold Commander was absent and a period when both the Senior Investigating Officer in the manhunt and his Deputy were absent. These absences were necessary for the individuals to get some rest, and the control room was manned over the entire period. Nevertheless, some consideration should be given to ensuring that, in major operations, the chain of command is maintained when a Gold or Silver Commander is absent (eg. by nominating interim replacements).

(c) *DSO*

10. The command structure referred to was further adapted by the involvement of a Designated Senior Officer ['DSO']. This post was developed to ensure that an appropriate officer should be charged with giving a 'critical shot' authorisation in operations mounted against suicide terrorists. It is apparent that the DSO plays a different role when directing a response to a 'spontaneous' report from a member of the public, as compared with the role he plays when involved in a 'pre-planned' or 'intelligence-led' operation. However, in all cases, it is important that all officers should know (i) when the DSO becomes involved in commanding an operation and (ii) precisely what command role he performs. Is the DSO to assume command from the start, or only to step in when an armed intervention is required?

(2) Communications Systems

11. The Jury concluded that the following factors (among others) contributed to the death of Mr de Menezes:

- ‘The fact that the views of the surveillance officers regarding identification were not accurately communicated to the command team and the firearms officers.’ [Factor (f) in the Inquisition]
 - ‘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.’ [Factor (g) in the Inquisition]
 - ‘Any significant shortcomings in the communications system as it was operating on the day between the various teams on the ground and New Scotland Yard.’ [Factor (h) in the Inquisition]
12. A number of particular concerns arose during the course of the Inquest regarding communications systems. Some of these may have been addressed, as lessons have been learned and as technology has improved. I also recognise that some of the details of how the police have developed their communications systems may well be sensitive.
- (a) *Radio Operation and Maintenance*
13. There were a number of difficulties in operating specific police radios on the morning of 22nd July 2005. These affected the surveillance team and the firearms team (especially motorcycle officers). These problems required surveillance officers to use impromptu relay systems and one firearms car radio to be repaired in the course of the operation.
- (b) *Radio Coverage above Ground*
14. The Cougar radio system suffered from poor coverage and radio ‘black spots’. A number of officers commented on the extremely poor signal they had. Many resorted to using mobile telephones to communicate with each other, an expedient which occupied valuable time in obtaining telephone numbers and which prevented messages being transmitted to a wider range of officers. Mobile telephones may be appropriate for confidential communications

between particular officers, but undue reliance upon them prevents messages being heard and understood by the full range of officers involved in an operation.

(c) *Radio Coverage Underground*

15. None of the radio communications systems which officers used to speak to each other had any coverage on the London Underground system. This meant that the command team could not direct firearms officers after they had gone below ground at Stockwell Station.

(d) *Communication between Teams*

16. It is important to ensure that effective radio systems can be used to communicate between teams from different branches of the Metropolitan Police who are engaged in the same operation (including control room, firearms teams and surveillance teams).

(e) *Language*

17. In the course of the Inquest, there were a number of instances where police terminology tended to confuse rather than to clarify. The word 'subject' appeared to bear the twin meanings of 'identified suspect' and 'person under surveillance'. The words 'intercept' and 'intervene' were said to bear distinct meanings, but were difficult to explain with clarity. The word 'control' was used to refer to a number of different forms of police activity, including watching an address and restraining a person. Words such as 'stop', 'detain', 'contain' and 'deploy' were also apparently capable of being misinterpreted.

(3) Radio Discipline

18. As well as technical concerns, the Inquest highlighted two problems with radio discipline. These may also have some bearing on the contributory factors identified by the Jury (paragraph 11 above).

(a) *The Speaker Announcing Himself*

19. There were a number of important radio communications in which the speaker did not identify himself either by name or by reference to his team. For example, firearms officers gave evidence that they heard important messages concerning identification of Mr de Menezes in the period from 9.50 to 9.55am. However, none was able to say specifically who was the speaker and the general belief that the speaker was a surveillance officer was a matter of assumption.

(b) *Acknowledging Messages*

20. There was no system whereby an officer was required to acknowledge a message addressed to him. For example, when the leader of the Grey surveillance team asked for a numerical confidence rating for identification of the person under surveillance, he was met with silence, which he assumed to be an inability to answer the question (rather than an inability to hear the question).

(4) **Location Information**

21. As mentioned above, the Jury concluded that the death of Mr de Menezes was caused in part by the fact that the position of the firearms officers was not accurately known to the command team. They also concluded that the death was caused in part by a failure ‘to ensure that Mr de Menezes was stopped before he reached public transport’ [Factor (c)]. Both of those conclusions draw attention to the importance of the command team having accurate information about the location under surveillance and the position and movements of officers.

(a) *Maps in the Control Room*

22. There was conflicting evidence as to whether or not maps of the area of Scotia Road were displayed in the control room during the material part of the operation. Guidance might usefully be given about the importance of displaying maps and attempting to plot the approximate locations of different teams. Of course, this may not be an exact science. Officers on the ground

cannot be required to give constant reports and it will usually be impossible for senior officers to plot the location of every officer.

(b) *Use of Maps to Assess Surveillance Plot*

23. Guidance might usefully be given to Gold and Silver Commanders that, in surveillance-based operations, the Geographia and/or other maps should usually be checked to ascertain the nature of the premises under surveillance. In this case, the Gold Commander did not know that one of the two premises against which he directed his strategy had a communal entrance. Once this was known (through reconnaissance), the strategy was adapted or refined.

(c) *Transferring Imagery*

24. Depending on developments in technology, it may become possible for officers on the ground to transfer to the control room visual imagery of important locations. This may assist in directing surveillance and firearms officers.

(d) *Tracker Technology*

25. It may well be possible in future for GPS/tracker technology to be used to ascertain the positions of vehicles engaged in surveillance or pursuit, and to display those positions on screens in the control room. If so, that could well avoid many of the difficulties which arose in the surveillance of Mr de Menezes.

(5) Identification

26. The Jury concluded that ‘a failure to obtain and provide better photographic images of the suspect, Hussain Osman, for the surveillance team’ [Factor (b)] had contributed to the death of Mr de Menezes. They did not regard ‘general difficulty in providing an identification’ [Factor (d)] as constituting a contributing factor to the death. However, many of the senior police officers who gave evidence commented that difficulties in identification bedevilled

their work on the day in question. In my view, procedures for making and communicating identifications do call for review.

(a) *Terminology*

27. Clear terminology ought to be used to indicate the level of confidence with which a particular identification is made. Some evidence was given to the effect that new practices had been introduced in this regard. It is obviously important that, where firearms officers are to be ordered to intervene based upon an identification of a suspect, all officers should understand the quality of the identification which has been made.

(b) *Use of Photographs*

28. It would assist identification in many cases if a surveillance officer was able to check a photograph of the suspect during the course of the operation. The evidence revealed that officers were given the opportunity to take photographs with them from their briefings, but that many chose not to do so. One officer gave evidence that this was because of concern that the photograph might be misplaced. Consideration should be given to advising officers to take photographs with them unless particular circumstances dictate otherwise.

(c) *Provision of Photographs*

29. A number of allegations were made during the Inquest to the effect that the MPS had failed to obtain and circulate the best available photographs of the suspect, Hussain Osman. In short, the following criticisms were advanced by the de Menezes family:

- (a) that the police had failed promptly to obtain photographs of the suspect held by the DVLA and the immigration authorities;
- (b) that the police had failed to review files and photographs from Operation Ragstone after a connection had been made between that operation and the suspects;

- (c) that the police had failed to make use of photographs found in the 'bomb bag' discovered at one of the scenes of attempted bombings.
30. The police parties argued that none of these allegations had real weight in the circumstances of this case. At least some of their arguments had real merit. However, it must be accepted that identification is vital in intelligence-led operations against suspected terrorists. With that in mind, I suggest that the following topics should be reviewed:
- (a) how to ensure that other agencies can be contacted quickly (at any time of day or night), with a view to obtaining further photographs and information about suspects;
 - (b) what guidance should be given on reviewing files of related operations with a view to obtaining further information on suspects;
 - (c) what guidance should be given on the use of photographs obtained from crime scenes to aid identification.
- (d) *Transmission of Photographs*
31. Developments in technology may make it possible in future for surveillance officers to take photographs covertly and to transmit them to a control room. It may also be possible in future for the control room to transmit photographs electronically to surveillance officers, when such photographs are obtained during the course of the operation. It need hardly be said that such methods could be very valuable.
- (6) Rules of Engagement and Code-Words**
32. Intervening against suspected suicide terrorists raises particular difficulties. These were explained in the careful evidence of Mr Swain, the officer who had developed the MPS policies in this area. A challenge to a suicide terrorist will generally result in him detonating his device. The use of baton rounds or

tasers will often trigger the device. Therefore, a critical shot without warning may be the only realistic tactical option, especially where the suspect has to be confronted in a public place. Decisions on how to confront a suspect will often have to be based on a combination of intelligence assessments by senior officers and the exercise of judgment by firearms officers.

33. A number of senior officers gave evidence that it is impossible to give hard and fast rules to firearms officers on how to confront a suspected suicide bomber. However, the MPS had attempted to give guidance in the Operation Kratos Firearms Officer Awareness Package (January 2003). In brief, that document had suggested that two situations might arise:

- A person is suspected of carrying a bomb but there is some doubt on the subject. In that situation, officers were advised to rely upon their training and ordinarily to issue a challenge.
- ‘The suspect has been confirmed as being in possession of a device and poses an immediate threat to life.’ In that situation, officers were advised to attempt a critical shot to incapacitate the suspect immediately. A DSO might give the authority to fire a critical shot, but the officer on the ground would still have to make his own independent assessment.

A Tactical Options Document prepared for the manhunt on 21st July 2005 addressed the situation where there was intelligence to suggest that a suspect was a suicide bomber and carrying an explosive device with the means of detonating it. In that situation, the document cautioned against overt deployment before giving the following advice in relation to all the tactical options available:

‘In all these options there exists a real possibility that should the subject be non-compliant with the commands of the officers initiating the interception then an immediate critical shot may be taken in order to protect the public and the officers engaged in that interception.’

That may be read as suggesting that a critical shot should only be fired if the suspect fails to comply with a challenge.

(a) *Rules of Engagement*

34. I suggest that the MPS review its guidance with a view to providing the clearest and most consistent rules of engagement which can be devised. The following topics may be considered:

(a) providing criteria, or a list of considerations, to help firearms officers to decide whether to issue a challenge or to fire a critical shot without warning;

(b) linking those criteria or considerations to an improved system for designating levels of identification (see paragraph 27 above);

(c) devising practical training for firearms officers to assist them in determining the appropriate response.

(b) *Code-Words*

35. The firearms officers in this case all gave evidence that they correctly understood the order given by the DSO when they were at Stockwell. However, it appears that, for the type of operation being performed, there was no system of code-words by which a senior officer could give instructions for firearms officers to take particular action. Such a system had been developed for dealing with suicide bombers at 'pre-planned events', and evidence was given that a similar system had been extended to other situations in the years since 2005. I would endorse such a development.

(c) *Communication of Intelligence*

36. Finally, the situation which arose on 22nd July 2005 highlights the importance of ensuring that intelligence is communicated to officers on the ground, insofar as that is possible. If a firearms officer is expected to exercise his own independent judgment before firing a critical shot, he should be kept informed

of what is known about the suspect. It may well be impossible to provide full information to those engaged in a fast-moving operation. On the other hand, senior officers should not start from the premise that intelligence should not be passed to those on the ground.

(7) **Surveillance Officers / Firearms Officers**

37. Although the events of 21st / 22nd July 2005 were unprecedented, the model of a mobile armed support to surveillance ['MASTS'] operation was familiar to the MPS.

(a) *Joint Briefings and Joint Training Operations*

38. In this case it was not possible for surveillance and firearms officers to be briefed together. However, the case does emphasise the value of holding joint briefings for MASTS operations, if at all possible. Such briefings should be audio- or video-recorded if at all possible, to avoid uncertainty arising later about their tone or content. Joint training operations involving surveillance and firearms officers may also be of assistance in helping them to work together.

(b) *Awareness of Other Officers*

39. The facts of this case also highlight the importance of ensuring that surveillance, firearms and arrest teams are aware of each others' presence and position. For example, there was evidence that surveillance officers were not informed when the firearms team was arriving near the surveillance plot, or when that team was ordered to join the follow. Similarly, the deployment of an SO13 arrest team appears not to have been notified in advance to surveillance or firearms officers.

(c) *Training of Surveillance Officers*

40. The Jury concluded that a failure to use surveillance officers to perform the stop of Mr de Menezes contributed to his death [Factor (i)]. They reached that conclusion notwithstanding evidence as to the superior training and experience

of firearms officers. On any view, the senior officers in this case had to contemplate using surveillance officers to stop a suspect. It is also clear that the surveillance team leaders had considered the possibility of their teams performing a stop if a suspect emerged from the address under surveillance before firearms teams arrived. In those circumstances, consideration might usefully be given to training at least some armed surveillance officers in how to perform a stop of a suspected suicide terrorist.

Other Points of Concern

41. As is clear from the statutory wording, a Rule 43 report is concerned with circumstances which may give rise to the risk of further deaths. In this case, it is right that I should mention two matters which probably do not strictly fall into that category.
 - (a) *Recording of Briefings and Control Room Activity*
42. The Inquest had to consider numerous different contemporaneous written records of the same briefings, decisions and instructions. Despite the particular importance of the operation, none of those were audio- or video-recorded. It is not my intention to suggest that all briefings or control room activity should be recorded in this way, but consideration might be given to recording at least some briefings and control room discussions in important operations.
 - (b) *Preparation of Notes / Statements*
43. The firearms officers had all discussed the events in detail with each other before preparing their statements and they worked on their accounts together over a period of many hours. There was a stark difference between their experience and the treatment of civilians, who were required to give their accounts promptly and independently. I do not mean to criticise the officers for acting as they did: they were following standard practice and the best available advice. However, the result was that whole sections in some statements directly replicated sections in other statements. Officers were

cross-examined on the basis that their evidence was not the product of independent recollection. Allegations of dishonesty were made which would have been impossible to make in the absence of collaboration.

44. Following the decision of Underhill J in *R (Saunders) v IPCC* [2008] EWHC 2372 Admin, ACPO has modified its guidance (see revised version of Post-Incident Procedure Chapter 6, ACPO Manual on Police Use of Firearms (23rd October 2008)). The new guidance recommends that, in investigations concerning police discharge of firearms, officers should ordinarily give their accounts as soon as practicable and without conferring with each other. It also recommends that statements include details of any conferring which has taken place. See paragraphs 4.1 - 4.8.
45. In recent years, the Higher Courts have repeatedly expressed concern about the practice of witnesses conferring in the preparation of their accounts. Where police action has proved fatal, there is the additional imperative that the resulting investigation should comply with the procedural obligation inherent in Article 2 of the ECHR. That obligation requires the state to secure the best evidence by a fair, independent and transparent process.
46. The MPA issued a Report on 4th December 2008 formally recognising that the ACPO guidance would be followed in fatal shooting investigations. According to that report, the MPS has commissioned a Gold group under DAC Hitchcock to develop further guidance and the Directorate of Professional Standards is developing a new post-incident procedure. I would simply add my voice to those recommending that clear guidance be given to ensure that officers should in future prepare early and independent accounts of any police actions which result in fatal or other serious injuries. Serious consideration should also be given to audio- and video-recording of post-incident debriefings.

Sir Michael Wright
6th January 2009