

MARK DUGGAN INQUEST

THE PIH ON 15 JULY 2013

NOTE BY COUNSEL TO THE INQUEST

Update on progress by inquest team

1. I propose to deal briefly with the state of disclosure; outstanding requests for evidence; Court provision; and the proposed call list. It would be helpful for the IPCC to give an update on its report, and if possible to say if it anticipates it is likely to lead to an adjournment.

Witness lists and timetabling

2. The inquest team want to begin writing to witnesses as soon as possible, putting them on notice of being called and giving them likely dates to attend. I will suggest that the IP's identify any issues over the proposed call list, and that perhaps a round-table meeting may help to resolve them.

Jury matters

3. Most provisions of the 2009 Act, together with the Coroners (Inquests) Rules 2013, and the Coroners (Investigations) Regulations 2013 will come into force on 25 July 2013. The summoning of jurors will take place under the new legislation, enabling more than 11 jurors to be summoned (though restricting the maximum number on the jury to 11).
4. Nothing in the Act requires balloting of those who attend as a result of a summons. It follows that there is no need to call jurors by name. The question of anonymising them appears now not to arise.
5. Parties may wish to propose questions to be put to prospective jurors, so as to screen out those with a potential conflict. If so, it would be helpful for those questions to be identified prior to the PIH.

6. The Coroner is concerned that jurors who are sworn may drop out at two stages. Firstly, they may discover directly after the first day that they have commitments, or conflicts, which they had not known of during the first day. Secondly, through illness or accident they may drop out during the course of the evidence. He invites submissions about what steps could be taken to retain sufficient jurors, such as having a small number of “spare” jurors sworn and retained until the second day, or perhaps having shadow jurors throughout.

7. Presently six broad issues have been formulated as arising from the evidence. I propose to open the evidence by reference to them, while making it clear that the actual questions which the jury will be required to answer in their verdict will only be crystallised after the evidence has been heard. I will circulate drafts of my opening in due course, but it would be helpful to know at this stage whether there is any objection to this approach.

Confirmation of Inquest sitting days

8. The proposed sitting days are Mondays 2pm to 4.30 pm; Tuesdays to Thursdays 10 am to 4.30 pm. Lunch will be from 1 to 2 pm, and there will be short breaks within sessions. Ordinarily there will be no sitting on Fridays. On Monday the 16th September proceedings will start at 10.30 am.

Anonymity and PII applications

9. The Coroner’s anonymity rulings have been served.

10. No PII applications have been received. Some documents have been held back from disclosure at present so that the inquiry team can assess their relevance once further statements have been obtained. If they are seen to be relevant they may be the subject of PII applications, but we anticipate that to be unlikely, and do not expect any delay to be caused.

Transcripts of evidence

11. The proceedings will be transcribed, and we aim to have transcripts available as soon as possible on the following day. They will be placed on the inquest website as soon as practicable.
12. The Coroner is currently minded not to restrict the jury's access to the website. Rather, he would like to take advantage of transcripts to shorten his summing-up.

Live-feed out of Court, and exclusion of witnesses

13. The proceedings in Court 73 are intended to be relayed live, both sound and vision, to Court 76. No direction has been made about whether witnesses can be in either court prior to being called. I believe that the Duggan family wishes to address that issue. The MPS wishes its witnesses to have a live video and audio feed within the RCJ precincts.
14. The only written submissions on those issues I have seen are one behalf of the firearms officers. They contend that they are entitled to have a live link to premises outside the precincts, and that raises a question of law that the Coroner must therefore deal with. My submission will be that:
 - a. s.41 of the CJA 1925 criminalises photography of a judge, juror or witness during proceedings in court, and publication of any photograph taken in court;
 - b. while that provision does not, on its face, deal with transmission of moving images, *Loveridge* held that it did;
 - c. likewise, the provision does not, on its face, deal with live transmission. However, it is generally acknowledged that it does. Presumably that is because of the prohibition on publishing contained in s.41(1)(b). No criminal court has been the subject of a live broadcast. Parliament shares that understanding, which is why it believed it necessary to change the law to allow live transmission of Supreme Court proceedings;
 - d. The Practice Guidance notes that (i) there is no judicial discretion to dispense with the prohibition; and (ii) it applies to any equipment

which has “photographic capacity”. It is plainly a premise of the Guidance that no simultaneous video transmission is lawful;

- e. On a true construction of s.41, as it has been applied, even visual transmission to Court 76 would be a criminal offence;
- f. The transmission of sound is dealt with by s.9 of the Contempt of Court Act 1981. That too prohibits both recording and publication, although it offers a discretion to the Coroner.

- 15. I have not seen other submissions on the exercise of that discretion, and presently have no comment to make on it. I invite submissions by the end of this week.

Jury visits

- 16. I would like the jury to see the Vicarage Road and Ferry Lane areas between the opening and calling evidence. It may also be useful for them to have a further visit once some or all of the evidence has been led.

Next PIH

- 17. As a final check to ensure readiness it has been suggested that we have a further PIH some time between 10th and 13th September.

ASHLEY UNDERWOOD QC

8 July 2013