

1 Transcript of the Inquiry

2 Friday 2 December 2022

3 (10.02 am)

4 Ruling

5 LORD BRACADALE: Good morning. I'm going to give my
6 decision on the Rule 9 applications.

7 The original Rule 9 application on behalf of
8 PC Walker, Ms Short and the Scottish Police Federation
9 contained a total of 144 questions.

10 I should say in passing that what I am looking for
11 in written applications under Rule 9 are proposed lines
12 of questioning rather than a list of questions. Be that
13 as it may, I'm grateful to the Dean of Faculty and
14 Senior Counsel to the Inquiry for significantly reducing
15 the scale of the application. That has made it easier
16 for me to identify and assess the lines of questioning
17 contained in the questions and decide whether any should
18 be permitted.

19 In addition, the Dean identified a number of
20 specific paragraphs in the Inquiry statement of
21 Martin Graves under reference to which he sought to
22 explore differences between the evidence of Ms Caffrey

1 and Mr Graves.

2 I remind myself that this is an Inquiry under the
3 Inquiries Act 2005, and subject to the statutory
4 provisions in relation to the examination of witnesses.
5 In considering whether to permit examination of
6 witnesses by the legal representatives of core
7 participants, I have at the forefront of my mind whether
8 the examination is likely to assist the Inquiry.
9 Against that background I considered whether the
10 proposed lines of questioning would be likely to assist
11 the Inquiry.

12 I think that it is important to note the way in
13 which the evidence of both Ms Caffrey and Mr Graves
14 evolved. In Ms Caffrey's report and in the Inquiry
15 statement of Mr Graves, each was asked to address the
16 primary evidence. In their oral evidence they addressed
17 a number of hypothetical scenarios based on the primary
18 evidence. In each case their oral evidence was given
19 with the benefit of additional information produced
20 since the date, respectively, of Ms Caffrey's report and
21 Mr Graves' Inquiry statement.

22 This means that in each case it will be necessary

1 for me to have regard to their evidence in the light of
2 its evolving nature. Given that evolving nature, I do
3 not think that it would assist the Inquiry for the Dean
4 to explore at this stage, under reference to specified
5 paragraphs in the Inquiry statement of Mr Graves,
6 differences between Ms Caffrey's evidence and specific
7 matters in Mr Graves' Inquiry statement. In my view,
8 there is sufficient material as a whole before the
9 Inquiry to allow such differences to be explored in
10 submissions in due course.

11 The evidence of Ms Caffrey and Mr Graves has
12 provided me with a framework against which I can test
13 the evidence which I find proved. My assessment of the
14 primary evidence will of course involve assessments of
15 credibility and reliability. That assessment of the
16 primary evidence and whether I accept the evidence of
17 Ms Caffrey and/or Mr Graves, in whole or in part, will
18 be a matter for me.

19 I anticipate that the submissions of counsel for
20 core participants will be of great assistance to me in
21 these endeavours. As a general proposition I consider
22 that it would not assist the Inquiry to engage at this

1 stage in an exercise of putting to this witness details
2 of what primary witnesses said for further comment by
3 this witness. It seems to me that the Inquiry will be
4 better assisted by core participants making submissions
5 based on the primary evidence.

6 I consider that questions in relation to the
7 expertise of Ms Caffrey, questions of the weight to be
8 accorded to her evidence and questions of the
9 application of her expertise to the primary facts are
10 all best dealt with in submission.

11 I do not consider that it is necessary, as a matter
12 of fairness to the witness, to explore every respect in
13 which criticism might be made of her evidence in
14 submission.

15 I consider the issues in relation to training, if
16 they require further exploration, would be best explored
17 at a later hearing.

18 Having adopted the approach which I have outlined,
19 there are two lines of questioning which I do think
20 would assist the Inquiry. These are the issue of the
21 availability of the dog unit raised in questions 34 to
22 36 and 95 to 96, and the issue of the viability of

1 unit, please.

2 A. Yes.

3 Q. And I think your suggestion is it would have been
4 a reasonable option to have waited for the dog unit to
5 have arrived?

6 A. It would be a tactical option to consider that.

7 Q. Mr Bayoh was travelling briskly when he was seen; do you
8 agree with that?

9 A. Yes.

10 Q. You can't let him move on given that there are reports
11 that he is in possession of a knife; do you agree with
12 that?

13 A. No, not necessarily. It would all be around the risk
14 and using the National Decision-Making Model, that you
15 don't unnecessarily put the officer lives at risk
16 either. It's all about the decisions and the tactical
17 response at the time.

18 Q. We're talking about a situation where the dog unit is
19 some minutes away -- in your report you have adopted
20 10 to 15 minutes --

21 A. Yes.

22 Q. -- I think based on PC Wood's assessment.

1 A. Yes.

2 Q. Am I right in understanding that the viability of
3 waiting turns on the viability of containment?

4 A. Sorry, can you --

5 Q. The viability of waiting --

6 A. Yes.

7 Q. -- turns on the viability of containment?

8 A. It would still be a decision on the day based on the
9 risk of actual risk or hypothetical risk.

10 Q. Given that there are reports that he is in possession of
11 a knife, he has been attacking cars, he is walking
12 briskly; if you can't contain him then something else
13 needs to be done, yes?

14 A. Yes.

15 Q. Okay. Because otherwise there is an unacceptable risk
16 to members of the public, yes?

17 A. Something that needs to be done could include everything
18 from one extreme of withdrawing and observing, up to
19 physical engagement, and again, that would be the
20 decision of the tactical commander at the time.

21 Q. You gave example in your own testimony of a situation in
22 which you encountered an arterial bleed, as you

1 described it?

2 A. Yes.

3 Q. An arterial bleed is a very serious situation?

4 A. Yes.

5 Q. An arterial bleed left untreated will lead to

6 exsanguination within minutes, if not seconds?

7 A. Yes.

8 Q. Does that not demonstrate really quite graphically the

9 dangers of waiting?

10 A. Yes, because that was an actual risk that we were aware

11 of for preservation of life, which is always the

12 priority.

13 Q. Well, the fact that exsanguination would happen within

14 minutes or seconds means that when you arrived and there

15 was an arterial bleed, that wound had been inflicted

16 just very shortly before that?

17 A. Yes.

18 Q. If the police had arrived a minute earlier that wound

19 might have been avoided, yes?

20 A. It may have.

21 Q. And that's why you can't leave somebody who is reported

22 to be in possession with a knife to roam the streets?

1 A. That would be a decision for others than me. All I can
2 say is what the range of tactical options are and at the
3 end of the day it's an evidence-based risk assessment
4 using the NDM.

5 Q. Mr Woods has now accepted that it would have taken him
6 at least 20 minutes to get from Fettes to Hayfield Road.
7 I think you might have seen that.

8 A. Yes.

9 Q. He is noted as being en route at 7.21 am, yes?

10 A. Mm-hm.

11 Q. That's a minute after the police first arrived at
12 Hayfield Road, isn't it?

13 A. Yes.

14 Q. You can't really be saying that Mr Bayoh could sensibly
15 have been left uncontained for at least 20 minutes?

16 A. It would be the tactical commander's decision because
17 if, for example, the belief was that he had a handgun
18 and then we've got a confirmed firearms incident, there
19 would still be the issues there with sending unarmed
20 officers in, or withdrawing them, so again, it's looking
21 at the range of options, tactical options, weighing up
22 the risk and using the National Decision-Making Model to

1 take command.

2 Q. These officers are dealing with a dynamic,
3 rapidly-evolving situation, yes?

4 A. Mm-hm.

5 Q. There's a limited number of officers --

6 A. Yes.

7 Q. -- all of whom are unarmed?

8 A. Yes.

9 Q. The locus is a busy one --

10 A. Mm-hm.

11 Q. -- you can see that from the amount of cars that are
12 travelling. He is on a footpath that leads somewhere
13 presumably --

14 A. Yes.

15 Q. -- potentially in the vicinity of dog walkers, for
16 example.

17 A. Mm-hm.

18 Q. It's not really viable to contain him, is it, with the
19 number of officers they had?

20 A. Not with two officers, no.

21 Q. No. Not with four officers?

22 A. No, it would be difficult.

1 Q. Yes. Because the Inquiry heard evidence from
2 PC Alan Smith that in order to contain, a lot of support
3 would be required. Do you agree with that?

4 A. Yes.

5 Q. Sergeant Scott Maxwell said in order properly to contain
6 a subject on Hayfield Road approximately 20 officers
7 would have been needed. Do you agree with that?

8 A. No. I have been involved in containments with just four
9 or six officers. It all depends on the attempt and then
10 the person's response to that. Sometimes the physical
11 presence of four officers can psychologically contain
12 the person. Each individual is different; unless you
13 try, you don't know whether it's going to work or not.

14 Q. A reasonable officer looking at that location at that
15 time would reasonably have thought "It's going to be
16 very difficult to contain in these --"

17 A. Yes, yes.

18 Q. Do you agree with that?

19 A. Yes.

20 Q. Thank you. And then once we've got a situation where
21 the officer reasonably believes "I can't contain", then
22 it's a -- it's a fair enough tactical option to approach

1 Mr Bayoh, isn't it?

2 A. Yes, it's one of the tactical options, yes.

3 Q. And in that situation, if you have got gap closing, if
4 you've got failure to respond to lawful commands, and if
5 you are reasonably of the understanding he is in
6 possession of a knife, deployment of CS and PAVA is
7 again a reasonable option open to a reasonable officer?

8 A. It's one of the tactical options, yes.

9 DEAN OF FACULTY: My Lord, I think that exhausts those that
10 I have been permitted.

11 LORD BRACADALE: (Mic turned off).

12 Ms Caffrey, thank you very much for coming to give
13 evidence to the Inquiry. I shall be adjourning the
14 Inquiry in a moment and you will then be free to go.

15 Ms Grahame, I think we adjourn until Tuesday at
16 10 o'clock, is that correct?

17 MS GRAHAME: Yes, that's correct. The next witness is
18 scheduled for 10 o'clock on Tuesday.

19 LORD BRACADALE: Very well. The Inquiry will adjourn until
20 Tuesday at 10 o'clock.

21 (10.17 am)

22 (The Inquiry adjourned until 10.00 am on Tuesday,

6 December 2022)

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