



Inquest into the death of
Mark Duggan

REPORT TO PREVENT FUTURE DEATHS

His Honour Judge Keith Cutler CBE
Assistant Coroner

29 May 2014

Introduction

1. This is a report under Schedule 5 of the Coroners and Justice Act 2009 arising out of Mark Duggan's death. Paragraph 7 of that Schedule provides that where:
 - a. A Senior Coroner has been conducting an investigation into a person's death,
 - b. anything revealed by the investigation 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 continuation of such circumstances, or to eliminate or reduce the risk of death created by such circumstances,the Coroner must report the matter to a person who the Coroner believes may have power to take such action.

2. I was appointed Assistant Deputy Coroner on 9 January 2013. On 25 July 2013, by virtue of paragraph 3(3) of Schedule 22 of the Coroners and Justice Act 2009 Assistant Deputy Coroners automatically became Assistant Coroners. For the purposes of Schedule 5 I was given the powers of a Senior Coroner.

3. Before identifying my concerns it is necessary for me to set out:
 - a. The background to Mark Duggan's death;
 - b. The circumstances of his death;
 - c. The investigations which took place immediately after his death;
 - d. The gathering of evidence used at the Inquest;
 - e. The procedure of the Inquest itself; and
 - f. The process leading to this report.

The background to Mark Duggan's death

4. In 2011 the Metropolitan Police Service ("MPS") contained a unit called Trident. That unit was conducting an operation code-named Operation Dibri concentrating on a gang based in Tottenham called Tottenham Man Dem ("TMD"). Trident held intelligence to the effect that Mark Duggan was a prominent member of TMD. In early August 2011, within Operation Dibri there was a four day intelligence-led firearms operation focused on seizing illegally-held firearms in the hands of individuals within TMD. By 3 August 2011 the officers concerned had become particularly interested in Mark Duggan.
5. The firearms operation was supported by intelligence from the Serious Organised Crime Agency ("SOCA", now the National Crime Agency, "NCA"). The case officer at SOCA, for security reasons, was known to the Inquest by the cipher name of A10.
6. Prior to August 2011 A10 received intelligence that a male associate of Mark Duggan was holding weapons, to at least one of which Mark Duggan was seeking to gain access.
7. On 1 August 2011 A10 received further intelligence that the male associate holding the firearms stored them at the premises of an unidentified female. Due to the female being out at work each day, he would not be able to gain entry to the premises to retrieve the firearms until she returned from work some time mid to late evening.
8. On 2 August 2011 A10 received further credible intelligence that indicated that the male associate, who had become known as "Kevin", was likely to be Kevin Hutchinson-Foster. There was still insufficient intelligence to identify the address where the firearms were being stored or when they would be collected. A10 also received intelligence that Kevin Hutchinson-Foster would

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not be in London that evening so Mark Duggan would not be able to meet with him to collect a firearm.

9. On 3 August 2011 A10 received further intelligence that Mark Duggan still wished to collect a firearm from the male, who A10 now firmly believed to be Kevin Hutchinson-Foster. There was still insufficient intelligence to identify the address where the firearms were being stored by the female associate, although it was known the address was probably in the Leyton area. The intelligence indicated that Kevin Hutchinson-Foster intended to travel out of London later that evening. A10 subsequently received intelligence that indicated that Mark Duggan would not be in a position to collect a firearm as he was attending a family barbeque. The intelligence throughout this period indicated that when Mark Duggan collected a firearm he would store it at an unidentified location.
10. From the intelligence the MPS received from SOCA on 3 August 2011 they assessed that Mark Duggan wanted to take possession of a firearm from Kevin Hutchinson-Foster later that evening. Mr Hutchinson-Foster had indicated to Mark Duggan that he would not be able to get access to the firearms until after 9pm when his female associate returned home.
11. A Trident officer conducted some research regarding "Kevin" on 2 August 2011. She was able to find Kevin Hutchinson which she later amended to "Hutchinson-Foster". The officer made a note that Kevin Hutchinson was released from prison on 8 April and was under supervision until 9 July 2013. However, she did not contact the Probation Service or identify a current address or telephone number for Mr Hutchinson-Foster.
12. The Senior Investigating Officer ("SIO") of Operation Dibri, Mr Foote, gave evidence at the Inquest that it should have been possible to determine the location of Mr Hutchinson-Foster. However, they had specific intelligence

that a person was going to take possession of a firearm but they did not know where that firearm was. They had finite resources in relation to following people and had an armed team to deal with Mark Duggan. They could have put resources into trying to find and follow Mr Hutchinson-Foster, but taking those resources would have meant a loss of their capability and flexibility to stick with the intelligence where they had an identified individual whom the MPS believed was going to take possession of the gun. Mr Foote decided he did not want to put surveillance on Mr Hutchinson-Foster to follow him to the point where he was to meet Mark Duggan as Kevin Hutchinson-Foster might not have been ready to hand over the firearm. Mr Foote believed it would be an ideal scenario to have seized both Mark Duggan and Mr Hutchinson-Foster at the time the gun was handed over. However, Mr Foote thought that the best option at that time was to have Mark Duggan followed as he was to receive the gun, thereby enabling the MPS to use their limited resources to the greatest effect.

13. A10 gave evidence that he had a small research team that had access to MPS databases. His team were not tasked to attempt to identify Mr Hutchinson-Foster or the female associate as he said that was a matter for Trident. There was some research conducted at SOCA in relation to Mr Hutchinson-Foster but A10 was not in a position to give this evidence publicly.
14. A strategy was developed of keeping Mark Duggan under surveillance by officers from a unit called SCD11 and then, once he had a gun, to recover it. This involved armed officers from a unit called CO19 to detain Mark Duggan in order to arrest him. This type of strategy was called MASTS – mobile armed support to surveillance.
15. On 3 August Mark Duggan was put under such surveillance, but the SCD11 officers lost sight of him.

The circumstances of Mark Duggan's death

16. On the evening of 4 August 2011 officers from SCD11, Trident and CO19 were due to assemble at police premises in Wood Green, code-named 'Quicksilver.'
17. One Trident officer, known for the purposes of the Inquest as ZZ17, was in charge of handling the intelligence at the material times. On 4 August 2011 he was at Quicksilver with several Trident officers when he learned about the intended hand-over of the gun in the Vicarage Road area of Leyton. He subsequently received intelligence about that having taken place. Also, he had intelligence that Mark Duggan was thought to be going to Broadwater Farm with the gun.
18. Trident officers were able to get to the Vicarage Road area before Mark Duggan. They identified the minicab he was in when it arrived, and followed it when it left. The CO19 officers had to race to get to Quicksilver and then to get behind the minicab. They did that shortly before Ferry Lane, and they decided to conduct the stop at that point.
19. This was intended to be something formally called an enforced vehicle stop, commonly known as a "hard stop". It involved three CO19 cars, referred to as Alpha, Bravo and Charlie, each containing three armed officers. Behind these three cars was a control car.
20. The Alpha car overtook the minicab, moved in front of it and braked sharply. The Bravo car drove alongside the offside of the minicab, to prevent it overtaking the Alpha car, and the Charlie car drove up to the rear of the minicab. As the minicab came to a halt, Mark Duggan exited the minicab onto the pavement.

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21. The officers left their cars. Two of them, who gave evidence as V53 and W70, left the Charlie car, and got onto the pavement to the rear of the minicab. V53 was armed with an MP5 carbine, which is a short rifle of the kind armed police have in airports. He fired twice in quick succession. No-one else fired a gun.
22. One of the shots hit Mark Duggan on the inside of his right bicep, and did not cause a fatal wound. The other went into his chest and out of his back. That shot hit his aorta, the main artery into which the heart pumps blood. The damage to it was catastrophic and resulted in a fatal wound.
23. An officer from the Alpha car, W42, was behind Mark Duggan. One of the two shots fired by V53 travelled through Mark Duggan's body and hit W42's radio, worn in a holster near his left armpit.
24. At figure 1 is a photograph of the cars in place after the shooting (the Alpha car was driven onto the pavement shortly after the stop) :



25. A number of officers, but principally V53, performed first aid on Mark Duggan. They did that with conspicuous skill and care but nonetheless he was pronounced dead at the scene by a doctor.

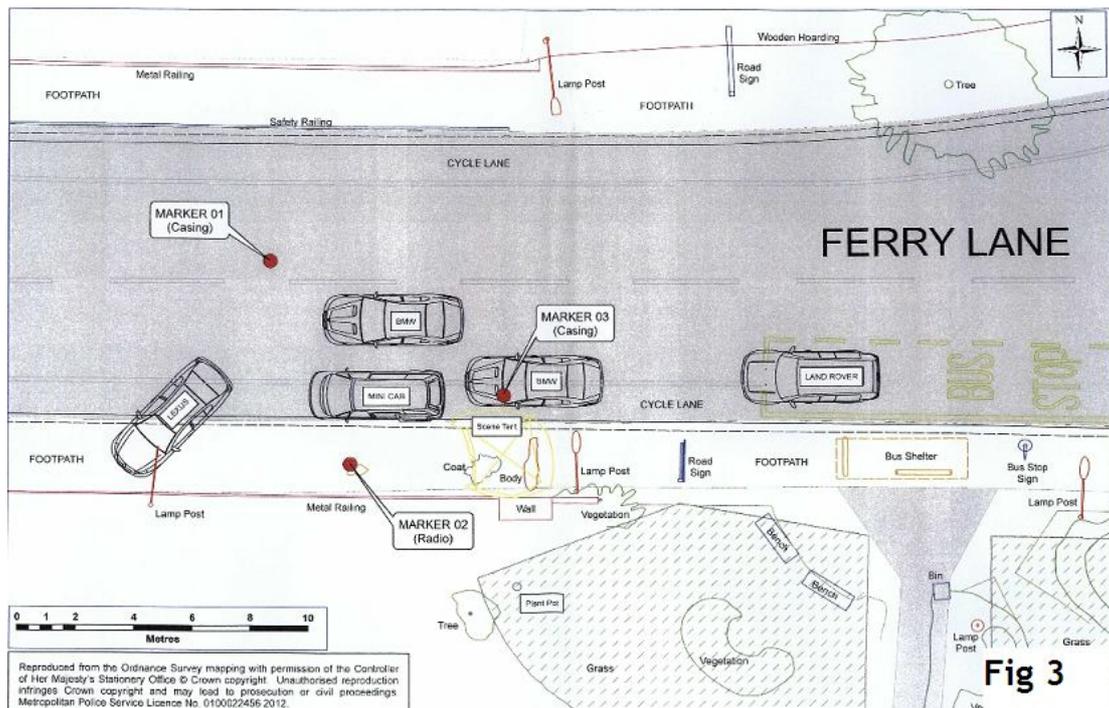
The investigations which took place immediately after Mark Duggan's death

26. The operation then came to a halt. No attempt was made to retrieve other guns from Hutchinson-Foster, who was only arrested months later.

27. Immediately after the shooting, only the officers involved in the operation were at the scene. No pistol could be found next to or underneath Mark Duggan, but officers gave evidence that they found a pistol wrapped in a sock on the grassland, the other side of the fence from Mark Duggan's body. At figure 2 is a photograph of the gun in the sock. Figure 3 is a plan of the scene. By the stage it was compiled, a plant pot had been placed over the gun:



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28. The MPS handed command of the investigation to the Independent Police Complaints Commission ("IPCC") very shortly after the incident.

29. Initially, it was thought that the round which struck W42's radio was a non-police issue bullet. From this it was inferred that Mark Duggan had fired it and that is what the press were told.

30. As can be seen from figure 4 a shoebox was inside the minicab. It was about one foot square. The evidence, accepted by the jury, was that Mark Duggan collected it from Mr Hutchinson-Foster, in Leyton, although the latter denied that.



31. All those police officers at the scene who saw anything relevant made notebook entries after their return to their bases. They did not give statements until 7 August 2011. Prior to making their notebook entries, the CO19 officers were seen by a doctor, a Police Federation representative and a solicitor. They were warned against conferring, but no step was taken to prevent them from doing so. On 7 August the CO19 officers sat together when writing their statements. Again, they were warned against conferring but were not prevented from doing so. This was consistent with normal practice and guidance issued by the Association of Chief Police Officers ("ACPO").

32. The Home Office pathologist conducted the post-mortem examination of Mark Duggan. The Duggan family then commissioned a second post-mortem examination by a second pathologist.

Gathering of evidence used at the Inquest

33. The IPCC investigated the shooting and the MPS investigated the criminal offences relating to the gun found on the grass. The latter investigation led in due course to Mr Hutchinson-Foster being convicted of supplying the gun to Mark Duggan. The MPS provided the IPCC with witness statements, and the IPCC in turn conducted witness appeals and interviewed potential eye-witnesses. The IPCC commissioned experts in various fields including ballistics, gunshot trauma, DNA, fibre transfer, gunshot residue, toxicology, fingerprints and blood staining. CCTV footage was gathered from a number of sources and an expert was commissioned to synchronise the footage.

34. The SIO of the IPCC was permitted to see all of the intelligence relating to the planning of the MPS operation. He commissioned a Superintendent from Northumberland Police to prepare a report about that planning. However, she was prohibited by statute from seeing all of the intelligence and was only able to prepare a provisional report.

The procedure of the Inquest

35. As Mark Duggan's death involved a police shooting it was bound to lead to an inquest with a jury. The Coroner for the area in which the death occurred was prohibited from seeing certain of the intelligence materials and that is why a Judge needed to be appointed to conduct the Inquest.
36. The IPCC was to provide its report and the underlying evidence to be called at the Inquest in the usual way. In the event the IPCC report was not ready to be finalised until very shortly before the Inquest was due to start. However, the IPCC did provide documents, witness statements and expert reports which it had gathered and they were used as the starting point for the evidence put before the jury.
37. I had the assistance of a team. It commissioned further expert reports and with its assistance I decided which witnesses to call. Among those witnesses was a man who came to be known as Witness B. At the time of the shooting he lived in a flat overlooking Ferry Lane. He was alerted to the shooting and he captured some of its aftermath using the camera on his mobile phone and a camera. He provided the footage to the BBC and, with the benefit of my powers of compulsion, Witness B was persuaded to give evidence to explain what he had seen and heard. Figure 5 is a still from the footage which he took. His evidence was plainly significant. Despite the IPCC's call for witnesses and notwithstanding a similar exercise undertaken on my behalf, I very strongly suspect there were other eyewitnesses to the shooting, but none came forward.
38. Between 16 September and 5 December 2013 the jury and I heard from 93 witnesses, with the statements of a further 23 being read.



39. V53's consistent account was that Mark Duggan got out of the minicab and had a gun shaped object contained in a sock held in his hand. Mark Duggan began to bring the gun into a position where it was posing a threat, and V53 shot him in self defence. He said he thought that shot hit Mark Duggan's chest. But, he said, Mark Duggan kept bringing the gun into the aim, so he shot him again in self defence. W70 was beside V53 and he gave some support to that account by saying that he saw a gun in Mark Duggan's hand immediately before he was shot. Neither officer could say how the gun got to where it was later found on the grass.

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40. All of the evidence gathered by the IPCC and the MPS concentrated on, but did not resolve, the vexed and very important issue of what precisely happened immediately before the fatal shot was fired.
41. There was no contemporaneous video or audio coverage of the incident. The police cars had incident data recorders but the MPS says that no data from them is available. No relevant police radio transmission was recorded.
42. In the circumstances, it was necessary to attempt to reconstruct Mark Duggan's movements and what happened between the minicab being brought to a halt and Mark Duggan's death.
43. To that end the jury had to infer a good deal from what was later discovered. For example:
 - a. When Mark Duggan's clothes were searched after the shooting his 'phone was apparently found in a pocket of his jacket, though precisely which pocket, and whether it was in any way fastened was not recorded;
 - b. He was right handed;
 - c. The arm wound was more or less horizontal, but the chest wound was about 45 degrees downwards and from his right to his left;
 - d. The bullet-holes in Mark Duggan's jacket caused by the shot which led to the chest injury were on the front lower left;
 - e. One of the bullets struck W42's radio. The other was found in a bag inside the minicab;
 - f. Neither wound was instantly incapacitating, but the chest wound would have been fatal within a few seconds;
 - g. The gun was found between about 10 and 20 feet away from where Mark Duggan was shot, over a fence;
 - h. Shortly after the shooting the shoe-box was inside the minicab, with its lid open.

44. In order to assist the jury in its task:

- a. The jury, legal representatives and I visited Vicarage Road and Ferry Lane at the beginning and again at end of the Inquest. On the second visit the police cars and a replica of the minicab were placed in the positions they were in at the time of Mark Duggan's shooting;
- b. A replica of the pistol found on the grass and made-safe versions of police firearms were made available to witnesses and the jury;
- c. Mark Duggan's jacket was made available to experts and a replica of it was made available to the jury and to experts. The experts used a mannequin in a successful endeavour to reconstruct the tracks of the two bullets which struck Mark Duggan and to ascertain his stance when shot;
- d. The mobile phones Mark Duggan had with him in Ferry Lane were made available to the jury;
- e. The training of firearms officers was explained in evidence together with a demonstration of a decision-making exercise;
- f. Every witness who could conceivably provide relevant evidence was called or their statement read. A list of those witnesses is Appendix 1; and
- g. The jury were provided with a bundle of maps, plans and photographs at the beginning of the Inquest. Counsel on my behalf presented them with an overview of the evidence they were likely to hear and the issues they were likely to need to consider. The jury received key documents as they were introduced in evidence.

45. SOCA made available to me the intelligence which it had shown to the IPCC's SIO. With SOCA's cooperation much of that evidence was summarised and the summary was presented to the jury in a way which did not disclose its source. I was required by statute to restrict lines of questioning.

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46. At the conclusion of the evidence I invited submissions about the questions which should go to the jury. After hearing argument I decided to pose a number of questions designed to elicit narrative conclusions and also to leave the conclusions of “unlawful killing”, “lawful killing” and “open”.
47. The results of their deliberations are set out in Appendix 2. In short they were critical of the planning (question 1). They found that Mark Duggan had collected the gun (question 3) but did not have it in his hand when shot (question 5), having thrown it away as soon as he opened the minicab door and before he exited the minicab (question 4). They found that his killing was lawful.

The process leading to this report

48. During the course of my work on this Inquest the materials which I saw and the evidence which I heard caused me a number of concerns of the type which I considered Schedule 5 of the 2009 Act required me to include in the report.
49. My approach to the duty set out in Schedule 5 is as follows:
- a. It only arises if I have a concern that circumstances creating a risk of other deaths either will occur or continue to exist;
 - b. If I have such a concern I must deliver a report if in my opinion action should be taken to prevent those circumstances occurring or continuing, or to eliminate or reduce the risk of death created by the circumstances;
 - c. I should construe the duty broadly. The purpose of the provision is to ensure that coroners consider the possibility of future deaths and to make a report with a view to avoiding them. The provision was designed to be compliant with Article 2 of the ECHR. That Article creates a positive obligation to safeguard lives. Further, it requires deaths such as Mr Duggan's to be effectively investigated for the purpose, among others, of learning lessons with a view to avoiding other deaths;
 - d. My concerns do not have to relate to anything which was causative of Mr Duggan's death. Further the phrase, "circumstances creating a risk of other deaths" does not mean I must be satisfied that those circumstances will arise or that they will be the sole cause of other deaths. If I have reason to believe that something I have seen or heard may contribute to future deaths then I should go on to consider whether, in my opinion, action should be taken;
 - e. Where my concern relates to investigative steps I appreciate that they may not prevent future deaths immediately. So if person A is killed as a result of contact with the police in 2015 and the investigation of

that death is improved as a result of a report by me, that may prevent the death of person B, who might subsequently have died. I have borne in mind the issue of the remoteness of the effect of any report when considering whether any concern of mine should, in my opinion, lead to action being taken.

50. I gave the interested persons notice of the broad circumstances which were causing me those concerns. I then received helpful representations about them, for which I am grateful. After considering those representations I was left with a number of concerns which, in my opinion called for action to be taken to prevent the occurrence or continuation of those circumstances, or to eliminate or reduce the risk of death created by such circumstances.
51. In order to ensure fairness I gave those affected by those concerns a further opportunity to comment on them, and I have taken their comments into account. I am now bound to report my concerns to persons who I believe may have power to take the appropriate action.
52. What follows does not purport to provide solutions to my concerns. My duty is to make general recommendations. My primary aim is to set them out, to identify the body which seems best placed to find a solution, and to call for responses. It must be for those to whom my concerns are addressed to give detailed consideration about how any recommendation should be implemented. I expect responses within 56 days.

Concern 1: The MPS and SOCA could have reacted better to developing events and used their joint intelligence resources better.

53. The first question addressed to the jury was whether, in the period from mid-day 3rd August to when state Amber was called at 6.00pm on 4th August 2011, the MPS and SOCA did the best they realistically could have done to gather and react to intelligence about the possibility of Mark Duggan collecting a gun from Mr Hutchinson-Foster? If not, what more could have been expected of them?
54. The jury answered in the negative, and went on: "With respect to the Trident investigation, there was not enough current intelligence and information on Kevin Hutchinson-Foster. There was no emphasis on exhausting all avenues which could have affected reaction and subsequent actions. - Insufficient information regarding any relevant intelligence gathering or activity on Mark Duggan or Kevin Hutchinson-Foster between 9pm on 3 August (after surveillance lost him) until new intelligence came in from A10 on 4 August."
55. I have the same concern, and I do so with the benefit of having seen the intelligence records. I am unable to say more about those records, but I intend to write a letter to the appropriate authority with my full concerns. What I say below is therefore restricted to what I can say based on the evidence which was given openly.
56. I repeat that it was an important objective to get guns off the streets, and the intelligence was that Mr Hutchinson-Foster was known to be storing guns somewhere for Mark Duggan. The MPS either had an address and mobile telephone number for him or was capable of finding them, as he was on parole. I am unable to say what efforts were made by SOCA to narrow it down or whether those efforts were exhaustive.

57. I am therefore concerned that there may have been the opportunity for better liaison between the MPS and SOCA, and for more focus on intelligence about Mr Hutchinson-Foster, with a view to locating the guns prior to Mr Duggan collecting one. I am left with the clear concern that SOCA did no more than pass on the intelligence it received and did not develop it or suggest ways in which the MPS could do so, in order to get guns from the girlfriend's address in Burchell Road. The MPS did not react to the unfolding situation so as to review their strategy of waiting for Mark Duggan to obtain a gun before stopping him. The MPS and SOCA did not devise a strategy which focussed on Mr Hutchinson-Foster and the guns and which was capable of leading to them being seized before one was collected by Mark Duggan.

58. No witness from the MPS or SOCA acknowledged any deficiency in planning or the use of intelligence. I am satisfied that, if the circumstances were repeated, they would act in the same way. I do not say that the matters which concern me caused or contributed to Mr Duggan's death. However, if lessons are not learned I believe that circumstances creating a risk of other deaths will occur, or will continue to exist, in the future.

59. This concern is directed to the MPS and NCA.

Concern 2: Comprehensive accounts were not taken from police witnesses at the first possible opportunity

60. A number of CO19 officers were very close to Mark Duggan when he was shot, in particular those known as V53, W70 and W42. Of those, V53 and W70 were together to Mark Duggan's front and W42 was close behind Mark Duggan. Only V53 was asked to give an account at the scene. It was written down and was signed by him. He and the other armed officers then returned to their base at Lemn Street, save for W42, who first went to hospital to be medically checked. At Lemn Street the officers were subjected to the "post incident procedure". They made brief entries in the evidence and action books after taking legal advice. They then went home and only on 7 August did they re-gather to compile statements. They did that at Lemn Street, over the course of about eight hours. They were warned not to confer about their recollections prior to making their first brief entries and again prior to making their statements.

61. The first accounts of the officers were universally bland and uninformative. For example, no officer put in how many shots they had heard. All provided a general indication such as "a number of shots".

62. Some officers also did not include relevant detail. For example in his full statement W70 said he was standing next to V53 when he fired. W70 said he saw Mark Duggan holding a gun which he brought out of his jacket. W70 said he would have fired at Mark Duggan if he had his gun ready. However, in his Evidence and Action Book ("EAB") he did not record that he saw the gun.

63. W70's evidence to the inquest was that his legal adviser told him not to put detail in his initial account. Consequently, he did not mention the gun because it was a detail. His evidence was that he heard two shots but did not put that in his notebook because his training was to be careful about providing a specific number of shots. W70 kindly waived privilege over the

conversation which he had with his solicitor. That solicitor's very full note of the conversation supported what W70 said.

64. I am concerned that fatal police shootings are not as rigorously examined as they could be and that doubts about the accuracy of police accounts are not minimised. Lessons learned after a death should be as complete as possible. A number of aspects of the process as it applied in this case caused me concern quite apart from the bland nature of the first accounts. Firstly, V53 was regarded as a "principal officer" without there being any apparent decision being made about who was, and who was not, in that category. For example, W70 was not included in it, yet when he gave his full account it was evident that he had decided to fire, and W42 was included despite not having decided to fire. Secondly, there was considerable scope for conferring before any account was given. Thirdly, prior to even those accounts being given, the officers spoke to a Police Federation representative and to a solicitor. That solicitor was plainly acting in the best interests of his clients. Nothing I say should be seen as being critical of him. Fourthly, the delay in taking statements created a real risk of evidence being lost. Finally, the fact of the officers gathering in a room together for many hours to compile statements created a perception of collusion.

65. What the MPS did was in accordance with national practice, much of it sanctioned or encouraged by ACPO. I believe it may not be the best possible practice. Indeed, I understand that the MPS has already strengthened the non-conferring warning, and a senior officer would now be present in the Post Incident Management Suite with a view to ensuring that the process is open and transparent.

66. My concern is that not all witnesses to a fatal shooting are asked to give full statements as soon as possible after the event, giving a detailed account of what they saw. I appreciate that ACPO guidance recommends that at least 48

hours should elapse before full accounts are taken from police officers, yet it was considered proper to ask V53 at the scene about his reasons for shooting Mark Duggan. A civilian who uses lethal force in defence of himself or another would not be given 48 hours to compose himself prior to being questioned by police, and it is not immediately obvious why a trained firearms officer should require what a civilian is not given. I have been shown a Home Office Study Paper which lends some support to the practice of allowing a period between a traumatic event and a statement being given. That paper does not purport to set out the evidence upon which that notion is based and it is inconsistent with another paper by Dr William Lewinski which I was shown. I do not know whether enforced delay is justified on the totality of research available.

67. Officers concerned with this incident were examined by the Forensic Medical Examiner ("FME") prior to giving their first accounts. It seems to me that the issue whether an officer is in a fit state to give an account could primarily be a matter between that officer and the FME.
68. I am concerned that witnesses who perceived a threat from the person who was shot did not set that out in their statements.
69. I am also concerned about whether there is any purpose in seeking to distinguish between "principal officers" and other police officers save that, where there is any reason to caution an officer, then of course that must be done.
70. I understand that witnesses to a traumatic incident such as a fatal shooting may need careful handling, and that is particularly so of an officer who has used lethal force. However, thought should be given to any intervention by Police Federation representatives prior to the full account being recorded to be restricted to welfare considerations.

71. The issue whether opportunities for police officers conferring after a fatal shooting should be minimised is controversial. I am also conscious that the IPCC has issued a consultation document which touches on some of these issues.

72. I therefore invite ACPO and the MPS to deal with what I have said when they respond to the IPCC consultation. I ask that they send me a copy of their response and, to the extent that they do not deal with my concerns in that response, to respond separately to me.

Concern 3: The IPCC had primacy at the scene but did not have the resources to conduct all relevant activities there

73. Under paragraph 14B of Schedule 3 to the Police Reform Act 2002 it is the statutory duty of the Chief Officer of the relevant police service to obtain and preserve evidence in relation to a death involving police. However, the IPCC has the obligation to investigate independently. Thus, in this case, the IPCC was involved very quickly after Mark Duggan was shot, and both it and the MPS recognised that the IPCC was in charge of the investigation into the shooting. The IPCC sent investigators to the scene and they were consulted about steps taken there. However, all those actually conducting the work, such as searches, the seizure and labelling of evidence and initial contact with prospective witnesses and with Mark Duggan's family, were employed by the MPS. The IPCC does not have its own crime scene managers. There was a period in the morning of 5 August in which no crime scene manager was present at the scene at all. The SIO of the IPCC initially went to the site of the Post Incident Procedures rather than to the scene itself. He sent a Deputy Senior Investigator to the scene, and subsequently visited it himself.

74. The management of the scene was the subject of a good deal of evidence before the jury. The box which is said to have contained the gun was apparently moved around in the minicab; the seats in the minicab were moved around (the middle row of seats are capable of either facing forwards or backwards) before being examined for blood-stains; and the minicab itself was moved to a car pound before a full forensic examination was carried out.

75. Much of what happened at the scene was less than ideal. The significance of the box in the minicab in which the gun had been transported was not appreciated, and in the course of it being moved about a risk was created that evidence could be compromised. The interior of the minicab was searched without regard for the evidential significance of bloodstains and there was a failure of communication about what interior furnishings had

been moved. The minicab itself was removed from its position on the road, brought back, and then removed again before full searches were conducted. The provenance of a key exhibit, Mark Duggan's mobile 'phone, was not fully recorded. I was left with an impression of some uncertainty about precisely what was being investigated, on whose behalf, for what purpose, and by what means.

76. As I set out above a report was initially circulated to the effect that Mark Duggan had fired a shot because there was at that time some reason to believe that W42's radio had been struck by a non police issue round. That was later discounted. The report was inconsistent with the first account given, at the scene, by V53.
77. That inaccurate account and its later withdrawal fostered suspicion of the MPS and the IPCC which continued throughout the inquest hearings. Such suspicion may have contributed to reluctance on the part of civilian witnesses to come forward. As I have said, that is plainly undesirable if fatal shootings are to be fully investigated so that lessons can be learned.
78. I am concerned that no scene of a fatal shooting should be the subject of any confusion about the purpose of the investigation, or about what should be done to further that investigation. There is a tension, in a case such as this, between the duty of the MPS to obtain and secure evidence at the scene, its position as being under investigation, and the IPCC's obligation to investigate independently. The pragmatic approach adopted of the MPS consulting the IPCC about what should happen may not always resolve that tension. My primary concern is whether that position should persist. If it does then I am concerned that the police service has the practical control of many aspects of the scene and what happens there despite being under investigation, without the public realising that the investigation does not have full independence which the IPCC's role appears to safeguard.

79. If the position is to remain, I think it may be helpful to consider whether there should be a formal transfer of responsibility from police to IPCC at the scene of a death only once the police duty to obtain and preserve evidence there has been discharged.

80. This concern is addressed to the IPCC, the Home Secretary and the MPS.

Concern 4: The scene of the fatal police shooting was not video recorded

81. There was a significant issue about how and when the gun found some distance from Mark Duggan's body got to that location. A further issue arose about how and by whom it was found there. The failure to record where Mark Duggan's mobile 'phone was found created difficulties. Much of this, and the distrust which it fostered, could have been avoided had the scene been video recorded in the period between the shooting and the arrival of a police helicopter. Armed officers were anxious to video record the first-aid that was (assiduously) given, so the availability of a camera and the manpower to operate it was not a problem, yet no thought was given to ensuring that the wider scene was captured until the helicopter arrived to begin overhead filming.

82. I believe that it is important to minimise distrust in the police in connection with fatal shootings, as that distrust can then permeate the entire investigation which follows and may mean that civilian witnesses will not come forward. That plainly has the capacity to prevent lessons being learned which could prevent deaths in the future. In this instance there was a significant failure of witnesses to make themselves known and to give evidence. Of course I cannot say why that was in every case, but one witness whose attendance was arranged with great difficulty was Witness B and he said that his reluctance stemmed from distrust of the police. Any such reluctance is inimical to the avoidance of future deaths.

83. This concern is addressed to the MPS, the IPCC and ACPO.

Concern 5: The planned operation to seize weapons was not pursued after the fatal shot was fired

84. As I have said, one of the principal purposes of the operation which led to Mark Duggan's death was to seize illegally-held firearms and it was believed that at least two were held by Mr Hutchinson-Foster at premises occupied by a girlfriend which transpired to be in Burchell Road. Yet, once Mark Duggan had collected one gun from him no further thought appears to have been given to seizing the other gun or guns.
85. It is understandable that all attention was focused on Mark Duggan after the collection, as it caught the MPS by surprise and the SCD11 surveillance team had to scramble to catch up with the CO19 officers. Of course, those officers who were then involved in the hard stop could not then be expected to perform further duty. However, there were senior officers responsible for planning, Trident officers, and SCD11 officers armed for their own protection who were available to further the purpose of getting guns off the street.
86. I do not know whether fully-developed intelligence would have permitted the Burchell Road address to have been identified on 4 August with sufficient precision for it to be raided or in sufficient time for a search warrant to be obtained. My concern is that no consideration appears to have been given to the prospect. A starting point should have been that one of the Trident officers saw the minicab turn into Burchell Road for the handover, and that was a short cul-de-sac.
87. This concern is addressed to the MPS, the IPCC and ACPO.

Concern 6: The armed police operation was not recorded after State Red was called

88. There are a number of ways in which the important stages of an armed operation can be recorded. For example, the cars involved in a MASTS operation can be fitted with incident data recorders ("IDR") which plot movement against time. Further, CO19 officers can wear video cameras.
89. The combination of the IDR and some footage which captured sound allowed the Azelle Rodney Inquiry to reconstruct significant events so as to find facts and learn lessons. As I have said, no IDR data has been made available to me. The MPS has been consistent in saying that there was none to disclose. It tells me that the relevant cars were fitted with an older generation of IDR which registered only significant incidents. I am aware that in the Azelle Rodney Inquiry all CO19 cars involved in the "hard stop" in 2005 registered their movements for some time before and after the stop. Those vehicles included a "Delta" car which was not directly involved in stopping the subject vehicle. I infer that the degree of braking or steering involved in that stop was such a significant incident as to register on the IDR in that car.
90. I have no reason to believe that the cars involved in stopping the minicab containing Mr Duggan were subjected to less braking or steering forces than the Delta car in Mr Rodney's stop. I am therefore concerned that the cars involved in stopping the minicab containing Mr Duggan had data available to be downloaded or that the technology was not as effective in 2011 as it was in 2005. I expect to be told the actual position. I am told that current MPS vehicles would provide data, but I do not know whether that is so for all police services which conduct similar armed operations.
91. Had V53, W42 and W70 been wearing video cameras the jury would have known precisely what happened around the time Mark Duggan was shot. The

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MPS has announced that it will deploy video cameras in future, but I am not aware of the procedures in any other police service.

92. In the circumstances I address these concerns to the MPS and ACPO.

Concern 7: The IPCC does not have a protocol agreed with the Chief Coroner, ACP and the CPS

93. A number of steps are taken when someone dies at the hands of a police officer. The police service has statutory obligations. The IPCC takes charge of the investigation. A report may go to the CPS to consider prosecutions. The local Coroner comes under a duty to investigate. The IPCC report may precede the inquest, or may not. It may be necessary for the inquest to be adjourned pending criminal proceedings. It is obviously important that everyone concerned in those exercises should liaise.
94. There is a Memorandum of Understanding between the Crown Prosecution Service, the Association of Chief Police Officers, the Chief Coroner and the Coroner's Society of England and Wales dated June 2013 which deals with the interplay between inquests and potential criminal proceedings. The IPCC is not a party to it. The statutory provisions (in Schedule 1 to the Coroners and Justice Act 2009) for adjourning the inquest to give priority to a prosecution make no reference to the IPCC. There is, however, a Memorandum of Understanding between the Coroners Society of England and Wales and the IPCC dated 1 April 2010 which deals with the interplay of inquests and IPCC investigations and which touches on the interplay between inquests and prosecutions.
95. With a view to coroners holding effective inquests as soon as practicable I address this concern to the IPCC and ask it to consider approaching the Crown Prosecution Service, the Association of Chief Police Officers, the Chief Coroner and the Coroner's Society with a view to integrating its memorandum with theirs.

Concern 8: The IPCC and Counsel to an inquest do not have access to all intelligence

96. As I have indicated, there was intelligence relevant to Mark Duggan's death which the jury could not see. Exceptionally, the Senior Investigating Officer at the IPCC was permitted to see it. However, a senior police officer in an independent police service, from whom the IPCC thought it necessary to get an expert opinion, was not so permitted. That prevented her from forming a fully-informed view about the planning of the operation. I would have liked to put her report before the jury and to call her to give evidence but did not do so because she had not seen the intelligence picture. Furthermore, the IPCC is plainly being hampered in its task by not having the benefit of her expertise.

97. Further, although I was allowed to see the intelligence, my leading Counsel was not, despite holding the highest security clearance.

98. These limitations not only give rise to understandable suspicions in the minds of those not party to the intelligence but also plainly create a risk that an intelligence-led operation which results in death will not be fully investigated so that lessons may be learned.

99. This concern is addressed to the Home Secretary.



His Honour Judge Keith Cutler CBE
Assistant Coroner
Resident Judge and Recorder of Winchester

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Appendix 1

<u>Surname</u>	<u>First name</u>	<u>Description</u>
A10	-	Officer working within SOCA dealing with the intelligence passed to ZZ17
Allen	Christopher	Uniform officer who attended the scene and looked after Taxi Driver
Arkless	Gary	Expert who specialises in linking mobile telephones to cell sites
Asif	Mohammed	He worked in the taxi office that Mark Duggan called
B17	-	SCD11 officer involved in the firearms operations
B22	-	SCD11 officer involved in the firearms operations
Barber	Michael	Tested the pistol found on the grass for fingerprints
Barter	April	Paramedic who attended Mark Duggan
Belfield	Andrew	MPS officer who investigated the pistol-whipping by Mr Hutchinson-Foster
Bell	Andrew	Forensic scientist who analysed the blood staining on and in the taxi
Biggs	Darren	Civilian who was at the scene
Boswell	Stephen	Uniform officer who attended the scene and managed cordons
Bowden	Mark	Gunshot residue expert
Brennecke	David	Paramedic who attended Mark Duggan
Burchett	Clive	Imagery expert who has analysed the video footage
Christiansen	Paul	CO19 officer who attended the scene and stood over the gun found on the grass
Clasper	Jonathan	Orthopaedic surgeon who analysed the effect of the wounds Mark Duggan sustained
Clow	Luke	Civilian who was at the scene
Cockram	John	Crime Scene Manager who took over from Patricia Larrigan
Cundy	Stuart	Commander of Trident who attended the scene and assumed initial responsibility
Cunningham	David	Staff at the car pound who signed for the taxi on 5 August 2011
Dempsey (ZZ42)	Paul	Trident officer who arrived at the scene after the shooting
Dobinson	Simon	Chief Firearms Instructor for the MPS
Dowe	Shaun	Post Incident Manager at scene for SC&O19
Drzewiecki	Emil	Civilian who was at the scene
Duggan	Marlon	Mark Duggan's brother who was on the telephone to Mark Duggan shortly before his death
Duggan	Pamela	Mark Duggan's mother
Elliott (W55)	Brian	CO19 officer duty officer who attended the scene after the shooting

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<u>Surname</u>	<u>First name</u>	<u>Description</u>
Ely-O'Carroll	Kieran	Civilian who was at the scene
Evans	Neil	Post Incident Manager
Faulkner	Steve	MPS officer who investigated the pistol-whipping by Mr Hutchinson-Foster
Fitzgibbon	Paul	Specialist Search Officer who searched the scene on 5 August 2011
Foote (ZZ21)	Mick	A Trident officer who was the SIO for Operation Dibri
Forrest	Robert	He commented on Mr Slaughter's findings
Fowler	Jim	CO19 officer who attended the scene and stood over the gun found on the grass
Gibson	Dan	CO19 officer who attended the scene and stood over the gun found on the grass
Glazebrook	William	HEMS Doctor who attended Mark Duggan
Goldsmith	Nicholas	Recovery driver who picked up the taxi on 5 August 2011
Green	Richard	Officer who dealt with the firearm found on the green
Grodentz	Norman	Civilian who was at the scene
Hamadouche	Nino	Civilian who was at the scene
Hannigan	Christopher	POLSA team leader
Hanrahan	Finbar	Civilian who was at the scene
Hartshorn	Steve	Police Federation representative who provided support to the CO19 officers involved in the shooting
Heley	Nicola	IPCC Investigator who attended the scene
Hewitt	Martin	Officer providing an overview of the challenges faced by SC&O19
Hodge	Colin	Recovery driver who picked up the taxi on 5 August 2011
Hughes	Gareth	Officer who dealt with the firearm found on the green
Hutchinson-Foster	Kevin	Man convicted of providing the gun to Mark Duggan
Johnstone	Neil	IPCC Intelligence Analyst
Jones	Gareth	IPCC Investigator who attended the scene
Khera	Saranjeet	Forensic scientist who analysed DNA
Kirkpatrick	David	IPCC Investigator who attended the scene
Landais	Jacqueline	Analysed the fingerprints on the shoebox and gun
Larrigan	Patricia	Crime Scene Manager
Lilburn	Katie	DPS officer investigating the allegations in the anonymous letter
Lucas	Brian	Post Incident Manager
Mallon (Z50)	Fiona	Strategic Firearms Commander for the firearms operation

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<u>Surname</u>	<u>First name</u>	<u>Description</u>
Martin	Paul	Staff at the car pound who searched the taxi
McGuire	Valentine	Civilian who was at the scene
Mir	Ajaz	He worked in the taxi office that Mark Duggan called
Miss J		Civilian who was at the scene
Miss J's Daughter		Civilian who was at the scene
Mugglestone	Paula	Search advisor at the scene on 5 August 2011
Nash	Tony	Post Incident Manager
Nicholls	Scott	Specialist Search Officer who searched the scene, particularly the taxi, on 5 August 2011
Noble-Thompson	Richard	Civilian who was at the scene
Nott	Malcolm	Crime Scene Manager
O'Connor	Anna-Marie	Forensic scientist who analysed fibre transfer
Omosho	Richard	IPCC Investigator who attended the scene
Orford	Jonathan	Crime Scene Examiner who assisted John Cockram
Payne	Jonathan	Exhibits officer at the scene
Poole	Simon	Pathologist
Pounder	Derrick	Pathologist
Q63	-	CO19 officer involved in the firearms operation
R31	-	CO19 officer involved in the firearms operation
R68	-	CO19 officer involved in the firearms operation
Rainford	Steven	Specialist Search Officer who searched the scene, particularly the taxi, on 5 August 2011
Rennles (Q35)	Gary	CO19 officers who attended the scene and drove some of the CO19 officers involved in the shooting back to Leman St Police Station
Richards	Ian	Tested the shoebox for fingerprints
Samuel	Rachael	Exhibits officer at the scene
Saunders	Caroline	Duty officer in Haringey who attended the scene
Seaman	Philip	Forensic scientist
Shaw	Angela	Forensic scientist who analysed gunshot residue
Slaughter	John	Toxicologist who analysed the MDMA in Mark Duggan's body
Sparrow	Colin	IPCC SIO
Suggett	Peter	DPS officer who attended the scene
Taxi Driver		He was the man driving the taxi that Mark Duggan was in
Tilinskaite	Geidre	Civilian who was at the scene
Tomei	Franco	Ballistics expert
U3	-	Trident officer discussed in the anonymous letter
V48	-	CO19 officer involved in the firearms operation
V53	-	CO19 who fired the fatal shots
V59	-	CO19 officer who was the team leader of the other CO19 officers

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<u>Surname</u>	<u>First name</u>	<u>Description</u>
V72	-	CO19 officer involved in the firearms operation
Vanhinsbergh	Desmond	Forensic expert who analysed the DNA findings
Vaughan	Michael	Ballistics expert
W39	-	CO19 officer involved in the firearms operation
W42	-	CO19 officer involved in the firearms operation
W56	-	CO19 officer involved in the firearms operation
W70	-	CO19 officer involved in the firearms operation
Warner	Danny	Uniform officer who attended the scene and managed cordons
Williams	Steve	DPS officer who monitored the investigation
Wilson	Semone	Mark Duggan's partner
Witness A		Civilian re BBC footage
Witness B		Civilian re BBC footage
Witness C		BBC journalist
Witness Z		Civilian who was at the scene
Z51	-	Trident officer who was the Tactical Firearms Commander for the firearms operation
ZZ17	-	Trident officer who received the intelligence during the firearms operation
ZZ37	-	Trident officer who was in Vicarage Rd at the time of the handover of the gun who followed the minicab to the scene
ZZ46	-	Trident officer who was in Vicarage Rd at the time of the handover of the gun who followed the minicab to the scene
ZZ50	-	Trident officer who was in Vicarage Rd at the time of the handover of the gun who followed the minicab to the scene
ZZ63	-	Trident officer who was in Vicarage Rd at the time of the handover of the gun who followed the minicab to the scene
ZZ75	-	Trident officer who was in Vicarage Rd at the time of the handover of the gun who followed the minicab to the scene

Appendix 2

INQUEST TOUCHING UPON THE DEATH OF MARK DUGGAN

Form 2

Record of an inquest

The following is the record of the inquest (including the statutory determination and, where required, findings) –

1. Name of the deceased (if known):
Mark Wayne Duggan
2. Medical cause of death:
Gunshot wound to the chest
3. How, when and where, and for investigations where section 5(2) of the Coroners and Justice Act 2009 applies, in what circumstances the deceased came by his or her death:
 - a) when;
4 August 2011 at 18.41
 - b) where;
Ferry Lane
 - c) how;

Question 1

In the period between midday 3rd August and when state Amber was called at 6.00pm on 4th August 2011, did the MPS and SOCA do the best they realistically could have done to gather and react to intelligence about the possibility of Mr Duggan collecting a gun from Mr Hutchinson Foster?

Yes **10** **No** **Not enough information**

If no, what more could have been expected of them?

- **With respect to the Trident investigation, there was not enough current intelligence and information on Kevin Hutchinson Foster. There was no emphasis on exhausting all avenues which could have affected reaction and subsequent actions.**

- **Insufficient information regarding any relevant intelligence gathering or activity on Mark Duggan or Kevin Hutchinson Foster between 9pm on 3 August (after surveillance lost him) until new intelligence came in from A10 on 4 August.**

Question 2

Was the stop conducted in a location and in a way which minimised to the greatest extent possible recourse to lethal force?

Yes

No

If no, what more could have been expected of them?

Question 3

Did Mr Duggan have the gun with him in the taxi immediately before the stop?

Yes

No

Question 4

How did the gun get to the grass area where it was later found?

8:2

The Jury, in a majority of 9:1, concluded that Mark Duggan threw the firearm onto the grass.

Of the 9, 8 have concluded that it is more likely than not, that Mark Duggan threw the firearm as soon as the minicab came to a stop and prior to any officers being on the pavement.

1 concluded that Mark Duggan threw the firearm whilst on the pavement and in the process of evading the police.

1 juror was not convinced of any supposition that Mark Duggan threw the firearm from the vehicle or from the pavement because no witnesses gave evidence to this effect.

Question 5

When Mr Duggan received the fatal shot did he have the gun in his hand?

If you are sure that he did not have a gun in his hand then tick the box accordingly and then go on to consider unlawful killing, lawful killing or an open conclusion;

We are sure that he did not have a gun in his hand

If you find that it was more likely than not that he did have a gun in his hand tick the box accordingly and then go on to consider lawful killing or an open conclusion;

We believe it is more likely than not that he did have a gun in his hand

if you conclude that it is more likely than not that he did not have a gun in his hand then tick the box accordingly and go on to consider lawful killing or an open conclusion.

1

We believe it is more likely than not that he did not have a gun in his hand

Conclusions - lawful/unlawful killing and open conclusion

Unlawful. You have to be sure that the act was unlawful – that is that it was not done in lawful self defence or defence of another or in order to prevent crime. It is not for V53 to prove that he did act lawfully – before you conclude that his act was unlawful, you must be sure that it was unlawful.

Any person is entitled to use reasonable force to defend himself or another from injury, attack or threat of attack. If V53 may have been defending himself or one of his colleagues then go on to consider two matters:

- 1) Did V53 honestly believe or may he honestly have believed, even if that belief is mistaken, that at the time he fired the fatal shot, that he needed to use force to defend himself or another; if your answer is NO then he cannot have been acting in lawful self defence and you can put that issue to one side; if your answer is YES then go on to consider:
- 2) Was the force used – the fatal shot – reasonable in all the circumstances?
Obviously if someone is under attack from someone he genuinely believes is violent and armed – then that person cannot be expected to weigh up precisely the amount of force needed to prevent that attack. But if he goes over top and acts out of proportion to the threat then he would not be using reasonable force and his action would be unlawful.

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The question whether the degree of force used by V53 was reasonable in the circumstances is to be decided by reference to the circumstances as V53 believed them to be – but the degree of force is not to be regarded as reasonable in the circumstances as V53 believed them to be if it was disproportionate in those circumstances.

(Alternatively a police officer may use lawful force to prevent crime. Here two points arise:

- 1) Did V53 shoot Mark Duggan in order to prevent crime; and
- 2) Was the force used reasonable or unreasonable in all the circumstances?)

Only if you are sure that Mr Duggan was killed unlawfully will you come to this conclusion and record it as such.

Lawful killing. If you conclude that it was more likely than not that the fatal shot which killed Mark Duggan was the use of lawful force – then you would return a conclusion of lawful killing.

Open conclusion. An open conclusion should be recorded when there is insufficient evidence to the necessary standard of proof for you to record any other “substantive” conclusion as to how Mark Duggan came to his death.

You may record an open conclusion if:

- 1) You are not satisfied so that you are sure that Mark Duggan was unlawfully killed; and
- 2) You are not satisfied that it is more likely than not that Mark Duggan was killed lawfully.

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4. Conclusion of the jury as to the death:

**Unlawful
killing**

**Open
Conclusion**

**Lawful
Killing**

Further particulars required by the Births and Deaths Registration Act 1953 to be registered concerning the death:

Date and place of death	Name and surname of deceased	Sex	Date and place of birth	Occupation and usual address
Ferry Lane 4 August 2011	Mark Wayne Duggan	Male	15/09/1981	Clothes retailer. 13 Rowland Hill Avenue London N17 7LU

Signature of Coroner (and jurors):