



IN THE MANCHESTER CORONER'S COURT

INQUEST into the death of JACK ANDERSON BARNES

DETERMINATIONS, FINDINGS AND CONCLUSION

Introduction

1. Jack Anderson Barnes (“Jack”) was born on the 3rd November 1987 and died on the 2nd December 2016. The Coronial investigation into his death began on the 3rd December 2017. After a long police investigation the relevant evidence was supplied in the summer of 2019 to my office. Following several preparatory steps and two Pre-Inquest Review Hearings a final inquest hearing was commenced on the 2nd March 2020 before a jury. Oral evidence was heard from 17 witnesses as well as documentary evidence being admitted. The hearing had to be stopped and the jury discharged due to the Covid19 pandemic.
2. A further Pre-Inquest Review Hearing was held on the 18th September 2020. After hearing submissions from all interested persons represented at that hearing I directed that, with the agreement of all interested persons that a new inquest hearing would take place starting on 18th January 2021 and that it should be heard by a Coroner sitting without a jury and that the transcript of all the evidence at the original inquest hearing should be admitted in evidence under Rule 23 of the Coroners Inquests Rules 2013 without any witnesses being recalled.
3. I ruled that it was appropriate to allow the agreed transcripts of the evidence given under oath or affirmation before me at the aborted Inquest to be admitted in documentary form without the need to read the transcripts aloud in order to put them into evidence. I made this order under my broad case management powers and in accordance with the provisions of Rule 23 in order to save time and expense in circumstances where the transcripts were agreed.
4. A further 2 witnesses gave evidence and one of these was an expert witness. In total I heard evidence from 5 expert witnesses.
5. I am satisfied that the following are Interested Persons:
 - Jack’s Mother and other close family members
 - Mr. Stephen Rowlands (“Mr. Rowlands”)
 - Mr. Matthew Sellers (“ Mr. Sellers”)

- Mr. Paul Fogarty (“Mr. Fogarty”)
- Mr. Brian James Gartside (“Mr. Gartside”)
- Palladium Associates Plc (“PALLADIUM”)
- Metrolink Keolis Amey (“KAM”)
- Metrolink RATP DEV (“MRDL”)
- Transport for Greater Manchester (TFGM”)
- The Security Industry Authority (“SIA”)

The Legislative Framework

6. Section 5 of the Coroners and Justice Act 2009 defines the matters to be ascertained

- (1) The purpose of an investigation under this Part into a person's death is to ascertain:-
 - (a) who the deceased was;
 - (b) how, when and where the deceased came by his or her death;
 - (c) the particulars (if any) required by the 1953 Act to be registered concerning the death.
- (2) Where necessary in order to avoid a breach of any Convention rights (within the meaning of the Human Rights Act 1998), the purpose mentioned in subsection (1)(b) is to be read as including the purpose of ascertaining in what circumstances the deceased came by his or her death.
- (3) Neither the senior Coroner conducting an investigation under this Part into a person's death nor the jury (if there is one) may express any opinion on any matter other than:-
 - (a) the questions mentioned in subsection (1)(a) and (b) (read with subsection (2) where applicable);
 - (b) the particulars mentioned in subsection (1)(c)

Section 10 defines the Determinations and Findings to be made

- (1) After hearing the evidence at an inquest into a death, the senior coroner (if there is no jury) or the jury (if there is one) must—
 - (a) make a determination as to the questions mentioned in section 5(1)(a) and (b) (read with section 5(2) where applicable), and
 - (b) if particulars are required by the 1953 Act to be registered concerning the death, make a finding as to those particulars.
- (2) A determination under subsection (1)(a) may not be framed in such a way as to appear to determine any question of—
 - (a) criminal liability on the part of a named person, or
 - (b) civil liability.

7. This is subject to paragraph 7 of Schedule 5 which relates to the power of the Coroner to make a report to Prevent Future Deaths under Regulation 28 of the Coroners Investigations Regulations 2013.
8. When the first inquest began in March 2020 I had formed the view that there was an arguable breach of article 2 on the basis that TFGM was a public body and therefore a state body that discharged its functions of operating the Metrolink tram system by appointing companies that were acting as agents of the state. Consequently, it was arguable that Mr. Sellers, Mr. Gartside, Mr. Rowlands and Mr. Fogarty were agents of the state and that Jack died in circumstances where the state was implicated and that to avoid a breach of section 6 of the Human Rights Act 1998 it was necessary in accordance with section 5 (2) of the Coroners and Justice Act 2009 that the inquest determined how and in what circumstances he died.
9. Article 2 has repeatedly been interpreted as imposing on member states substantive obligations not to take life without justification and also to establish a framework of laws, precautions, procedures and means of enforcement which will, to the greatest extent reasonably practicable, protect life. Where a death occurs in circumstances in which it appears that one or other of the substantive obligations has been, or may have been, violated and it appears that agents of the state are, or may be, in some way implicated. Article 2 (2) provides that deprivation of life shall not be regarded as inflicted in contravention of this article when it results from the use of force which is no more than absolutely necessary: (a). in defence of any person from unlawful violence; (b.) in order to effect a lawful arrest or to prevent the escape of a person lawfully detained. If Jack's death was caused or contributed to by actions of an agent of the state then to avoid a breach of section 6 of the Human Rights Act 1998 it was necessary in accordance with section 5 (2) of the Coroners and Justice Act 2009 that the inquest determined how and in what circumstances he died.

Engagement of Article 2 of the European Convention on Human Rights (ECHR)

10. The consideration and application of the law relating to Article 2 ECHR engagement cannot be considered in a vacuum but with regard to the individual facts of the case. The Inquest is not the judicial process or forum which determines that there has been a breach of an Article 2 obligation or duties. Simply a decision must be made as to whether there is an arguable breach which widens the scope of the Inquest, but it is for the Coroner to determine how far and what issues are investigated.
11. Extensive domestic and ECtHR jurisprudence has established that there will be clear but also borderline cases for domestic courts to determine whether Article 2 is engaged. The ECHR has been described as a “living instrument” to be interpreted in light of present-day conditions. The application of Article 2 is not easy as Baroness Hale said in *Rabone v Pennine Care NHS Trust* [2013] UKSC 2 [2012] 2 AC 76 at [97]) the "broad statements" of principle made by the Strasbourg Court are "hard to interpret and even harder to apply." The developing case law has identified a number of issues that assist in determining on the particular facts of an individual case whether a relevant obligation and duty was owed and how in our domestic judicial system alleged breaches are investigated.

12. The words in Article 2 “Everyone’s life shall be protected by law” has been interpreted as creating three broad obligations. A Negative prohibition of intentional (unless in exceptional lawful circumstances) and unlawful taking of life by state agents. A Positive obligation to take appropriate steps to protect life. Finally, a Procedural duty or obligation to investigate potential violations of the negative or positive obligations. The positive obligation has two components. Firstly, a general or systemic duty. Secondly, an operational duty.

The General or Systemic Duty

13. This requires the State to create a framework of laws, precautions and procedures and means of enforcement for protecting life which will be to the greatest extent reasonably practicable do so. This can include effective systems of work and administration. See *R (Middleton) v HM Coroner for West Somerset* [2004] UKHL 10 at [2]. In the absence of either a systemic dysfunction arising out of a regulatory failure or a relevant assumption of responsibility the state will not be held accountable under Article 2
14. The systemic obligation has also been found to include a duty to employ and train competent staff, maintain high professional standards and adopt appropriate systems of work that will protect the right to life. *Savage v South Essex Partnership NHS Trust* [2004] UKHL 74 at [30] [45][50]. It has been recognised that there may be a violation of the systems obligation even where there has been no identification of a specified individual who was at risk. *Mitchell v Glasgow City Council* (2009) 1 AC 874 [66]. The general duty would not be engaged in a case involving no more than an allegation of negligent conduct by an individual, or a combination of events over which the state had no control and could not be held responsible.
15. Not all failures by the state will engage article 2 if they include “casual errors of judgment or acts of negligence” *R v Catherine Smith v Oxfordshire Assistant Deputy Coroner* (2010) UKSC 29. Furthermore, there is a distinction between a failure in the operation of a system as opposed to a failure of the system itself as considered by the Court in *R (on the application of (1) Pearl Scarfe (2) Julie Barber (3) Jamie Blyde (Claimants) v (1) Governor of Woodhill Prison (2) Secretary of State for Justice (defendants) & Inquest (Intervener)* (2017) EWHC 1194 (Admin). At para 54 the Court found; “Where there are identical or very similar errors or practice, that may point to a systemic fault in the design or supervision of the system; where there are repeated, but different operational errors, it may be impossible fairly to characterise that as a system fault.

The Operational Duty

16. The duty to protect arises where the state knows, or ought to know, of a “real and immediate” risk to life; *Osman v the UK* (1998) 29 EHRR, at [115] and [116]: The State’s obligation in this respect extends beyond its primary duty to secure the right to life by putting in place effective criminal-law provisions to deter the commission of offences against the person backed up by law-enforcement machinery for the prevention, suppression and sanctioning of breaches of such provisions. It is clear that Article 2 may also imply in certain well-defined circumstances a positive obligation on the authorities

to take preventive operational measures to protect an individual whose life is at risk from the criminal acts of another individual.

17. The Court must bear in mind the difficulties involved in policing modern societies, the unpredictability of human conduct and the operational choices which must be made in terms of priorities and resources, such an obligation must be interpreted in a way which does not impose an impossible or disproportionate burden on the authorities. Accordingly, not every claimed risk to life can entail for the authorities a Convention requirement to take operational measures to prevent that risk from materialising. Another relevant consideration is the need to ensure that the police exercise their powers to control and prevent crime in a manner which fully respects the due process and other guarantees which legitimately places restraints on the scope of their action to investigate crime and bring offenders to justice, including the guarantees contained in Articles 5 and 8 of the Convention.
18. Where there is an allegation that the authorities have violated their positive obligation to protect the right to life in the context of their above-mentioned duty to prevent and suppress offences against the person it must be established to its satisfaction that the authorities knew or ought to have known at the time of the existence of a real and immediate risk to the life of an identified individual or individuals from the criminal acts of a third party and that they failed to take measures within the scope of their powers which, judged reasonably, might have been expected to avoid that risk. Article 2, is a fundamental right in the scheme of the ECHR and it is sufficient to show that the authorities did not do all that could be reasonably expected of them to avoid a real and immediate risk to life of which they have or ought to have knowledge. This is a question which can only be answered in the light of all the circumstances of any particular case. See also (*Watts v United Kingdom* (2010) 51 EHRR at [83]; (*Van Colle v Chief Constable of the Hertfordshire Police* [2009] 1 AC 225, at [32]).
19. The dividing line between the general systemic duty and operational duty may not always be clear, particularly at the lower level see *R(L) v Justice Secretary* [2009] 1 AC 588, at [88]. The operational duty may be held to exist where there has been an assumption of responsibility for the individuals welfare and safety including by the exercise of control. *Rabone v Pennine Care NHS Trust* [2012] UKSC 2 [2012] 2 AC 72, at [22]. This is clear where the degree of control is high such as where the state has assumed responsibility for an individual's safety in a prison, a mental health unit or an immigration centre. Another factor is the nature of the risk of the kind the individuals in the relevant category should reasonably be expected to take will not give rise to a breach of the obligation, but an exceptional risk may do so. See also para [25]. These factors do not give a sure guide as to when the operational duty exists.
20. The ECtHR is tending to expand the categories of circumstances in which the operational duty will be found to exist. The duty may still exist when there has been no assumption of control by the State such as where a local authority fails to exercise powers to protect a child. *Z v the UK* 29392/95.
21. The threshold for engagement is that it is required to be "real" which means objectively well-founded (*Re Officer L*) [2007] UKHL 36 [2007] 1 WLR 2135, at [20]; (*Re W's Application* (2004) NIQB 67, at [17] and also "immediate" This means present and continuing; substantial or significant; not remote, fanciful or negligible *Rabone v Pennine Care NHS Trust* [2012] UKSC 2 [2012] 2 AC 72, at [39]; *In the matter of an*

application by Officers C, D, H&R [2012] NICA 47, at [261]; Re Officer L (2007), at [20]; W's Application [2004], at [17].

22. The test is stringent, and the threshold is high_ *Savage v South Essex NHS Trust* [2008] UKHL 74 [2009] 1 AC 681, at [41] and [66] *Van Colle v Chief Constable of the Hertfordshire Police* (2008) UKHL 50 [2009] 1 AC 225, at [32] *Officer L* [2007], at [20] *R (Kent County Council) v HM Coroner for the County of Kent* [2012] EWHC 2768 (Admin), at [42]
23. The duty is to take reasonable measures to prevent the index risk materialising - *Watts (2010)*, at [83]; *Edwards v United Kingdom* (2002) 35 EHRR 19, at [55]; *Osman (2000)*, at [116] In respect of reasonableness consideration given to the specific circumstances of the case, the unpredictability of human conduct, the ease or difficulties of taking precautions, and the resources available – *Osman (2000)*, at [116]; *Officer L (2007)*, at [21]

Procedural Obligation

24. This places an obligation to investigate deaths for which the state might bear responsibility. This will be engaged by a *prima facie* or arguable breach of the substantive obligation *R (Hurst) v London Northern District Coroner* [2007] UKHL 13 [2007] 2 AC 189, at [28] *Middleton (2004)*, at [2]. ‘Arguable’ being anything more than ‘fanciful’; *R (AP) v HM Coroner for Worcestershire* (2011) EWHC 1453 (Admin) para 59.
25. The procedural obligation is reliant on an arguable breach of either of the more substantive obligations. An Article 2 investigation requires that the authorities must act of their own motion. The investigation must be initiated promptly and proceed with reasonable expedition. The investigation must be independent and be open to public scrutiny as well as being effective.

Causation

26. Breach of Article 2 duties in relation to a death may be established without proof that relevant failure probably caused the death. It is only necessary to prove that the deceased lost a substantial chance of surviving as a result of the breach. *Van Colle v Chief Constable of Herefordshire* (2009) 1 AC 225 at [138]. Even where there is a real and immediate risk to life preventative operational measures of whatever kind are adopted to safeguard the lives of those involved so far as this is practicable.

The Purpose and Limitations of an Inquest

27. An inquest is a statutory judicial inquiry to determine the identity of the person who has died, where when and how that person came by their death. It is not a criminal or civil trial and is not a forum which attributes blame or apportions fault. The question of "how" a person came by their death goes beyond the simple question of the medical cause of death. The inquiry must focus on matters directly causative of the death and be confined

to those matters alone. It should not consider by what means and in what circumstances the deceased died unless S.5 (2) requires it in order to avoid a breach of any ECHR rights (within the meaning of the Human Rights Act 1998). The purpose mentioned in subsection (1)(b) is to be read as including the purpose of ascertaining in what circumstances the deceased came by his or her death.

28. Neither the Coroner, nor the jury (if there is one) may express an opinion on any other matter. Consequently, it is important to repeat that an Inquest is an important but limited statutory judicial inquiry to determine who the person was who has died, where, when and how that person came by their death. It is not a general inquiry into all possible issues or circumstances. Nor is it some form of alternative complaints process.
29. The law allows for the Coroner to admit documentary evidence under what is known as Rule 23 (1) of the Coroners Inquests Rules 2013 (“the Rules”) This includes statements, records, reports or indeed any other form of document without calling the maker or author of them. Written evidence as to who the deceased was and how, when and where they came by their death is not admissible unless the Coroner is satisfied that:
 - (a) It is not possible for the maker of the written evidence to give evidence at the Inquest hearing at all, or within a reasonable time;
 - (b) There is a good and sufficient reason why the maker of the written evidence should not attend the Inquest hearing;
 - (c) There is a good and sufficient reason to believe that the maker of the written evidence will not attend the Inquest hearing; or
 - (d) The written evidence (including evidence in admission form) is unlikely to be disputed.
 - (e) That any Interested Person may object to the admission of any such written evidence. Even if there is an objection that does not automatically mean that some or all of the evidence has to be admitted by witnesses giving oral evidence. The Coroner would have to investigate the reasons for the objection and the overall evidence, and the issues involved to consider whether or not it is in the interests of justice to overrule the objection. Some cases are by their very nature more complex and the court would be assisted by asking questions of witnesses.

Rule 22 privilege against self-incrimination

30. Where a person is being interviewed by the police as a suspect, they have the legal right to refuse to answer any questions. In criminal proceedings the law allows the court to draw inferences from a defendant's failure to mention something in interview which they later rely on in court. There is also statutory provision to allow the court to draw inferences from the defendant's failure to give evidence. There is no statutory equivalent that applies to inquest proceedings. When interviewed by the police Mr Sellars, Mr Rowlands, Mr Fogarty Mr Gartside exercised their right of silence to virtually all questions. Neither the question nor their refusal to answer is evidence in the inquest. Only an answer to a question amounts to evidence. In inquest proceedings no adverse inference can be drawn against a person exercising their right of silence when interviewed or when the Coroner rules that in relation to a specific question the witness is asked that the witness need not answer that question pursuant to Rule 22.

31. Rule 22 states that: (1) No witness at an inquest is obliged to answer any question tending to incriminate him or her.(2) Where it appears to the coroner that a witness has been asked such a question, the coroner must inform the witness that he or she may refuse to answer it.
32. On several occasions when they gave evidence in court I ruled that in respect of specific questions it appeared to me in accordance with rule 22 of the Coroners Rules 2013 that particular questions had a tendency to incriminate the witness as to the commission of a criminal offence. They did not have to answer those questions and that was their legal right and no adverse inference can be drawn as a consequence.

The evidence and my findings of fact

33. Patricia Gerrard – Jack’s Mother

She confirmed Jack’s full name as Jack Anderson Barnes, and he was born in Hull on the 3rd November 1987. He attended local schools and had no health problems. He was keen on sport and maths but lost his interest in sport. He was the father of a little girl. In April 2016 he moved to Manchester and she saw less of him. As far as she was aware, he was fit and healthy. She last saw him in August and perhaps some weeks before the events in October. She did speak to him briefly on the evening of 11/10/16 at about 8 or 8.30 pm. She was subsequently contacted by the Police and learned that he was seriously ill, and she was taken to the Manchester Royal Infirmary (“MRI”) to see him. He remained in hospital at the MRI until 7th November 2016 when he was transferred to the Hull Royal Infirmary for ongoing medical treatment where he remained until he died on 2nd December 2016.

34. The CCTV and Body Cam

There are two fixed position CCTV recordings. One looking in the direction of the exit and the other with a side view of the pavement area immediately outside as well as a partial view just inside the entrance. There is also a Body Cam sound and visual recording from equipment worn by Mr Sellers from the beginning of the incident at around the entrance/exit. I have viewed and listened to these very carefully many times. I find as a fact that the transcript prepared of the sound recordings correctly identifies who is speaking and is an accurate record of what is said.

35. Craig Nevet

He was a friend of Jack's and lives in Hull and appears at the start of the CCTV recordings. He identified himself as the person in a blue hooded top. He was interviewed by the police in September 2017. On 11th October 2016 he had been with Jack on the Metrolink system together with other friends. Some of them have been smoking drugs. He couldn't remember being challenged by anyone to move away from the location where they were stood. He had known Jack for about six or seven years. Jack was living in a shared house and he allowed him to stay there. He was also able to identify from the CCTV his friend Mark Kershaw who was pulling a trolley bag as well as his cousin Kamal Kershaw. He could also identify Jack and his friend Ethan Harvey together with Kamal Kershaw. He saw that Ethan Harvey had been involved in a struggle and when the CCTV was showing events outside the entrance of Victoria Station, he could see himself, Jack and Kamal Kershaw in the background. He could not remember if any of men in the High Visibility ('HV') jackets spoke to him. When Jack appeared to strike out

at somebody he was by the bollards. He had not been involved in the scuffle between Ethan and the men in the HV jackets at the station entrance.

36. When Jack ran off, he followed him because he was his friend and they came from Hull together. He had no idea where Jack was going, and he wanted to see and simply followed him. At one point he and Jack had tried to get into a taxi, but the driver would not let them in. When Jack reached the pavement near to the Australasia restaurant entrance he stopped running. Jack was caught and aggressively tackled and forced to the ground in a facedown position.
37. He was out of breath and was close to Jack but simply wanted to watch to see whatever was going to happen. Jack was being restrained in a facedown position on the ground in a headlock. He saw that one of the men had an arm on the back of Jack's neck who was saying he couldn't breathe.
38. He had heard on the body cam sound recording that someone was saying he had threatened them with a knife. He denied that he was in possession of a knife, tried to stab anyone or threatened to do so. When subsequently interviewed by the police he denied it and no knife was found at the time of his arrest. Mr Sellers, Mr Rowlands, Mr Fogarty and Mr Gartside were all legally represented but at no point was Mr Nevitt's account of this challenged. It was never suggested that he had been untruthful, mistaken or had forgotten allegedly doing this.
39. He had just been standing there when he had been grabbed and forced to the ground. Whilst being restrained he did say that he had a heart condition to try and get them to release their hold on him. He also said that he couldn't breathe and felt pressure being applied on his neck.
40. At one point he was violently sick. He remembered seeing Jack on the ground and he was face down but looked unconscious and he noticed his eyes because his face was turned towards him. One was open and the other closed. At that stage there was only one person with Jack and he was kneeling down but he did not know what he was doing. He could identify his voice on the recording complaining about pressure and could also recognise himself being heard to shout that they had killed him. He had smoked a drug called Spice that day but as far as he was aware Jack hadn't consumed any that day and he couldn't remember Jack buying any. He was arrested but was never charged with any criminal offence.
41. Kamal Kershaw
He was a friend of Jack's as well as Ethan Harvey and Craig Nevet. They have travelled around on the Metrolink tram system that day and he had taken Spice and felt sure that Jack had taken Spice as well. He had some Spice with Jack on more than one occasion before and as far as he was aware Jack never suffered an adverse reaction to it. At about 8:15 PM the group were in St Peter's Square and he could recall a security guard speaking to him and telling him that he couldn't smoke that there, but he couldn't remember what he said in response. There was no threat of a physical nature from the group. At about 11:20 PM he remembered being at the entrance to Victoria Station when an incident happened involving some of the staff there, but he did not get involved and was never arrested. When the guards came to the exit they appeared intimidating by the manner of their approach.

42. He couldn't remember what the guards may have said. He identified himself on the CCTV immediately outside the entrance and could see the way Ethan was being restrained on the ground and being pinned down. He thought there was too much pressure being applied to Ethan's head which made him concerned. His face was on the floor and it did not seem professional. There was an argument between Jack and what he described as the security guards and he remembered seeing that there was physical contact between Jack and Mr Sellers.
43. He was at the station to get the last tram home to Oldham and did agree that the group were being intimidating. He did see Ethan being restrained. He was able to identify himself on CCTV and said he was minding his own business and didn't get involved. He could see himself at or around the entrance and walking across the road. He agreed that he was to be seen lighting the Bong but couldn't remember what happened to it. He saw the staff chase after Jack but didn't know what happened to him until the next day and he simply caught the tram home.
44. The Metrolink Walk Away Policy
This document applies to all employees and sets out the company's policy in respect of any employee or contractor who is dealing with the general public and believes that they could be a threat to themselves or to their colleagues. It details the action that must be taken by staff should they feel that a situation may escalate, resulting in intimidation, a physical exchange or verbal assault. The policy and procedure does not prevent staff from carrying out their daily duties or responsibilities. It does however aim to empower any member of the workforce who believes that a situation might arise that has the potential to put themselves, their colleagues or a member of the public at risk from assault or injury, to walk away. Verbal assaults and threatening behaviour include swearing or shouting, name-calling insults or threats, physical posturing and threatening gestures. Staff should be briefed on the policy regularly.
45. Employees are responsible for putting their own safety first and should be cautious when confronted with potentially hostile situations by remaining calm. They should risk assess the situation and if required summon assistance and leave the area when safe to do so. If any member of staff is threatened with violence, they should adhere to the walkaway policy. A passenger who is displaying aggressive or intimidatory behaviour should not be followed off the platform in any circumstances.
46. Lee Griffiths – METROLINK – CSR
On the night of the incident he was working with his colleague Mrs Dixon and he left the tram platform in order to go for a cigarette and headed towards the exit when his attention was also drawn to a commotion with what he described as being a pile of bodies on the floor and some of the people were wearing palladium HV jackets. He was surprised to see this. It was not part of his job to get involved because as he said "you didn't know what the situation was and in any event they have the walk away policy". He didn't call the control room or the police and thought that Miss Dixon may have shouted out if anyone had called the police and someone shouted that they were on their way. He heard someone shout and more Palladium staff arrived. He too had received training about the walkway policy and agreed that if it was followed no one needed to be restrained. His duties were confined to the Metrolink platforms.
47. It was his understanding that Palladium staff provided security and certainly that was the impression he formed from watching them work and speaking to the Palladium staff

although he accepted he could be wrong about that. They (Palladium staff) also dealt with antisocial behaviour and provided extra support for the Customer Service Representatives (CSR's). He believed that everyone had to follow the walk away policy.

48. Michelle Dixon - METROLINK – CSR

She started as an employee of Metrolink in 2011 and still was employed by them. She worked as a CSR but had no security role. Her job was confined to work on the platforms, check tickets, undertake revenue protection duties and also plain clothes ticket checks and assist passengers generally. Her work did not involve working on the Victoria station mainline platforms. If, for example, a passenger refused to buy a ticket and would not get off the tram she would try to defuse the situation and if necessary seek help from her colleagues and call the control room if necessary. She was aware of the Walk Away policy and that it simply meant that you walked away from an incident and did not get involved.

49. At about 11:30 hours on 11/10/16 she was walking towards the smoking area near the main entrance to Victoria Station with her colleague Lee Griffiths in order to have a cigarette. She heard a commotion involving what she described being about 30 feet away and seeing what she thought were a number of males on the floor and a couple stood up with some of them were wearing Palladium HV vests and was surprised to see them involved in the incident. She too had a HV vest provided by Metrolink but this was worn under her jacket as part of a full uniform although she thought that they did not have a uniform similar to hers. She did not wish to get involved and assumed that they would call the police. It was no part of her job to get involved and be dragged into the brawl. She then went back to her platform. It was also part of the walk away policy which was mentioned at the start of every shift. If the policy had been followed there would be no need to restrain anybody. She had never previously personally been involved in an incident or been struck or hit with a bag.

50. In the statement she made after the incident she described the Palladium staff providing security although she hadn't seen their job descriptions. She thought that was the impression most people would have although she couldn't remember being specifically told this but they would also assist the CSR's. One of the reasons she thought that they provided security was because they could refuse passenger's entry if they did not have a ticket and they provided additional support for the CSR's. She did think that the walk away policy applied to them as well. Usually the Palladium staff would be on the platforms, the same as the CSR's. Metrolink provided her training and very early on she learned that she was not to get involved in such incidents and if they could not diffuse a situation they would then call the control room or the police as necessary. She had worked with Palladium staff as part of the team.

51. Peter Giles – PALLADIUM

He had been the CEO of the company for some years but had ceased in that role about 12 months ago but the company was still trading. He had hands-on control of certain aspects of the business. The company had a business relationship with MRDL from 2012 and it developed to supplying staff to them. These would be engaged from Titanium Ltd and other partner companies as well. This would often be at short notice. In practical terms they were an agency supplier of staff. In a statement that he prepared to assist he identified a number of roles that staff supplied by the company were required to fulfil. This included providing a highly visible presence on trams where antisocial behaviour or

thefts have occurred to reassure the public. His understanding was that the staff were actually self-employed but were not to perform or provide a security function. He was aware of the Metrolink walkaway policy and expected the staff to comply with it.

52. He was never made aware of any complaints in respect of the staff. When a person is described as a team leader and supplied by his company this would be for internal management processes to, for example, collate timesheets. From the perspective of Palladium, the person appointed as a team manager or supervisor was for their business purposes. The responsibility for ensuring that any staff member complied with the walkaway policy was that of Metrolink. He was aware that evidence had been given in the inquest that Mr Rowlands was the supervisor on the night in question and had given a brief at the start of the shift Palladium would have no involvement in that. There was nothing to stop a Palladium supplied member of staff from acting in a supervisory position and from giving a brief at the start of the shift but that would come from Metrolink as it was intelligence led. Metrolink provided trackside safety training and he expected them to also provide training in the walkaway policy.
53. Steven Hedges
Relevant parts of a statement made by him on 12 October 2016 were admitted in evidence under Rule R23 which I summarise as follows. He returned to Manchester Victoria station at around 23:30 hours and met up with another team of colleagues and with “the boss” Mr Rowlands. Whilst on a Metrolink platform he noticed a group of young men stood outside the station near the taxi rank. He, Mr Rowlands, Mr Sellers and Mr Heathcote-Hilton walked to where the group were to check they were not causing any bother as they, according to him, had been up to no good earlier in the evening. During the walk over his boss (Mr Rowlands) said that the group had been ejected from Victoria due to their behaviour. He told Mr Rowlands about his contact with the group earlier. Mr Rowlands took the lead in speaking to them asking if they had been giving "verbals" to one of his staff. Mr Hedges said that the male in the grey tracksuit who he had spoken to earlier in the evening in St Peter's Square started swearing and being aggressive towards Mr Rowlands who then turned his attention towards the other staff. This male was bouncing about and swinging his draw bag around in the air with some force. His behaviour and demeanour were very confrontational. I find as a fact the Jack was not swinging his bag around in the air as Mr Hedges alleges. His account is contrary to the CCTV evidence and inconsistent with what even Mr Heathcote-Hilton says.
54. He went on to say that one of the group took a punch at Mr Sellers but he wasn't sure if it landed because at that point everything just went hectic and said that a black doorman came from nowhere and got hold of that individual and took him to the floor. I find as a fact that neither Jack nor Ethan Harvey swung a punch at Mr Sellers. The assertion that they did is inconsistent with the clear CCTV evidence. A mixed-race male then got involved shouting and being aggressive. All of a sudden, he felt a heavy blow to the back of his shoulder and saw it was the lad in the grey tracksuit who had hit him with a bag who then ran away with another lad. Mr Sellers, Mr Fogarty, Mr Gartside and Mr Rowlands chased after them. He did not feel the need to seek medical assistance and said that the general behaviour of the group was very intimidating. It was his job to deal with antisocial behaviour and to stop people carrying out acts which make the public feel unsafe. Whilst confrontation can be a part of his job he did not expect to be assaulted.

55. Aaron Heathcote-Hilton

Relevant parts of a statement made 12 October 2016 by him were admitted in evidence under Rule 23 which in summary was follows. Mr Rowlands, Mr Sellers, Mr Hedges and himself walked towards the entrance to tell a group of males there that they could not travel on the Metrolink that night because they had no money to buy tickets. They had been avoiding paying for their tickets all evening and their general behaviour to staff had been unacceptable. One of the males began shouting loudly and in an aggressive tone towards Mr Hedges saying that he hadn't been threatening. Mr Hedges explained that everything that happened that evening had been caught and recorded on camera. Mr Sellers had turned his body worn video camera on and said, "you're being recorded."

56. Jack came close to the camera and shouted "Fucking yeah and what?" Mr Sellers put his hand out at this point and asked Jack to get out of his personal space. Jack then shouted what are you assaulting me for and he had "undone his coat that he was wearing and took off his bag". He then wrapped the bag around his hand as if to swing it at Mr. Sellers. Jack then got back into Mr Sellers face and said something but he couldn't be certain what it was. Mr Sellers put out his hand again. He further said that Jack threw a punch at Mr Sellers although he couldn't remember which part of the body that was directed towards. However, I find as a fact the Jack did not swing a punch at Mr Sellers. Another male then went towards Mr Sellers which somehow resulted in Mr Sellers being put in a headlock. Then both of them fell to the floor and he tried to break up the incident. As he was doing this a member of the public who showed them his SIA badge came to help. Whilst restraining this male he saw Jack swing a bag towards him which made contact with his back in the kidney area which he subsequently felt was bruised. He said it felt as though it had a snooker ball in it. Jack then used the same bag to hit Mr Hedges with. Mr Rowlands, Mr Sellers Mr Fogarty and then Mr Gartside tried to detain Jack but he managed to escape and run off.

57. Brian Gartside

He was 52 years old at the time of these events and made a statement dated the 12/10/16 and signed each page and was satisfied it was correct. He also made another statement on the 28/11/19. The full statement was read to him. He agreed that the statement said he worked as a security officer for Palladium but that was wrong and he did not remember telling the police that is what he did but he did work for Palladium but not in a security role. I find as a fact that this is an unconvincing explanation and that he did perceive himself acting at least in part in a security role. He worked as a CSR, "checking tickets and asking people where they wanted to go and making sure they had a nice night, and everyone was happy". He agreed that the statement also said that he dealt with antisocial behaviour but when working for Metrolink he had a number of roles including antisocial behaviour. He did not have regular shifts but worked when work when asked and he had another job. He would ring up to check if there was any work available to be done. The hours of his shift were 4.30 pm until 12.30 am. He agreed that he currently worked on an ad hoc or on an as and when basis for a company called "Titanium" which was previously known as Palladium. He didn't get involved and understand the technicalities, but the people haven't changed. It was a long time ago.

58. Mr Gartside confirmed that separately at the time he worked for Metrolink cleaning trams. He was self-employed whilst working with Palladium and Titanium and did not have a contract of employment. He didn't need any training from those companies and the only training he received was from Metrolink about the walk away policy and believed that someone had read it to him, but he could not remember who. He

remembered being told that it applied to employees or contractors who believe there could be a threat to themselves or colleagues. For example, if an incident happened on a tram and someone gave you abuse you will always try to calm them down but if they became more agitated or threatening you can phone control and ask for the cameras to be put on them and if they still cause problems they would call the police. The policy was to walk away and get someone else to do with it.

59. On the night of the incident he was not a team leader, but Mr. Rowlands was. That night and every night they went for a briefing they were told about the walkaway policy and he understood what it meant. Any training was given by Metrolink. He said "The start of the shift when we went for the briefing we will be told where they wanted us to go and what they wanted us to do. He and his colleagues worked as a group on the trams and on the platforms and stay together. They were working on the same shift but in different areas and usually had a group of 4. They didn't have a uniform and tried to look smart but did have a HV vest. Metrolink provided these and some said Palladium on the back of them and others said Metrolink. He took his home because it was a big size and had Palladium on the back of it."
60. He told me that sometimes he would work with Metrolink CSR's and check tickets. His role was to ensure everyone visiting Manchester knew where they were going and catching the right tram and making sure that they were happy. A lot of events went on. Sometimes they would work on the tram itself or by the ticket machines. If there was an event in Victoria station, he can work anywhere on the Metrolink system, but it would depend what he was told to do at the briefing. This could involve explaining to passengers if there were any delays.
61. Mr Gartside confirmed that he had an SIA badge ("licence") and he had received training in disengagement but not in self-defence. He also thought he had some training in restraint, but he couldn't remember when but thought it was when he first applied for his SIA badge. He didn't get any training from Metrolink. If his job had involved security, then it would be no problem for him.
62. At approximately 23:30 hours he had been standing on the Metrolink platform with a colleague of his which he thought was somebody called David Leyland who was next to the exit near the taxi ranks about 50 m away and who waved his arm about in a manner which suggested he needed assistance. He shouted loudly "Brian" and he and his colleagues Mr. Sellers and Mr. Fogarty ran over, and he saw what he described as a commotion next to the exit which leads to a taxi rank. He saw a number of the Palladium staff and someone he only knew as Aaron restraining a male on the floor. He noticed his manager Mr. Rowlands standing nearby and he could tell he was in pain although he hadn't seen him struck by anything as he had his right hand cupped inside his left as if he was supporting it. He pointed and said, "they have gone that way". He started to run in that direction and Mr. Sellers and Mr. Fogarty also ran. At that stage he didn't know what had happened but believed that Mr. Rowlands had been assaulted.
63. As he got down onto Deansgate he saw a black taxi pull up and Mr. Rowlands was inside and shouted to him to get in. He did so and as the taxi continued up the road, he noticed two males who appeared to out of breath running ahead of Mr. Sellers and Mr. Fogarty. He did not ring the police or his control room at that time although he had a phone with him. He claimed that whilst the window of the taxi was down that a person who he later indicated was Mr Nevet had shouted words to the effect of "stay away or I will knife

you". This was not picked up on the Body Cam sound recording even though it was said to have been shouted and he and Mr. Sellers must have been close enough to hear it. Mr. Nevet denied saying it several times at the time and also later during his police interview. It was never suggested to Mr. Nevet when giving evidence that he was mistaken, had forgotten or was not being truthful when he gave evidence. I find as a fact that he did not say that he had a knife and that he would use it.

64. Mr. Gartside got out of the taxi near to the Australasia restaurant and ran towards both males who were now on the pavement and they separated. I find as a fact that he was encouraged by what Mr Sellers said and is recorded on the body cam as being encouraged to use physical force against Jack as quickly as possible. He alleged that Jack stopped running and turned to face him and then took a quick step towards him. I find as a fact that this is not correct and is inconsistent with the body cam visual images or sound recording at that stage. He says that he feared that Jack would try to assault him and so he placed both his hands around his arms and elbows with a firm grip and Jack protested at this and began to resist. He felt stronger than Jack and says that he guided him towards the ground.
65. That is inconsistent with the body cam images and the timing of events. I find as a fact that this was done very quickly and very forcibly, and that Jack was immediately restrained in the prone position with the left-hand side of his face on the ground. He twisted Jack's left arm behind his back and used his left arm pressure on his shoulder. This is what he said in his police interview. Mr Sellers continued to hold Jack's other arm behind his back kneeling beside him to restrain him as Jack protested. I find as a fact that Jack was restrained a few feet onto the pavement from the road close to a series of metal bollards. He was only about 20 feet away from Mr Nevet when he was restrained.
66. Mr Gartside agreed that Jack was restrained in the prone position ("face down"). He said that he had got it the wrong way around when describing the events in his original statement. He agreed that the body cam showed a hand on Jack's neck, but he did not know whose it was. He didn't know if he was stood up at the time. I find as a fact that Mr Gartside had his hand on Jack's neck and that he applied pressure. That is consistent with the body cam images and the direction of view that must have been from Mr. Sellers' equipment. I find as a fact that he restrained Jack's left arm because that is also consistent with the body cam images. Jack said at least 7 times that he could not breathe.
67. He could hear, on the sound recording played to him in court, someone say "I'm going to put you to sleep" or words to that effect and he thought it was Mr Rowlands's voice but he didn't recall hearing it at the time.
68. Mr Sellers also restrained Jack after about five minutes before Mr Rowlands knelt down beside him and took over from his position and Mr. Sellers remained until Mr. Fogarty replaced him. Jack stopped struggling but was still audibly protesting up to the point that he moved away.
69. As he stood up, he noticed that Mr. Nevet was allegedly acting very aggressively bouncing from one foot to another shouting that he was going to kill him or stab him. This is not consistent with Mr. Nevet saying shortly after was restrained "get off him, please" and Mr Nevet was not heard on the Body Cam sound recording making the alleged threats. He then said that this male then ran off in the direction of the road but was rugby tackled by Mr. Sellers. This is inconsistent with how Mr. Sellers described the

movements who did not say that he chased after Mr. Nevet who was running away rather he was running towards him. There is no sound recording of Mr. Nevet making any shouted threats to stab anyone and what he is recorded as saying when grabbed and restrained is not consistent with that scenario.

70. I find as a fact that Mr. Nevet did not make the alleged threats on the pavement near to the Australasia restaurant entrance. Mr Gartside saw that Mr Sellers had got Mr. Nevet into a face down position and Mr. Gartside twisted his left arm behind his back. Mr Nevet said several times that he had not done anything wrong and that he couldn't breathe on several occasions. Mr. Gartside noticed that Mr. Nevet felt very warm and was sweating profusely and then began to vomit. As soon as he did this, they got him up to a sitting position and encouraged him to bend forward as he vomited again. He then looked towards Jack noticed that he was on his back and Mr. Rowlands was kneeling over him administering CPR.
71. Stephen Rowlands
He was 60 years old at the time of these events and made an original statement dated the 12/10/16 after what he described as a harrowing night and it stated he was a security manager employed by Metrolink, but he wished to correct that because he was self-employed working for Palladium as an operations manager. Whilst the statement said his role was to maintain security that was another mistake he wished to correct because there might have been a perceived element of that because he rode the trams and wore HV jackets but that was not right. I find as a fact that this was an unconvincing explanation and that he did at least in part perceive that his role did include an element of security. I do not accept that was an error that crept into his statement. He said he dealt with people at Palladium and sometimes a company called Titanium.
72. He had been a police officer for about 13 years and had received training in the detention of people and restraint techniques. He claimed to have restrained well over a thousand people never causing any lasting injury or receiving any complaint. He had also received training in doing CPR.
73. On the 11th October 2016 he was the line manager and the senior person in the group of contractors working on the Metrolink system. He started work at 16.30 PM and would normally finish at 12:30 AM. Once he left the police force, he obtained an SIA licence which was renewed and so had one at the time of this incident but did not require any training on restraint or self-defence techniques. When interviewed by the police he said that he had received self-defence training about four years previously although he couldn't remember who provided this. He had received training from Metrolink in carrying out the role of a CSR. He was familiar with it and had training on the walkaway policy. He was the team leader that day and he reminded his colleagues of it at the start of the shift.
74. He said that others may have perceived his role as being security, but he knew the limits of his role. The walkaway policy meant that you walked away from conflict. When the incident happened, he anticipated the arrival of the police, but he had not called the police personally. He had been informed that they were on their way. He did not know where the lads were until he got to the taxi rank outside and he accepted, he could have called the police at that time.

75. At about 11.30 pm he was stood on a Tram platform when he heard Mr. Hedges shouting for help. Mr Hedges told him that he had been having trouble with lads who had been smoking a bong on the train and when being escorted from the tram had begun threatening the staff. Mr. Hedges did not say he shouted. Mr Rowlands understood that British Transport Police (“BTP”) were looking for the lads and he, Mr. Sellers and Mr. Heathcote-Hilton who were all wearing HV jackets went to see if they could locate the males. They made their way to the main exit which leads out onto a pavement area and a taxi rank where he saw a group of six males. He said a male carrying a small black Adidas bag started shouting and threatening them. The CCTV outside the front entrance to the station shows that Mr Rowlands and his colleagues once outside look in the direction of the camera and at that time Jack is not in view. The body cam recording equipment is not switched on at that stage and what was said, by whom and in what tone cannot be ascertained.
76. He told the group to move from the station and the male with the bag was up face to face with Mr. Sellers and said something like “do you want some of this”? and he saw him grip the bag further down. Mr. Sellers then pushed the male away to give himself some space. At the same time, he said the male then came up to him and swung the bag towards his head and he put up his hand to stop it and the bag thudded into his hand. He said that this happened in the confines of the entrance itself in what he described as the carpeted area. Contrary to what Mr Rowland said this part of the incident occurred outside the entrance on the pavement and not inside of what he described as the carpeted area. He also said that there was a lad in a blue tracksuit that that had a go at Mr Sellers, and they ended up dragging this male to the floor.
77. Having seen the CCTV he accepted that he had got the sequence of him being hit and the restraint of the male being on the floor wrong. I find as fact having viewed the CCTV recordings, he was not hit with a bag wielded by Jack as he described and nor was Jack swinging it about. He also said that Jack hit Mr. Hedges twice although Mr Hedges in a written statement stated he was only hit once. In his police interview Mr Rowlands confirmed that the same person who hit Mr. Hedges also hit his hand with the bag. He also said that Jack had committed an arrestable offence.
78. I find as a fact that Jack moves towards the camera positioned on Mr Sellers’ chest area removing from his left shoulder a small oblong shaped bag. He moved back into camera shot holding the bag and is holding it in his left hand at about waist level. The other camera view does not show this. Jack moves to the other side of the entrance and then returns whilst Ethan Harvey is still being forcefully restrained on the ground. He moves towards the entrance and swings the bag with his right arm but it cannot be seen whether or not he contacts anything or anyone. However, I accept as being accurate Mr Heathcote – Hilton’s account of him being hit in the kidney area by a bag wielded by Jack. As he moves away Mr Hedges attempts to kick him. Jack moves a few yards away from the entrance but then returns as Mr Hedges is near the middle of the entrance and swings a bag with his right arm which connects with the back of Mr Hedge’s right shoulder. Jack moves out of view and is then seen after a short period of time running up the road away from the entrance followed by Mr. Nevet.
79. I find as a fact the Craig Nevet had not been involved in any sort of physical altercation but had simply been standing around watching events. At no time did he or Jack stab or attempt to stab anyone with any object. Jack and Mr. Nevet ran off followed initially by Mr Sellers and Mr Fogarty.

80. Mr Rowlands and Mr Gartside also started chasing them. Once on Deansgate Mr Rowlands got into a taxi and began travelling up the road when he saw Mr Gartside and he asked the taxi driver to stop so that Mr Gartside could get in. At some point during the chase he removed his HV vest and put it inside his jacket. He told me that he did so because of his police training in surveillance not to wear something bright when following somebody. He did not phone the police or ask Mr. Gartside to do so whilst the pursuit continued. In his police interview when asked why he ran after Jack and Mr Nevet he said that it was because of the level of violence that one in particular had used. When asked what made him go after them rather than waiting for the police he said that he thought that they would have been lost. He hoped the police would catch up with us at some stage and would probably take over from us.
81. When they got to Spinningfields Mr Gartside got out first and Mr Rowlands then saw him detain Jack. Mr Fogarty got hold of Mr. Nevet but he was able to get away quite quickly. He said that Mr. Nevet started shouting repeatedly that "I'll stab you". I find as a fact that Mr. Nevet did not do so. It is not recorded on the Body Cam equipment and is inconsistent with what Mr Nevet was recorded as saying – "Can you get off him, please?". Mr Gartside then chased him, and Mr. Rowlands took over holding Jack down although he was strong and kept struggling. I find as a fact that Mr. Rowlands also put a hand in a "grip like" hold on Jack's neck at the outset and applied downwards pressure. This is consistent with the body cam images and Jack saying "just not me neck". I also find as a fact that Mr. Rowlands said to Jack "we're going to put you out pal. You're all right". Jack was still face down and he was beside him with an elbow in his back to stop Jack getting up.
82. I find as a fact Mr Sellers had continued to restrain Jack together with Mr. Gartside for about 3 minutes before Mr. Rowlands took over from Mr. Gartside. Mr. Sellers then got up and went to catch Mr. Nevet and was seen to rugby tackle him. I find as a fact that when Mr Rowlands first came into contact with Jack he said "I'll tell you what, I'll just, just put him out". I also find as a fact in response to that Jack said "just not me neck".
83. This is consistent with the transcript of the body cam and Mr. Fogarty also recognising Mr. Rowlands voice as well as the evidence from DS Anderton. Jack said, "I'm not resisting" and also "just not me neck". Mr Sellers then said "okay. Stop now. Stop". Then Mr Rowlands said "Right, if you struggle, I will put you to sleep. It won't kill you. It won't kill you, but you go to sleep for a while". Mr. Sellers had not moved away and he probably heard that because of his proximity and physical contact with Jack. This was before he moved to try and get Mr. Nevet. Jack said nothing more after this which was recorded on the body cam equipment.
84. Mr. Rowlands initially had hold of both Jack's arms behind his back and also used his elbow in Jack's back to try and stop him getting up. This placed downwards pressure on Jack's back, and he was still in the prone position. When Mr. Fogarty joined him, he held one arm and Mr. Fogarty the other. In his police interview he said that Mr Nevet had threatened to stab somebody but not Jack. The purpose of detaining Jack was hopefully for the police to attend. He took his HV jacket off as it would be easier to pursue someone without it on as it would stand out too much. He also said that he did not know what positional asphyxia was.

85. Whilst Mr. Rowlands continued to hold one of Jack's arms and put bodily pressure on Jack's back. Mr. Rowlands said that Jack was continually shouting to get off him along with other numerous threats. That is not recorded and Mr. Sellers would have been on the other side of Jack holding his arm This is inconsistent with what Jack is recorded as saying earlier when Mr. Gartside was also restraining him and was repeatedly saying that he could not breathe. He said nothing that could be interpreted as a threat. Mr. Fogarty said that Jack was slurring his words, and that he could not tell what he was saying. Since both men were close together holding Jack down I find that these accounts are inconsistent but if Jack had been doing as Mr. Rowlands says it is inherently improbable that Mr. Fogarty would not have heard Jack allegedly shouting or have been aware of this. I find as a fact that Jack did not shout or make threats during this continuing period of restraint of about 9 minutes and neither man checked on Jack's welfare and breathing at any point throughout that period. I find that Mr Rowlands is an unreliable witness and is not being truthful about this.
86. Mr. Rowlands has never said that he put Jack in a neck or choke hold or admitted saying what I find as a fact that he did or explain why he said it if he did not. Taking into account Jack's described actions and what can be heard on the sound recording before Mr. Rowlands began restraining Jack and the absence of shouting thereafter, I find as a fact that Jack was restrained by a choke or neck hold or by another mechanism that put pressure on Jack's neck and the vagus nerve. This further restricted his breathing and added to his metabolic acidosis. I find as a fact that this is the correct inference to draw from the comments made by Mr. Rowlands and my other findings of what he achieved when he first became involved with Jack. It is inherently improbable that there is another plausible explanation.
87. Consequently, I find that Mr. Rowlands thereafter put pressure on Jack's neck with the intention of rendering him insensible, unable to resist and/or unconscious which he did. Mr. Rowlands did not check on Jack's welfare during the continuing period of restraint over about 9 minutes. His explanation that he suddenly noticed that Jack had gone quiet and that that didn't seem right and that is why he felt for a pulse but couldn't get one is also inconsistent with my other findings. Jack had a cardiac arrest some minutes before he was turned over and must have stopped moving or being able to make a sound for some time.
88. It is also inconsistent with the expert medical evidence from Dr. Aw-Yong because when they turned Jack over, they noticed that his lips were blue and it would have taken at least a couple of minutes to develop that feature. I find that Mr. Rowlands' account of these events is inconsistent and implausible, and I do not find him to be reliable witness. Being a former Police officer and having had training in restraint techniques I consider it is inherently improbable that he would not have been aware of the potentially serious and life-threatening consequences of forcible continuing neck restraint or pressure. I also find as a fact that any ordinary person would know that putting someone in a neck or choke hold is inherently dangerous.
89. He asked Mr Fogarty to confirm that he didn't feel a pulse either and then went to put Jack into the recovery position and could now see his face and that his face was pale, and his lips were purple. He recognised the position as being serious and opened Jack's clothing and began CPR. Very quickly the police officer arrived followed by paramedics and they took over.

90. I find the fact that the force originally used by Mr Gartside and Mr Sellers was overall unreasonable and excessive. They had control of him in a position with his arms being held behind his back which meant that he was unable to pose a threat to either man. I also find that the continuing restraint and the manner in which it was done particularly by Mr Rowlands together with Mr Fogarty was unnecessarily prolonged and grossly excessive and unreasonable use of force.
91. Paul Fogarty
He was 43 years old at the time of these events and made an original statement dated the 12/10/16 which he signed below the declaration of truth and at the bottom of each page and at the end. It was taken by a police officer but he couldn't remember if it was read back to him or signing it. He had been able to read it recently. He was aware that the statement referred to him as being employed by Metrolink and was "Security", but he was not. Subject to that correction the statement was read to him and he agreed it was correct. He also made a statement on the 21/11/19 and clarified that he was self-employed and contracted with Titanium. His duties were described as assisting customers purchasing tickets on the Metrolink system; revenue protection; distributing leaflets and checking ticket machines but his duties were confined to the Metrolink platforms.
92. He couldn't remember Mr. Rowlands giving a brief at the start of the shift, but Mr. Rowlands was the line manager present and would always remind them about the walkaway policy which he knew about.
93. He said at about 11:30 PM he was on the platform when he heard someone shout. He and some colleagues ran towards the main doors of the station and he saw a male was being detained halfway along the main station wall and was told that both Mr Rowlands and Mr Hedges had been hit by a hard object in a bag although he accepted that his statement only referred to one of them being hit. In evidence he accepted that he thought it was only one person who had been hit. When he made the statement, things were a bit of a blur.
94. When he looked out onto the Street two further males were pointed out to him and they were running towards the cathedral. Mr Sellers pointed to a path and suggested they could use that to cut them off. They set off running and followed them through the streets but he did not think that they had got closer than 100 yards from them. Mr Sellers suggested that they take off their HV jackets so that they wouldn't stand out. He did so and put his inside the other jacket he was wearing and was doing what he was told. Once they had done that, they were able to walk because the males ahead of them were also walking and they closed the gap between them.
95. The males began running again and he and Mr Sellers continue chasing them through the streets. They caught up with them when they got the Spinningfields area and he saw Mr Gartside getting out of a taxi and moving to where he and Mr Sellers were. Mr Gartside then grabbed Jack who he understood had the bag. He detained him on the floor face down and continue to struggle. Mr Fogarty then grabbed Mr Nevet and held his arms behind his back, but he was able to wriggle free. Mr Nevet then ran close to Mr. Gartside, who was still on the floor restraining Jack, shouting several times that he should let Jack go and threatening to stab him. Mr Fogarty did not say that he saw Mr Sellers assisting in the original restraint. However, he said that Mr Sellers and Mr Rowlands then went to help Mr Gartside.

96. As they did so Mr Gartside got up and began chasing Mr. Nevet. Mr Rowlands then went over to assist Mr Sellers in restraining Jack. Mr. Fogarty then went to help restrain Jack who was still face down and he had hold of his right arm. He could hear Jack slurring his words but could not make out what he was saying and thought that they restrained him for about 5 to 6 minutes. Since he was right next to Mr. Rowlands I find it inherently improbable that if Jack was shouting and continuing to make threats that he would not have heard them. I find as a fact that Jack did for a period of time made some noise but then stopped moving and this should have prompted a check on his welfare. He asked a passer-by to phone the police who arrived quickly and as they did so he and Mr Rowlands turned Jack over onto his back. He could see Jack was unresponsive and he tried to feel for a pulse but couldn't get one. He also looked blueish in the face. He did not perform CPR on Jack, but he did remember seeing Mr Rowlands do so before the police arrived.
97. Matthew Sellars
He was 22 years old at the time of these events and made a statement on 12 October and this was taken by a police officer but there were a number of things he wanted to correct. He described himself in his statement as being security for Palladium but he did not consider himself as security but considered himself as a CSR. The statement was made in the early hours of the morning and it didn't seem to be significant at that time. He also clarified that he was working as a self-employed contractor. The team leader for the shift would always give a briefing at the beginning of work. He received a briefing every day and Mr. Rowlands was the team leader on the 11th October 2016. He was familiar with the walkaway policy and had received briefings on it previously, but he couldn't specifically remember whether or not Mr Rowlands had referred to it that day. He confirmed that he had received CSR training from Metrolink on the walk away policy that it should be adhered to.
98. At about 11:30 PM Mr Hedges told him and the others he was working with that the group who been smoking substances and threatening staff had been thrown off a tram. He and Mr Rowlands went to see where they had gone and as they left the main exit towards the taxi rank, he noticed the group and they immediately began to be aggressive towards them. He was wearing body cam equipment attached to a lanyard around his neck which had been turned on. He described the main aggressor as being Jack. He said that Jack continuously threatened them and called them "dickheads" and was bouncing around swinging a bag and asked them if they wanted to fight. The sound recording shows that Jack said that the group had come out of the exit and left Mr Sellers and his colleagues behind and asked why they come outside to "cause shit" and that they should "fucking get back in there".
99. At one-point Jack came very close to Mr Sellers and in response Mr Sellers extended his arm showing his palm to keep him at arm's length. Jack backed away and is heard to say on the sound recording that Mr Sellers had assaulted him. I find as a fact the Body Cam and sound recordings show that Jack was aware of the Body Cam equipment because at this point before he is pushed, he leans forward and says "boo" directly in front of the camera. Jack approached him again and he pushed him back for his own safety. He then said that a male to his right with a hooded jacket tucked up to his nose with it pulled tight so that he could at least see his eyes went to strike him and this ended up by him grabbing this male around the head and then both fall into the floor. I find as a fact that this was Ethan Harvey who was wearing a light coloured hooded short jacket which was over his head and wearing a baseball cap underneath the hood. The coat was zipped up to a point

covering his chin but not his mouth and was not pulled up to his eyes and was not as Mr. Sellers described.

100. I find as a fact that as Mr. Sellers pushed Jack away and then Ethan Harvey attempted to prevent Mr Sellers having further contact with Jack who moved away quickly, I find as a fact that Mr. Rowlands was not struck by Jack with his bag but moved quickly towards Jack and swings a fast and forceful punch towards him which comes very close to Jack's head and which may have made contact. Ethan Harvey was being physically grabbed by Mr Sellers and assisted by some of his colleagues and dragged back inside and forcibly restrained on the floor. Mr. Rowlands returns inside the entrance area and is in view but has no engagement or contact with Jack.
101. Mr Sellers had received no training on restraint or self-defence. He let go of the male he was struggling with when he was being restrained by other members of staff. When he stood up, he realised that Mr Hedges had been struck by the male who had threatened himself with the bag. Jack and Mr. Nevet then ran off and he, Mr Fogarty Mr Gartside and Mr Rowlands then gave chase for over 1,000 metres through the streets until they caught up with them on the pavement near to the Australasia restaurant entrance on Deansgate. He had removed his HV vest during the course of the chase and he thought he had put it in a pocket because it was easier for the camera to be used when he was not wearing it.
102. Mr Gartside caught Jack and says he assisted him to the ground and restrained him although he continued to struggle and push-up off his knees and tried to get to his pockets and he was unsure whether Jack had a weapon in his pockets. The other male was running behind and shouting things but he couldn't remember what he was saying. Mr Sellers then said that the male had started throwing punches at Mr Fogarty before running off. Mr Fogarty did not give evidence indicating that Mr Nevet had started throwing punches at him and nor did Mr Gartside say that. I find as a fact that Mr Nevet did not do as is alleged at this point. I find as a fact that Jack was not in possession of any weapon within his clothing.
103. Mr Sellers said Jack continuously stated he could not breathe but he was talking and did not sound as though he was out of breath or straining to breathe. He believed that Jack wanted them to release him so we could get away. He was kneeling next to Jack who was on his chest with his head to the side and he was to his right restraining one of Jack's arms behind his back and applied pressure to his arm. I find as a fact that was Jack's right arm. Mr Gartside was to the left. During the course of the restraint Jack said "I'm not resisting but I just can't breathe. Can you just release my neck?" I find as a fact Mr. Gartside was holding and putting pressure on Jack's neck at the outset.
104. Jack remained in the prone position for minutes. Mr Rowlands and Mr Fogarty joined him, and he released his grip on Jack. He then said he tackled Mr Nevet who was running at him. This is contrary to what Mr Gartside said and I find as a fact that Mr Nevet was tackled when he was running away and was then restrained by Mr Sellers and Mr Gartside. During this his neck was held by the hand of either man and pressure applied to it. He repeatedly said that he could not breathe and was eventually sick. The police and paramedics then arrived and took over the situation. When he was outside Australasia, he thought the Body Cam equipment may have fallen off but couldn't remember.

105. I find as a fact that during the chase at one-point Mr Sellers said "why did he whack Steve? The little prick". His then heard to say "we've got him stop I need to chill out? "We get this little fucker though. I don't care". Shortly after this when appearing to be addressing a taxi driver he says "they've assaulted someone, try stabbing him. Do not take them". I find as a fact that neither Jack nor Mr Nevet physically tried to stab anybody and the assertion that they did is simply untrue. Similarly Mr Sellers alleged that someone had been hit on the head which was also untrue. I find as a fact that these comments indicate that both men had become over aroused or stimulated by the bravado of the chase and were losing control of their emotions.
106. North West Ambulance Service Emergency Medical Technician ("EMT") - Ashley Matulko
On 11/10/16 he was working as an EMT for NWAS but is now a GMP officer. That night he was working with a colleague called Valerie K and he was the driver of the ambulance that was being driven down Deansgate when they were flagged down by what he thought was a police officer that was near to the Australasia restaurant and they parked on the road. We both got out and called control for Paramedic backup because this is standard practice. Paramedics were more qualified then him and his colleague for delivering some forms of treatment. He then got the defibrillator from the vehicle and he noticed a person lying on the ground face up with a person on top of shaking him as well as another male who is about 5 to 7 m away and was vomiting. This person was with two men, but he didn't hear this person said he had consumed Spice. His attention was on Jack.
107. The man with the male lying on its back didn't seem to have any official identification they didn't think this was a member of the public because of his clothing which seem to give the impression of some level of authority. This person was crouched between the legs of the male on the ground and seem to be shaking him and talking to him but he couldn't remember what was being said. His initial impression was that it seemed to be an attempt to wake the person up and that he thought it was a drunken person that the police had dragged down. He immediately saw from the face of the male that he was quite poorly. He seemed very grey and white as if the blood had been drained out but didn't notice the colour of his lips. As soon as he saw Jack he recognised this as an emergency.
108. He had no idea what had caused the male to end upon his back and the male on top of him who looked panicked, frantic and worried said that this person hit him with a snooker ball but he never got to find out why the male on the ground was in the position. It did not look like this person was initially doing CPR. His main priority was the male on the floor and ran through his A B C's airways breathing and circulation and felt for a pulse on the neck which was absent. He concluded that the male was in cardiac arrest, but his airway was clear although he was making no effort to breathe.
109. He and his colleague cut the clothes away and applied the defibrillator pads to his chest. This equipment has a time recording facility, but he did not know if this was calibrated to the correct time. No electrical activity or Asystole was detected, and they began manual CPR when an armed police officer arrived who assisted in performing CPR which freed him in order to deal with the patient's airway. His colleague passed in the airway equipment which comprised initially of a tube that is passed through the nose and into the throat and then his colleague was able to secure another airway by the use of different equipment.

110. It was normal procedure to stop manual CPR and check the ECG monitor which In this case was after about 6 minutes and this showed Pulseless Electrical Activity (PEA). This is some electrical activity in the heart that does not cause the heart to beat and create a circulation. Manual CPR was then recommenced. He then noticed initially by listening that Jack appeared to be making some initial attempts to breathe. CPR is stopped again, and the number of breaths is counted which 4 was and which was regarded as insufficient, but it did indicate the return of spontaneous circulation. They also used what is known as a bag and mask literally squeeze air into Jack.
111. They also checked Jack to see if there was any indication of the use of drugs, for example, by injection but the other person present still did not indicate how Jack came to be in this position. Jack was then noted to have a pulse rate of 87 and a good blood pressure which he was very pleased with. About three minutes later a rapid response paramedic arrived who was then able to cannulate Jack in order to give him cardiac drugs. A second ambulance arrived and so there were five members of ambulance staff involved in treating Jack and they were able to place him on a stretcher, move him to an ambulance and take him to the Manchester Royal infirmary.
112. This was a stressful position for him to be in the room a lot of police in attendance. Police tape was put up which seem to indicate that it was a crime scene. He did not recall seeing the person had been vomiting again but he did speak to his colleague Valerie and they both thought the other men that they saw on their arrival were undercover police officers because of their clothing. He had no further involvement with Jack after he was taken to hospital.
113. North West Ambulance Service Emergency Medical Technician (“EMT”)-Valerie Carr She made a statement dated this 20/12/16 with the assistance of a police officer and was a level 2 EMT based at Whitefield Fire and ambulance station and on the evening off 11/10/16 she was working with Mr Matulko and they were driving their vehicle driving down Deansgate when they were flagged down near the Australasia bar by what she remembered was a police officer in uniform. The officer directed her to Jack and told her he was in immediate need of help but she was not told how or why JB was in this state. She also saw another male who was vomiting and clearly responsive who was with a police officer, but she was not sure if it was the same police officer who had flagged them down. Her priority was Jack who was not responsive and she thought there was a police officer with him. He collected her equipment bag from the ambulance and returned to JB to initiate basic life-support treatment. The first action was to check if the patient was responsive, but she could detect no signs of life - pulse or breathing being present.
114. There was a man in dark clothing next to Jack who was doing what she recognised as CPR but not shaking the patient. She couldn't remember if this person had uniform insignia. Her next job was to secure an airway which he was qualified to do and achieved and then attached the basic life support pads to JB's chest for an ECG but the first reading was Asystole or a flat line. She recorded this in her statement as being at 23:53 hours. Manual CPR then continued with 30 impressions and ventilations. She appreciated that her statement made reference to specific times but she was not sure now that they were accurate. The statement is more likely to be accurate than her memory now. There was then a return of spontaneous circulation before a second rhythm check which showed a normal sinus rhythm and CPR was stopped and what she said in her statement was 00 03 hours with assisted ventilations when it was noted that he had started to breathe with 4 respirations per minute whereas 16 would be regarded as average or normal.

115. At some point somebody said something about Spice and restraint. Ambulance call sign 528 then arrived and all the ambulance personnel worked together to move Jack onto a stretcher so that he could be taken to the MRI for treatment.
116. GMP P.C. Williams
At about 11.45 on 11 October 2016 he was on duty in a marked police vehicle and single crewed when he was asked to attend King Street in response to a report of males fighting. On driving down Deansgate he was flagged down but he didn't know by whom and he saw a melee involving a number of males. He saw a male lying on his back on the ground with another male straddling him and pushing down on his chest which appeared to be giving CPR and he seemed to be a security guard. He checked if the man was still OK to continue CPR and the male on the ground looked unresponsive and very unwell. The Officer was trained to do CPR himself. He was not told how the man on the ground came to be in that position but there were other males close by who appeared to be fighting and therefore there were two incidents.
117. His focus was on the other males and two of them appeared to be holding or grabbing at the third but he did not see any punches being thrown. The third male vomited, and the other two males told him that there had been an incident at Victoria station and that made him think that they were security guards. He was able to identify himself on the video and could see the light of his radio attached to his chest. His primary concern at that stage was to stay with the man who had been sick. He didn't recall being told by the men who were struggling with the male that he had a knife but he could have been told by one of them that this person had threatened to stab them but on recording of the video he can recognise the word "knife" being said. He radioed for assistance and then managed to flag down an ambulance that was driving down Deansgate. The ambulance staff began to treat the man on the floor, and he went back to deal with the man who had been sick who was then taken to hospital where the officer arrested him and he did say "Fucking Metrolink staff choking him out, I could hear him saying that he couldn't breathe but they kept him in a headlock".
118. The statement of PC Brierley of GMP was admitted in evidence under Rule 23 but with minor redactions of opinion. This confirmed that Mr Rowlands approached him and explained that Jack had been chased from Victoria train station by himself and a number of other staff after he had been involved in a disturbance and had made off by foot. He indicated that he and other staff were assaulted whilst trying to restrain Jack and pointed to what looked like a black sock that was next to Jack on the floor whilst he was being treated. Mr Rowland said that inside the sock was a snooker ball and that Jack had been swinging it around hitting staff to avoid being restrained. He also showed the officer his hand which had a swollen lump on the fifth knuckle and Mr Rowland said that this was sustained whilst trying to detain Jack.
119. The following evidence was admitted in written form under R23 and can be briefly summarised as follows: PC Alcock of British Transport Police ("BTP) seized the body cam equipment worn by Mr Sellers which was played to him. PC Love of BTP was on duty in uniform on the 11th October 2016 and received the report of a staff assault. He arrived at the entrance to the station and saw a male being restrained on the floor who he later identified as being Ethan Harvey who was later arrested on suspicion of assault. He was notified by Metrolink staff that this male and others have been smoking drugs and

when asked to leave had punched a member of staff in the face and had been restrained. Mr Harvey was arrested on suspicion of common assault.

120. PC Guildford of Greater Manchester Police (“GMP”) was also a duty 11 October when at about 23:45 hours he heard PC Williams requesting an ambulance urgently due to male at his location being unconscious and not breathing. He could hear the urgency in his colleague’s voice. On arrival, other police vehicles and ambulances were already present on the scene. He was then asked to place some crime scene tape to secure the area and then followed PC Williams who took Mr. Nevet to the MRI. He witnessed PC Williams then arrest Mr. Nevet.
121. PS Kenna of GMP stated that at 23:51 hours on 11 October he responded to a report of an offender being detained at the Avenue in Spinningfields and was made aware that PC Williams was with a male who was neither conscious nor breathing. On arrival he could see a number of other police officers present together with a number of males who were wearing dark clothing and was informed that these were from a private security firm. He also noticed that paramedics and firearms officers were tending to the male. He directed other officers to put up scene tape. His primary concern at the time was the welfare of Jack. He directed another officer to follow the ambulance that took Jack to the MRI and at the hospital learnt that he was being placed into an induced coma and was going to have a CT scan as soon as possible. He later learned that Jack had swelling on the brain. He and a colleague tried to obtain next-of-kin details because it was recognised that he was critically ill. He made arrangements for a traffic unit to assist in picking up Jack’s mother who was being collected by another police force and transported to Manchester.
122. PC Wilson of GMP was on uniformed patrol in Manchester city centre and also attended the scene of the incident to preserve the scene and keep members of the public away. On arrival he noticed other police officers were on the scene conducting CPR and a short time later the male was taken away in an ambulance. He obtained identification details of Mr Rowlands, Mr Gartside, Mr Fogarty and Mr Sellers.
123. Crime Scene Investigator Rachel Verral had 12 years’ experience and in the early hours of the 12th October 2016 at about 1:35 AM she attended the scene of the incident to take photographs and recover any evidence. On arrival the scene was still taped off and police officers were still present. She noticed paramedic paraphernalia and items of clothing. She searched the scene for a snooker or pool ball but did not find such an object. Had she done so she would have seized them and recorded that. I find as a fact that Jack was not in possession of snooker ball. Any items that she recovered were recorded as exhibits bearing her initials and were numbered in a sequential way. One could be described as a black bag. It was possible that some items could have been taken by the ambulance staff to hospital before she got there.
124. DS Richard Anderton of GMP
He had been involved in the inquiries into the incident from the outset and also had been involved in some of the interviews. He had reviewed and seen the CCTV several times and the Body Cam recordings were downloaded onto a CD together with the sound recordings which he was able to see and hear. There had been no sound audio enhancement applied to the recordings. It was possible that other conversation had occurred that had not been recorded or was inaudible. There was reference to the police being requested to be called at Victoria station, but Mr Sellers phoned at Australasia.

125. He personally had not directed the Crime Scene Investigator to collect any samples or seize any objects but he was not the officer in the case and was not on duty on the night of the events. It was true the crime scene could stretch beyond a particular location and in this case a long route had been taken from the station but he was not aware of anything being found or seized at the station. He was aware that a drawstring bag was recovered at the scene on Deansgate which contained some clothing and a phone charger.
126. He was very familiar with these and has also read witness statements. He was able to confirm that a person known as Chris Carroll phoned the police at 23.40; a member of the public at 23.44 and Matthew Sellers at 23.46. All three were 999 calls. Due to his familiarity with the sound and video recording Mr Gartside originally restrained Jack. Mr Rowlands took over from him and he was heard to say ""We gonna put you out now, pal. You're all right." Jack is heard to say "just not me neck". Mr Rowlands then says "right, if you struggle, I will put you to sleep. It won't kill you. It won't kill you, but you will go to sleep for a while". At one point the body cam was on the floor whilst it seemed that Mr Sellers was detaining Mr Nevet. Mr Sellers asked a member of the public to phone the police and then he did so himself. Chris Carroll then phoned Mr Sellers. Video appears to show Mr Rowland's kneeling and doing CPR. There was also a paramedic present.

THE MEDICAL EVIDENCE

127. Professor Lumb – Home Office registered Forensic Pathologist
He recorded the background information provided to him by the police and he had seen the body cam recordings and highlighted some aspects of what was heard to be said. This specifically includes phrases such as putting him out and putting to sleep. He had previous experience of dealing with cases involving restraint and what are often described as sleeper holds in which someone is held to put them to sleep and pressure is applied to the neck. He considered the available medical records and he confirmed that Asystole was when there was no electrical activity in heart. In this case after six cycles of CPR circulation returned.
128. Whilst at the Manchester Royal Infirmary ("MRI") Jack required to be intubated and sedated. He was breathing with a tube placed in his airway. His post-mortem examination was some two months after the original incident but in it he recorded that there was a bruise at the top of the forehead just behind the hairline. Some bruises which are also known as haematomas can be on the skin or below it. Bruises are caused by blunt force trauma he could not say how this was caused. Whether this be by way of a blow from a weapon or a fist or from a fall.
129. He confirmed that there was no fracture to the skull and there was no intracranial bleeding within the brain and that a CT scan had been undertaken shortly after his admission to the MRI. On 12/10/16 there was an episode of sinus bradycardia which simply means slow heart beating. There is also reference to heart block and sinus rhythm which as I understand it is due to interruptions in the electrical flows to the heart. It was seen that there was mild brain oedema or swelling of the brain which is a non-specific feature often seen as damage to the brain. He noted that there were chest secretions and Jack suffered from seizures which could be due to the head injury. The level of brain damage seen was consistent with having low or interrupted oxygenated blood flow to the brain and is typical of those seen in instances of cardiac arrest. Having been transferred to Hull on

7th November 2016 the hospital-acquired pneumonia which developed is typical of the complications that can arise in patients who are in an unconscious state. They are prone to getting infections such as Urinary Tract Infections.

130. He had seen the Post Mortem photos. In particular he noticed that the eyelids had Petechiae or a rash. These are often seen in cases of asphyxial death but not all. However, asphyxia has many forms, but it is a possibility. His examination was over two months after the original incident and so any bruises or injuries that may have been caused at the time may have disappeared or resolved. Bruising does resolve but it does depend on the size of the bruise. Sometimes they persist. It is very variable. He had no experience or knowledge but these bruises could be caused by injections of antibiotics, seizure drugs or sedatives. He used other experts to assist him in his investigations which included toxicologists; cardiac pathologists and neuro pathologists.
131. On Page 9 of his report refers to a large cervical muscle in the outside of the neck. The fascia is the lining of the muscle and there is a bruise on the surface. He then looked at the bruise under the microscope. Although it was difficult to age bruises but, in this case, he saw signs of well-established healing. Consequently, this was not a bruise caused just before the death. It was of some age. It could have been as old as when he was admitted to hospital in the first place. Bruising can be caused by medical intervention and there is nothing in the records to indicate the insertion of needles that could have caused puncture marks. It may be significant in terms of causation but he can't tell. It could be consistent with pressure on the neck. The other feature that he recorded relating to the laryngeal structures of the neck was simply a natural variant and was not a true injury. He explained that the Hyoid bone is a U-shaped structure just above the larynx at the front of the neck and sometimes it can be fractured if someone is strangled or pressure is put on the neck. There were no fractures in it in this case.
132. Another cause of the death could be toxicological and he would rely upon the toxicologists to give evidence about that and would defer to the toxicologist about those aspects. Professor Lumb understood that a restraint specialist was going to give evidence so he would defer to him but pointed out that he does deal with issues of restraint quite frequently.
133. He said it was critical to understand the cause of the cardiac arrest. In this case he had to consider the restraint that took place on the ground and whether there was impairment of breathing caused by the restraint. He had researched a sample some of the medical literature in order to assist him in forming an opinion. Breathing can be impaired during restraint on the ground as well as by pressure on the neck. Pressure on the neck can readily cause death if applied forcefully. It can close the airway causing asphyxia. So, you can't get air into your lungs. Pressure on the neck may also lead to asphyxial signs. The most common are Petechiae spots around the eyes and sometimes well into the face. He saw some of these on the photographs and there were some asphyxial features. However, these signs can actually be seen in death from natural causes if there has been difficulty breathing. In this case it is a possibility that there was pressure on the neck.
134. It could be the position Jack was in with his arms behind his back and pressure being applied to his back and being in the prone position that could cause Pressure on his neck. It could be a combination of one or more of these features and an interaction between them. It is not possible to exclude restraint as being a cause of the death.

135. So far as research papers are concerned that an experiment in academic terms involving a person lying on the front with weights on their back up to about 100 Kg which did not seem to produce any adverse effect. However, it is simply not possible to replicate what happens in the real world and this may be different. The stresses may be different. There may be the use of knees or other focal points of pressure. Breathing also involves the use of a large band of muscle known as the diaphragm. Pressure on the back can also affect the functioning of the diaphragm. Pressure on the neck can close the airway. They can also effect the carotid arteries in the neck which are vital in supplying blood to the brain and can cause the collapse. Pressure on the neck can also affect something called the vagus nerve causing the heart to slow down or stop. Sometimes you will see injuries to the neck in asphyxial deaths and sometimes not.
136. The length of time of the restraint is also as a matter of common sense a factor as well. The size of the person being restrained was relevant but that was not dealt with in the literature he had read. If you have been heavily exercising then you need more oxygen and you are breathless. You have air hunger. If something else comes along to upset you then you can be starved of oxygen. He could not be certain what the cause of the cardiac arrest was. There were a number of factors that could be at play or interrelate to one another. This will include the aspects of restraint; pressure on the neck; heart disease to some extent which he described as mild but not of itself sufficient to cause death; the length of time of any restraint; and the presence of drugs.
137. In cases of restraint sometimes injuries can be detected or seen and sometimes not. A great deal depends upon the pressure applied. It was two months after the original incident that Jack died and the bruising he noted within the neck was seen. Sometimes such bruising could be caused by medical treatment by the insertion of what is known as a central line. However, his review of the records did not indicate that this had taken place. Pressure on the neck can lead to asphyxial signs. It is common to see petechia around the eyes and swelling on the face. He saw little of this and even where there are none it does not mean that there has not been asphyxia. It remains a possibility. Overall his opinion as to the pathological cause of death he described as being:
- 1a. "Bronchopneumonia" which is a bacterial lung infection which is due to or as a consequence of;
 - 1b. "Hypoxic Ischaemic Encephalopathy" which is damage to the brain from lack of oxygen or blood. In this case he is satisfied that the brain injury caused the pneumonia which is due to or a consequence of;
 - 1c. "Cardiac Arrest of undetermined cause."
138. He explained that a cardiac arrest is simply when the heart stops beating but he didn't know why. In this case the pneumonia was the terminal event but there was no evidence that he had pneumonia at the time of his cardiac arrest.
139. The following evidence was admitted in a written format pursuant to Rule 23:
- (1) Lindsay Ward (Forensic Toxicologist) confirmed that Synthetic Cannabinoids were found in the blood sample she tested that was collected from Jack shortly before 6 am on the 12th October 2016 and was consistent with prior use;
 - (2) Dr Suvarna (Cardiac Pathologist) reported that the left descending coronary artery was narrowed by 20 to 40% by atheroma. There were no other abnormalities; and

- (3) Dr Eddleston summarised the MRI care and Dr Hibbert summarised the medical care and treatment Jack received in Hull. This was not disputed.

140. Professor Eddleston – Clinical Toxicologist

He prepared an expert report dated the 20/10/19. He was also involved in preparing a tripartite joint expert report with Mrs Evans and the second report from Dr Saltissi dated the 21/2/20 jointly with Mrs Evans.

141. He was provided with the same CCTV and body/cam recordings and in addition the report of Professor Lumb, and the other medical specialists. In viewing the CCTV and Body Cam he focused on the start of the recordings and the end but not on the chase or running but he had seen it.
142. The toxicological tests confirmed that synthetic cannabinoids were in Jack's blood, but it was not clear what the drug that he described as the parent drug was. He couldn't say when the Synthetic cannabinoids were taken but it must have been within a certain number of hours of the original blood sample being obtained otherwise the drugs would disappear although it is not known how long they actually stay in the blood anyway. There are no studies on what is described as the half-life of a drug. This is the time for the concentration of a drug in the blood to fall by half. Synthetic cannabis is a commonly used recreational drug across the UK and took off in about 2014 and 2015. It comprised multiple compounds without being tested on humans or animals. Pharmacologically they were a known entity and tens of thousands of people have been admitted to hospital in the UK and around the world. He was aware that plant material has been found in some of the drug recovered in this case but plant material is not toxic. The more Synthetic cannabinoids within a quantity of material which also comprises plant material the greater the toxicity. That increases the dose and there may be variable toxicity and potency between various batches.
143. He didn't know the quantity of drugs taken or their quality but in his opinion, Jack was showing features of toxicity and so from that felt it would be a reasonably large amount. In this respect he used the word toxicity to mean that the drugs affected Jack's behaviour. He was in agreement with Mrs Evans that the taking of the drug affects behaviour, but that Mrs Evans had a different expertise to him. She was an expert on analysis, but he sees patients and treats them before they might die and she only looks at toxicological analysis after death.
144. He agreed that different individuals respond differently to Synthetic cannabinoids. In addition, what people take is different in contents and purity. There will be some people who become sick and some who don't. That may be because of the way the body handles it or the dose they took. On what he understood in this case there may have been a number of different amounts of Synthetic cannabinoids in several packs so it was possible that Jack and his friends were not all smoking the same thing. That represents his experience because he has seen patients who indicate they have all been smoking the same thing but one or more may act differently.
145. He had agreed with the other experts on a number of factors. He agreed with Dr Saltissi that the drugs materially contributed to Jack's death. He took into account Jack's behaviour leading up to the chase and the restraint. He agreed that it was not possible for the experts to say that the Synthetic cannabinoids were directly implicated in the death because in medicine you couldn't say that for sure but that is why they had agreed that

on the balance of probabilities they were directly implicated. In evidence when asked about whether or not the chase and physical exertion materially contributed, he indicated that although Professor Lumb didn't know about the level of Jack's fitness, Jack appeared to be a light person with a healthy heart and looked fit.

146. Professor Eddleston was asked about the question posed at paragraph 11 of the joint statement which read " Is it your view that the restraint or the manner of the restraint materially contributed to the deceased's death" In response to this he said he didn't know. He was aware that Dr. Saltissi was of the opinion that it had. Professor Eddleston pointed out that restraint in both the prone and non-prone position was common in the UK with tens of thousands of cases each year by police and health care staff, with very few fatalities. He also added patients of his had to be restrained at times and he couldn't be sure how much restraint impacted. It was his opinion that the majority of episodes of death from drug agitated states during restraint occur because of drugs and went on to say that restraint may have caused the timing of Jack's death but that was due to the presence of Synthetic cannabinoids in his body. He added that patients are restrained within his hospital and he couldn't recall a death from restraint.
147. The more agitated a person the more toxic and higher the risk of cardiac complications and death. No one in his care had died as a result of taking Synthetic cannabinoids. In the community it can cause them to die from funny heart rhythms. It was his experience that patients in hospital can be assisted by medical treatment but if they were in the community and they have taken Synthetic cannabinoids the likelihood is that they might die if emergency treatment is necessary but unavailable. Paragraph 12 of the joint report then asked "would the deceased have died if the restraint had not occurred?" To that he answered that he didn't know. Whilst Professor Eddleston accepted that cardiology was not a specialism of his, he responded by saying that patients who come into hospital with VF heart rhythm that he may treat may die and cardiology is an aspect of his treatment. Patients in hospital like this can survive if treated.
148. He was of the opinion that the effect of Synthetic cannabinoids might appear in minutes or hours after exposure and that may depend on how the drug was taken. Smoking is rapid whilst ingestion is slower. It has a quicker effect after smoking. It still takes time after smoking for it to be absorbed into the blood. When it was pointed out to him it wasn't known when Jack took drugs he told us that he had seen Jack on the video taking drugs from a Bong. I find as a fact that he is wrong about this and Kamal Kershaw was the person seen doing this and not Jack. This is verified by the CCTV recordings which he had misinterpreted and wrongly identified Jack as the person who he believed was seen smoking. Professor Eddleston accepted that whilst Jack was seen on the Body cam recordings displaying features of drug toxicity because he appeared agitated, he agreed there could be lots of reasons why Jack was agitated.
149. In summary he agreed with the other experts that consuming Synthetic cannabinoids can cause adverse cardiac events but not everyone who takes them experiences this. He also agreed that on the balance of probabilities that they played a part in the adverse event. He agreed that he still "didn't know" if the physical exertion did so. He accepted he was not a cardiologist or a restraint expert who could be asked whether or not Jack would have died without the restraint but in his opinion that Jack could have died at a later time due to the cardiac complications of Synthetic cannabinoids. In his opinion he couldn't exclude the death being caused by Synthetic cannabinoids because there was evidence of toxicity and plenty of cases where death is due to the drug alone. He couldn't say Jack

wouldn't have died without the restraint and that it could have caused the timing of the cardiac arrest.

150. Mrs Julie Evans – Forensic Toxicologist

She had prepared a first report in November last year and had seen a large number of reports and witness statements but hadn't seen the video footage. She had given summaries of the evidence. She was involved in the tripartite expert statement as well as a joint one between herself and Professor Eddleston. The original samples from Jack for toxicological testing were virtually exhausted and they had to rely upon what was known as a serum sample and found essentially the same things as previous toxicological testing reported by Lindsay Ward. She was satisfied that Jack had consumed drugs but she could not say in what quantity or at what time. She also confirmed that there were no, what were described as, half-life studies. She didn't know how quickly they broke down in the body. These are from a family of drugs with multiple changes.

151. The drug would more quickly affect the user if smoked because it reached the bloodstream quicker. She agreed it was highly likely consumption had an effect on the user's behaviour. In addition, it could affect the same individual differently on different occasions. She thought it likely that it played a part in Jack's aggressive behaviour but she didn't know the underlying personality of the person involved. She was not an expert in restraint or cardiology. In this case it is likely to have increased any agitation Jack exhibited but she couldn't say definitely. She was unable to express an opinion as to whether or not the restraint or the chase materially contributed to the cardiac arrest.

152. So far as the prevalence of use of Synthetic cannabinoids is concerned. She was aware of a study which indicated that there had been a 38% increase in violent behaviour in prisons over the period 2012 to 2014 with a corresponding increase in the use of Synthetic cannabinoids but that there has not been a subsequent increase in the number of deaths directly attributed to the drug. Consequently, there is no evidence of a notable effect. She was aware of a study in 2013 that indicate that in excess of half the prison population had taken Synthetic cannabinoids.

153. In her opinion Synthetic cannabinoids are likely to have affected Jack's behaviour but from her perspective it was difficult to say any more than that it was a possibility that it contributed to death. She agreed that she didn't know the potency of the drug that Jack consumed but she noted that he was able to run and didn't have a cardiac event then. Just to be clear she was unable to say if Jack would have died if he had not been restrained or that it materially contributed to his death.

154. Dr Saltissi – Cardiologist

He confirmed that he had written three reports of his own firstly in 2017, then in 2018 and more recently in 2019 but in addition he was involved in the tripartite joint expert statement dated February 2020. He had been provided with a lot of police evidence as well as the CCTV body cam recordings together with the transcript of what was said. He had seen the reports of the toxicologists as well as the pathologist. In his first report he dealt with the relevance of the fascial bruise on her neck muscle referred to by Professor Lumb on page 9 of his report and he was aware of his views as to the possible origin of that. Dr Saltissi had considered the possibility of asphyxiation, but the evidence given to this court meant it was much clearer to him now.

155. He was asked to explain the terminology he used by saying that Jack had suffered death when referring to the events outside Australasia when he knew that Jack died in December 2016. He explained using that terminology he was referring to the cessation of vital functions, for example a heartbeat. When that is absent technically the person is dead, but they can be resuscitated so that vital functions restart and they had what he described an aborted sudden death.
156. He agreed the Jack died as a result of pneumonia which was caused by the brain injury which in turn was caused by the cardiac arrest. In cardiac terms Asystole means an absence of electrical activity and any mechanical contraction of the heart. In other words nothing was going on in the heart. There are other rhythms which were also not compatible with life. VF was what he described as a random movement of the baseline with no output from the heart. The majority of cardiac arrests start out as VF and then the heartbeat disappeared to go to a flat line or Asystole. In this case it is probable that the initial cardiac rhythm was VF and then with the passage of time to the onset of ECG testing degenerated into Asystole.
157. There was nothing to support the contention that Jack had a pre-existing cardiac condition but he could not 100% exclude that as being impossible. He was well aware that a degree of cardiac narrowing in one coronary artery was detected but this would have had zero effect and can be discounted. As a matter of common sense if someone is choked and begins to asphyxiate that stops oxygen getting to the body. It was out of his expertise to express an opinion about whether or not injury to the neck was indicative of pressure on the neck.
158. There has been a body of evidence built up over many years the prone restraint can cause what is described as positional asphyxia. It is a matter of common sense that if you lie on your front you cannot expand your chest as much as you would if you were lying on your back. If prone it is even harder to expand your chest. Breathing affects cardiac function. The literature suggests that restraint can cause changes in the blood and can have an impact including cardiac arrest. Restraint is a topic which he has an interest in and he has previously provided reports on this, but he does not see himself as an expert in restraint.
159. When asked about what the impact a prolonged struggle would have had on the heart, he explained that a struggle results in exertion and using oxygen and also mental stress. Mental stress is an important factor in a cardiac arrest. This results in stimulation of the brain and the autonomic nervous system. This produces adrenaline and the body's fight or flight response. When you have mental stress, this results in an outpouring of those chemicals directly and via the nervous system which makes it much more likely that a cardiac arrest will occur which favours disturbances and in particular a VF cardiac arrest.
160. The exertion and breathlessness from running or jogging and walking over a period and over some distance would also be a factor in later oxygenation and acidity of the blood and again it is a potential trigger for cardiac arrest. He accepted the role of Synthetic cannabinoids discussed by other witnesses but there were two issues of relevance so far as cardiology was concerned. These drugs have a neuropsychiatric effect providing euphoria but also negative effects such as agitation and anxiety and so they can promote cardiac rhythm disturbances as well as mental stress.
161. The other effect, independent of the neuro psychological effect, is that they have a cardiovascular effect. The same receptors that are in the brain exist in the heart. When a

drug stimulates receptors this can have an adverse effect in terms of heart rate and blood pressure. In terms of the toxicological effects and timing which is not cardiac related he would defer to his toxicology colleagues. He agreed that when he drafted his first report in 2017 Synthetic cannabinoids were relatively new in terms of academic research. In his report he had quoted from a specific subscription only medical database which is kept constantly up to date and covers all aspects of medicine. He agreed that the greater the quantity of the drug consumed the greater the likelihood of an adverse effect, and the greater the potency the greater the likely effect on the heart. He confirmed that Professor Eddleston and he disagreed about the observed changes in Jack's behaviour. Professor Eddleston was of the view that Synthetic cannabinoids were a major contributory factor but he considered it contributed in a minor way but both would agree that it was a contribution.

162. He understood that Professor Eddleston was still of the opinion the pressure on the neck was not a relevant factor in the death. He understood the difficulties in determining how and when the bruising to the neck occurred. However, it was his opinion that in this case it was the combined package of contributory factors that caused the cardiac arrest. Jack was strongly predisposed to having a cardiac arrest by a combination of mental stress, exertion, and the effect of Synthetic cannabinoids and all of those were present for some time before he was restrained. Either it was a complete coincidence that he had the cardiac arrest without the restraint element or restraint was also a cause. He described this as being an additional factor and a cause of the cardiac arrest on the background of those other contributory factors.
163. In his second report he observed that Jack was seen to be moving and responding in the earlier stages of restraint and he was still alive before some of the individuals involved in the restraint moved on to deal with Mr. Nevet. Dr Saltissi went on to describe how he could not say that Jack was in a pre-arrest state. This would be when his heart had not yet stopped and he still had mechanical contractions with blood still being pumped round his body but it was insufficient to maintain full mental, respiratory and cardiac functions as well as maintaining metabolic integrity. If untreated a subject goes into cardiac arrest. It is very important to treat this in hospital if possible because you can prevent that from occurring.
164. A pre-arrest state can include impaired consciousness or what he described as conscious but not thinking quickly or not fully with it. In this case Jack can be heard responding up until Mr. Sellers moved away and then no further sounds were recorded as coming from Jack. However, as far as he could tell when Jack was responding he was responding appropriately and he would not say that he was in a pre-arrest state.
165. In his opinion had the restraint ceased at that stage the cardiac arrest would have been prevented. Mr Rowlands and Mr Fogarty took over the restraint and it was clear that a cardiac arrest had occurred when they noticed his lips were blue and he had a grey pallor and stopped responding. From the witness evidence he had seen there was nothing to suggest that he had gone from a conscious state, then to a pre-arrest state and then to a cardiac arrest. In other words, he seemed to go from the first to the third stage. Those performing the restraint might have seen a diminution of physical resistance, verbal response, and a change of colour and the onset of sweating and often the subject then becomes incontinent of urine and then goes into cardiac arrest. Those are the sorts of things that might be noticed by proper observation.

166. He considered the statements of the ambulance EMT's who attended and it appeared to him that the cardiac arrest occurred a few minutes before 23:50 hours. He noted that Mr. Nevet shouted they killed him and it is reasonable to presume the cardiac arrest occurred then or just before. The body cam identifies that Jack was breathless at the very start of the restraint and whilst it did start to diminish he was breathless throughout and he repeatedly said he felt subjectively breathless.
167. He confirmed that the drugs have the potential for triggering and making more likely a cardiac arrest. He repeated that they did so by neuropsychiatric stimulation or direct cardiac effects. The neuropsychiatric stimulation is evident from Jack's behaviour and demeanour which was consistent with someone who had taken this type of drug. He repeated that taking these drugs was one of the package of factors that contributed to the cardiac arrest. He confirmed what he said in a joint expert statement that the exertion materially contributed on the balance of probabilities. This was one of the package of factors which created a lack of oxygen and the outpouring of adrenaline. The restraint materially contributed to the death on the balance of probabilities and this was based on the temporal association with restraint and the onset of the cardiac arrest from a cardiological perspective.
168. He was asked to explain why in paragraph 12 of the expert statement he was of the view that Jack would not have died had the restraint not occurred. He said that all the other factors were present together for some time prior to the cardiac arrest. Jack had been able to run over 1 km despite having consumed drugs and suffering mental distress and struggling beforehand but he was still functioning and was not in a state of cardiac arrest. However, during the forced restraint he did have a cardiac arrest. He explained that this was either firstly, a complete coincidence or secondly that restraint was a trigger. Restraint itself was a factor known to be able to trigger a cardiac arrest and so consequently he favours the latter explanation. He maintained that on the balance of probabilities it was his opinion that this extra factor did play a role and was the final trigger for the event. Without the restraint Jack would not have suffered a cardiac arrest.
169. Dr Meng Aw-Yong
He was an independent expert witness in the medical aspects of restraint instructed by the court and had supplied 2 reports dated 28/2/20 and 12/3/20. He confirmed his qualifications and experience, the positions he currently held as well as the documents and other evidential material supplied to him in addition to other sources of information and research that he took into account in formulating his opinions. He was one of the lead contributors to drafting guidance for police forces and emergency services.
170. He had not seen the original statements made by Mr Rowlands, Mr Fogarty, Mr Sellers and Mr Gartside. He also viewed and listened to the body cam recordings. I am satisfied that he is an expert in the matters that he was asked to consider and express opinions upon.
171. The evidence he relied on to establish the following about Jack's cardiac arrest was derived from the NWS EMT – Mr Matulko who described that when he first assessed Jack there was no respiratory effort or carotid pulse. There was a return of spontaneous circulation (ROSC) after resuscitation he noted the reported pulse and blood pressure. Jack was alive and, in a post cardiac arrest state. He was aware Jack's presentation immediately upon arrival at hospital and the results of various tests, investigations,

treatment and assessments he underwent. This indicated he was suffering from metabolic acidosis.

172. There was no evidence of any unnatural condition including a traumatic brain injury. He noted that following Jack's death a specialist neuropathologist concluded that the damage found to his brain was consistent with the timescale between his original hospital admission and death. He had read and considered the reports of Professor Lumb as well as Dr Saltissi whose opinion was that the combination of an acute mental stress reaction, physical exertion and the effects of recent synthetic cannabinoid use set the scene for a cardiac arrest but the physical restraint was the specific trigger. In addition, the cardiac arrest would not have occurred in the absence of those factors and the forced prone restraint.
173. There was evidence from the body cam recordings that the cardiac arrest which is a sudden event took place a few minutes before 23:50 hours. He confirmed that his report described the features of an acute behavioural disturbance (ABD) which presents as a spectrum with varying degrees of severity and is associated with a number of different signs and symptoms. At the lower end of the scale the individual may simply be angry or agitated. Jack did not demonstrate signs of severe ABD. The presentation is usually associated with agitation, violence, aggression, unusual strength and paranoia. It is commonly linked to drug abuse but also to mental health issues and medication. Identifying it can be a challenge, but it is a medical emergency. The guidance provided assists emergency medical staff to recognise it but it is difficult.
174. The behaviour of a person experiencing ABD can be unpredictable and restraint may be necessary. There is continuing development in the training to deal with this. There appears to be a significant mortality related to ABD but this is unpredictable because there are no accurate records of individuals who may suffer from it. He agreed that if it was part of a person's job to be authorised or required to use restraint then they should be aware of and taught about ABD. Clearly if it was part of that person's job it will be relevant.
175. It was his opinion that prolonged physical activity exacerbated by restraint, stimulated by drugs/medications or where restraint prevents breathing will lead to an increase in metabolic acidosis. This is important because any physical activity uses energy and oxygen as well as creating the by-product carbon dioxide. This can be removed by increased breathing or much more slowly by kidney function. Where the body fails to remove the carbon dioxide by this process it leads to metabolic acidosis which affects normal body functioning including potassium levels. It is well-recognised increasing acidosis significantly lessens the chance of survival.
176. When an individual experiences prolonged exercise such as fighting against restraint that will increase the level of acidosis. It is also recognised that stimulant drugs such as cocaine or synthetic cannabinoids stimulates the body's metabolism leading to an increase in acidosis if breathing does not reduce this. Restraint restricts breathing and would not help to prevent the rise of acidosis.
177. Positional asphyxia is the term applied to the compromise of breathing or the occlusion of the upper airway by abnormal positioning of the body. Anything that reduces breathing is a factor and that will include pressure applied to the torso or abdomen of a person in a prone position as well as to the back of the neck bending it in a way which affects the

ability to breathe through the trachea. Alcohol and drugs can also have an effect by increasing metabolic excitement and the need to breathe more. It is now recognised that restraint and physical activity together with consequent acidosis is the major contributory factor to a cardiac arrest. In practical terms there is no safe way to restrain an agitated or confused adult.

178. There is national guidance some of which he had co-authored indicating it is very clear that prolonged physical restraint must be avoided where practicable and specifically the prone position. This should be minimised as well as the level of force used which should be justifiable, reasonable, and proportionate to the individual case. The individual should be sat up as soon as possible. Although putting somebody in the recovery position does not always stop death. He had seen and considered the report from Professor Eddleston as well as the other toxicologists. He did not dispute Professor Eddleston's evidence that users of synthetic cannabinoids can die without any restraint or physical exertion being involved.
179. Having regard to all the evidence it was his opinion that the physical exertion of Jack running over a kilometre together with the effects of synthetic cannabinoids and the restraint contributed to the cardiac arrest. Without this he would not have been in an acidotic state. At the point Jack stopped running if there was no restraint he would expect Jack to have been able to dissipate acidosis by himself. It is possible that Jack could have been experiencing acidosis earlier in the evening when he was reported to have been agitated and bouncing around. There was no evidence that during the chase he was in any distress at that time but was likely to have recovered from the exertions of running on his own accord. There was no indication that he was unwell or in distress prior to the chase and he could speak. From the video evidence it did not appear that Jack was in an agitated state for very long but running for the distance he did was a significant exertion and that could be a significant contributor to the developing acidosis even before the restraint began.
180. He had not suffered a traumatic brain injury and had a minimal amount of natural disease of the heart. Running over a kilometre on foot is a significant distance. After the chase and the restraint, he went very quickly into cardiac arrest. Consequently, without those elements he couldn't see why Jack would have suffered a cardiac arrest. The restraint itself would have been over approximately 10 minutes and appears to have continued up to a point when Mr Nevet says words to the effect that they've killed him. It is not possible for him to say what level of contribution or significance Jack's resistance to the restraint could have made but it would have been less than the exertion of running.
181. The individual should be sat up as soon as possible or put into the recovery position whichever is more comfortable. Techniques of de-escalation should be used wherever possible prior to any attempt at physical restraint. The police training is that neck restraints should only be used in rare exceptions and they are not taught because of the significant and inherent dangers in the use of any neck restraint. There is a risk of serious injury or fatality to the individual. There is a risk of damage to the airway, restricted breathing and reduced blood flow to the brain.
182. There should be a continuous process of checking the condition of the individual which would involve their breathing, skin colour, whatever they are saying but also if the individual goes quiet that can signify an imminent cardiac arrest. This did not appear to have happened in this case. There is no safe period of time that an episode of restraint

can be carried on for. It is unknown how long Jack may have been stimulated by synthetic cannabinoids. The over one kilometre chase would have contributed to his acidotic condition and a short period of restraint may have been enough to tip him over into a cardiac arrest. The prone position itself can reduce the ability to breathe and increases the acidosis which itself contributes to a cardiac arrest. He could not say with certainty that the forcible restraint of an arm behind the back may have reduced the ability to breathe. Pressure applied to the back also makes it more difficult to breathe particularly if the neck is tipped forward.

183. Pressure on the neck affects the airway and reduces the air entering the body. Pressure on both sides can reduce the blood flow and cause a loss of consciousness. Pressure on the vagus nerve adjacent to the carotid arteries in the neck can slow the heart down (a condition known as vaso vagal syncope) and sometimes also stop it. This requires more than a light touch but pressure and can be applied by fingers. A choke or neck hold can cause a loss of consciousness and is extremely dangerous and not a recommended technique. He would not describe the hand seen in the video on Jack's neck as a choke hold. The petechiae noted by the pathologist could have been caused by a handheld on the back of the neck but there are other causes such as CPR and medical interventions at any time prior to his death. Slurring of speech is not synonymous with impaired breathing but can be related to be a loss of consciousness but also other factors such as drugs or alcohol can be the cause.
184. A choke or neck hold may not leave any visible signs and still cause a cardiac arrest, but he would normally expect to see a substantial amount of petechiae. The measured pH in his body was such as to make the chances of survivability very low. The police are taught that an individual noticed to be short of breath is a sign to moderate or release the restraint. However, he would expect anyone to be worried if the individual was slurring his speech while saying he couldn't breathe although he accepted that slurred speech could be due to other factors. It appeared from the video that even if his face was on the floor his words can be heard clearly.
185. Jack had said some seven or eight times that he couldn't breathe. If there was a change to him slurring his words later that should be a concern and action should have been taken as soon as reasonably practical. He accepted that if Jack's face was still on the floor it was possible that it contributed to the slurring of his words. Whoever was restraining at that stage may not have heard him earlier to be able to recognise the change. If the restrained person stops moving they should be put into the recovery position. Any change in behaviour such as a quiet period is a dangerous indication. It would usually take a couple of minutes for the lips to turn blue which will be after the person stopped moving or breathing whilst the residual oxygen in the blood is used up.

Summary of the key findings of fact

186. On 11 October 2016 Jack was with a group of his friends and had been using the Metrolink tram system. At some time during the evening he had taken an unknown quantity of synthetic cannabinoids. This was not the first time he had taken the drug but had not experienced any adverse physical health side effect or reaction to the drug in the past. His friends got into an argument with one of the Metrolink staff about one or more of them smoking on trams or platforms what was thought to be drugs.

187. Whilst Mr Giles of Palladium indicated that Mr Rowlands' role as a supervisor related only to routine internal management decisions so far as the company itself was concerned and not his operational duties, I find that Mr Hedges considered him to be in that position and that is why he described him as his "boss. I find as a fact that Mr Rowlands was acting as a supervisor or team leader on an operational basis and consequently had a leadership role. Although he and his colleagues were self-employed contractors, they were being employed to undertake the role of a Metrolink CSR.
188. This is consistent with Mr Rowlands giving a briefing at the start of the shift and reminding them about the walkaway policy. Amongst other things the job involved dealing with antisocial behaviour. They and others perceived that they were undertaking at least in part a security role. He and his colleagues wore what was in practical terms a uniform including a HV jacket. On the platform Mr Hedges told him that he had been having trouble with a group of lads who had been smoking a bong on the tram. At about 23:30 hours he, Mr Sellers Mr Heathcote – Hilton, and Mr Hedges walked to the exit and onto the pavement outside where Jack and his friends were stood about near to a taxi rank. He then spoke to the group that initiated an unnecessary confrontation which was in breach of the walkaway policy. Initially apart from Mr. Rowlands there were four of his colleagues with him at that point.
189. When Jack returned to face Mr. Sellers a second time he put his hand out again towards Jack and made physical contact who reacted to this by moving backwards and Ethan Harvey put his hands up between the two of them. Mr Sellers grabbed Ethan Harvey. These events happened very quickly. In the process of moving backwards and turning away, Mr Rowlands swung a punch at him which came very close to his head. Jack did not swing the bag at Mr. Rowlands and did not hit him with it.
190. Neither Ethan Harvey nor Jack swung a punch at Mr Sellers and I am satisfied that the fixed position CCTV camera outside the entrance demonstrates this. In addition, Jack was not swinging the bag around as described. Whilst Ethan Harvey was being forcibly restrained on the ground Mr Hedges who was standing just inside the entrance was struck on the right shoulder by a bag swung by Jack and then he tried to kick Jack as he moved away. I also find as a fact Mr Sellers grabbed Ethan Harvey first and dragged him back into the entrance.
191. As he was struggling with Ethan Harvey Mr. Heathcote-Hilton saw Jack swing a bag that struck him in his back and felt as though it had a snooker ball in it but when the bag was found and examined it did not contain such an object. He then saw Jack use the same bag to hit Mr Hedges on his shoulder. Four of his colleagues then ran after Jack and a couple of minutes later a British Transport police officer arrived and arrested the male who he had been struggling with.
192. I find that Mr Rowlands, Mr Gartside, Mr Sellers and Mr Fogarty were aware of the detail and meaning of the walkaway policy and that they should have adhered to it. Consequently, they should have distanced themselves from conflict or confrontation. Jack and his friends had left the station and they were outside. Mr Rowlands had an operational role in a supervisory capacity in respect of the duties they were performing. He failed to lead by example and condoned his colleague's conduct by joining in and not following the walkaway policy. He and his colleagues' decision to leave the exit provoked the confrontation that then ensued. This is corroborated by the comment Jack

made "yeah listen, we come out here and left you lot. Why do you come here to cause shit? Fucking get back in there."

193. Jack had consumed a quantity of synthetic cannabinoids and had other substances in his system and was displaying animated and agitated behaviour. Whilst he did come close to Mr Sellers on the first occasion, he was aware of the body cam equipment and deliberately looked into it and said "boo". He was physically touched by Mr Sellers. After retreating he removed his bag that was slung over his left shoulder but resting on his right hip. He then held it in his left hand but did not swing it about. He returned to speak to Mr Sellers, and he reacted to Mr Sellers putting his hand out again. He did not swing a punch at Mr Sellers and nor did Ethan Harvey. He moved away quickly and then Mr Rowlands swung a hard punch at Jack's head. As Ethan Harvey was being restrained on the floor Jack came back inside the entrance and swung the bag he was holding by his right hand and struck Mr Heathcote-Hilton. Mr Hedges tried to kick him as he moved away but failed to make contact. Jack returned and swung the bag again hitting Mr Hedges on the back of his right shoulder and then ran off. His actions were sufficient to justify him being arrested. If any physical force was required only the use of reasonable force would be justified. Mr Nevet was not involved in any physical altercation but ran after his friend to see where he was going. The incident outside the station lasted about three minutes. I find as a fact the incident lasted about 3 minutes.
194. When all four men started chasing Jack and Mr Nevet their intention was to catch both of them although Mr. Nevet had done nothing to warrant any action or physical force being taken or used against him. All four men had opportunities to phone the police during the course of the chase but did not do so. All four were overstimulated and aroused as is evidenced by Mr Sellers saying "we get this fucker though, I don't care" He also said to a taxi driver that both Jack and Mr Nevet "assaulted someone, tried stabbing them." Mr Nevet had not been involved in any physical altercation and neither man had stabbed or attempted to stab anyone. I find that the comment made by Mr Sellers regarding stabbing is a deliberate exaggeration and untrue. I find as a fact that they were losing their self-control and were being carried away by the bravado of the chase.
195. When Mr Gartside alighted from the taxi Mr Sellers encouraged him to participate in physically detaining Jack by saying "come on Brian will get him now, grab him, grab him" All four men were acting with the joint intention to physically catch and restrain Jack.
196. Jack had stopped running and was out of breath. The chase lasted about 9 minutes. He did not turn and confront Mr Gartside in an aggressive manner but was very quickly grabbed by him and restrained forcibly on the ground because Mr Gartside was stronger than him. Mr Gartside's initially held him by the neck as well as his left arm and put pressure on his back. Jack was in the prone position. Mr Sellers joined him very quickly and restrained the right arm. Jack's face was down on the floor and he repeatedly said he could not breathe. He was restrained in the prone position throughout. Mr Nevet did not threaten to stab anyone and was tackled when he was running away. Mr Rowlands took over the restraint position from Mr Gartside and also initially gripped Jack's neck and held his left arm behind his back as well as putting pressure on his back. He did say "I'll tell you what, I'll just put him out". Jack then said "I'm not resisting" Mr. Rowlands then said "We're gonna put you out pal You're all right." Jack said "Just not me neck." Mr. Rowlands then said "Right, if you struggle I will put you to sleep. It won't kill you. It won't kill you, but you will go to sleep for a while" Mr. Sellers was still holding Jack at

that point and I find that he probably heard this. He was then joined by Mr Fogarty who held the other arm and also applied pressure to Jack's back.

197. Jack continued to be restrained in the prone position and his condition was not monitored by either man over a period of several minutes and continued to put pressure on his back. He did not continue to struggle or shout, but slurred any words he did speak which was over a short period of time. Mr Rowlands forcibly applied pressure to Jack's neck intending to cause him to lose consciousness and be unable to struggle and that is what happened. Both men failed to check on Jack's condition and he sustained a cardiac arrest several minutes before he was turned over and his lips were noticed to be blue. They had failed to notice that he had not been moving for some minutes. The period of restraint that ensued from the point at which Mr. Rowlands became involved lasted about 9 minutes.
198. Mr. Rowlands actions were dangerous from an objective standpoint, and which a sober, reasonable and responsible person of his age and gender, would inevitably realise were actions likely to cause Jack some physical harm, albeit not serious harm. The unlawful and dangerous act caused Jack to have a cardiac arrest and suffer a severe hypoxic brain injury and he died from the complications of it despite treatment. In any event Mr. Rowlands was a former police officer who had a physically detained over a thousand people and received training in restraint. Mr. Fogarty assisted him in the restraint despite being aware that Jack was only able to slur some speech and was not continuing to struggle. Mr. Sellers was aware of Jack's protestations about not being able to breathe and also heard what Mr. Rowlands said to Jack.
199. Jack did not attempt to assault Mr. Gartside. He had been very quickly restrained and subdued by Mr. Gartside and Mr. Sellers. They used excessive and unreasonable force. They could and should have sat Jack up just as they did with Mr. Nevet a few minutes later. Mr. Rowlands used grossly excessive and unreasonable force deliberately to render Jack unconscious and unable to struggle or resist. He and Mr. Fogarty failed to stop Mr. Rowlands using an unreasonable amount of force or check Jack's condition for several minutes when it would have been obvious to an ordinary person that it was not reasonable to put pressure on his neck or restrain him for several minutes in this manner. Jack did not continue to shout or struggle but did slur what few words he was able to speak.
200. Jack's cardiac arrest was caused by a combination of factors involving the consumption of synthetic cannabinoids, the physical exertion of being chased for over 1000 metres as well as an element of resistance to restraint in the initial stages but also the prolonged restraint itself and the unreasonable and excessive force used to do so. Professor Eddleston was not a cardiologist and whilst he said that it was possible for someone to die simply through the consumption of synthetic cannabinoids, he agreed he did not know whether or not physical exertion was a factor in the cardiac arrest. I find that the restraint more than minimally, trivially or negligibly contributed to the cardiac arrest from which Jack was resuscitated but sustained a severe hypoxic brain injury and died from complications of it despite treatment on 2 December 2016.
201. I accept Dr Saltissi's explanation that on the balance of probabilities unless the cardiac arrest just happened to be a pure coincidence there is a temporal association in time with that event and the increasing metabolic acidosis and compromised breathing due to the ongoing restraint. This caused a cardiac arrest. It took several minutes for the paramedics to arrive and begin attempts to resuscitate Jack. They eventually got a return of

spontaneous circulation, but his brain had been deprived of a sufficient supply of oxygenated blood.

202. The cardiac arrest was contributed to by the restraint which is supported and corroborated by the evidence of Dr. Aw-Yong. These are logical and reasoned opinions by medical experts which I find to be correct and I accept.

The pathological cause of death

203. I have to have regard to all of the evidence in making my determinations and this includes the pathological cause of death. Professor Lumb was unable to express an opinion as to whether the restraint contributed to the death and he deferred to other expert evidence which I have accepted. I therefore find the cause of death should be described as:
- 1a. "Bronchopneumonia"
 - 1b. "Hypoxic Ischaemic Encephalopathy"
 - 1c. "Cardiac Arrest triggered by a combination physical exertion, the effects of prolonged and unreasonable amount of force used in restraint, pressure on the neck and consumption of synthetic cannabinoids."

Outline of the submissions from Mr. Willems QC and Mr. Simms – Counsel to the Inquest

204. A Coroner sitting alone has a broad discretion on the conclusions to be drawn from an inquest and is the final judge of fact and law. There is a distinction between a broad and flexible scope of enquiry which falls to be decided within the discretion of the coroner and a strict approach to the determinations and conclusions that can be reached. Subject to the Coroner making the required findings of fact on the balance of probabilities based upon the evidence available, it was possible that the Coroner could come to the conclusions of unlawful killing; or gross negligence manslaughter; or misadventure; or accident. This was because there was sufficient evidence for it to be safe to come to one of those conclusions.
205. In the event that the Coroner found there to be an arguable breach of one of the substantive obligations under Article 2 he will be required to determine how and in what circumstances Jack died. The precise scope of the enquiry is a matter for the Coroner's discretion. This would still involve the coroner resolving the disputed factual issues at the heart of the case and what led to the death and recording judgemental words.
206. Based on the evidence in this case the coroner could find that an indictable offence of assault upon Mr Hedges had occurred. That would render the initial arrest lawful. However, only reasonable force would be allowed in restraining Jack and such force should only be reasonable and proportionate in order to detain him in the face of any threat that he posed. It will be possible for the Coroner in this case to find that the restraint was unlawful.
207. Under S.24 A of the Police and Criminal Evidence Act 1984 a person other than a constable can arrest another person where an indictable offence has been committed and they have reasonable grounds for suspecting that person to be guilty of it. However, this can only be done if it appears to the person making the arrest that it is not reasonably

practicable for a constable to make it instead and it is necessary to prevent the person in question making off before a constable can assume responsibility for them.

208. The necessary elements of unlawful act manslaughter required are, firstly, a deliberate act which is unlawful (for example an assault), secondly, the act is dangerous in that it is, from an objective standpoint, one which a sober, reasonable and responsible person of the perpetrator's age and gender, would inevitably realise is an act which is likely to cause the deceased some physical harm, albeit not serious harm. Thirdly, the unlawful and dangerous act causes death.
209. Unlawful act manslaughter in respect of the actions of Mr Rowlands could be established if he performed an unlawful act which caused, or materially contributed to the death of Jack if, but only if, he made a deliberate decision to cause some harm to Jack or he foresaw a risk of causing such harm and deliberately chose to run that risk. It was also possible that Unlawful act manslaughter by joint enterprise could be established in respect of the actions of Mr Sellers, Mr Gartside and Mr Fogarty. This was because the Coroner could find they assisted or encouraged Mr Rowlands to chase Jack as well as supporting or fortifying him through their force of numbers and took part in the initial and/or continuing restraint so that Jack could not defend himself or escape harm.
210. The necessary elements of gross negligence manslaughter required that Jack was owed a duty of care applying the ordinary principles of the law of negligence. The duty of care was breached by an act or a failure to act. The breach of duty more than minimally, negligibly or trivially contributed to the death. The breach of duty departed from the proper standard of care that Jack should have received such that it could be judged criminal. Those using or attempting to use force must reasonably attempt to avoid causing injury or where a foreseeable injury may materialise. The breach of duty does not have to be the sole or predominant cause of the death. There is no need to establish that Jack would have survived or that his death would have been prevented but for the breach of duty. It is a matter of fact for the coroner to decide whether or not the breach of duty is so bad and so gross as to amount to a criminal act or omission. This can arise where there is indifference to a risk to life. The breach of duty has to be truly exceptionally bad and go beyond even making what might be regarded as a serious mistake.
211. This could be established if the Coroner factually found that any or all of the four men were aware that Jack had said he could not breathe and/or he was restrained prone for a significant length of time with weight applied to his back and/or he had been held by the neck whilst prone. There was no attempt to check his condition even after he had run over kilometre and knowing that he had taken drugs. In addition, that Mr Rowlands said that he would "put him out". Thereafter by a method such as a choke hold or application of pressure to the vagus nerve, and that was known to Mr Sellers, Mr Fogarty, and/or Mr Gartside.
212. Alternatively, if the Coroner did not find that Jack was unlawfully killed then it would be open to him to come to a conclusion of misadventure or accident. This will involve the factual finding that Jack died the unintended consequences of a deliberate human act or that he died as a result of events not under human control.

Outline of the submissions from the other interested persons

213. **Mr Powell for the family** - Accepted that the well-recognised constituent ingredients a gross negligence manslaughter are clear. However, he added that where a person creates, or contributes to the creation of, a state of affairs which he knows or it is reasonable to know has become life-threatening, a consequent duty on him to act by taking reasonable steps to save the other's life will ordinarily arise. The standard of care should be judged on an objective basis. Where a person has been reckless this provides evidence that his or her negligence was gross but the converse is not true. If Mr Rowlands was found to have put Jack into an unconscious state after threatening to "put him out" and also saying that he was going to put him to sleep for a while, this would be a significant factor. In addition to the restraint techniques used as well as a failure to heed clear signs of danger arising from Jack's response to restraint which it is said includes saying several times that he could not breathe and eventually his speech becoming slurred as well as at the diminution in his movement during the restraint. Another factor would be an alleged delay in administering CPR following the cardiac arrest. A relevant factor would also be comments made by those chasing him indicating an intent to harm him.
214. In respect of unlawful act manslaughter this must be one of commission rather than omission. The unlawful act must be one, such as an assault which all sober and reasonable people would inevitably realise must subject to the victim to, at least, the risk of some harm resulting therefrom, albeit not serious harm. It was immaterial that the act was known to be unlawful and dangerous whether or not harm was intended. There was sufficient evidence on the balance of probabilities for the court to find unlawful act manslaughter proved. It was also possible for the court to come to the conclusion of unlawful manslaughter by joint enterprise. This requires the court to find that Mr Rowlands committed unlawful act manslaughter and that the other three men did so by a joint enterprise with him. Encouraging or assisting a principal may be achieved by association, as well as presence at the scene and the accessory need not intend to encourage or assist a specific offence, provided that it is an unlawful act which carries an objective risk of some harm, although not serious harm.
215. It was suggested that there was a burden of proof on each of the men to demonstrate that their restraint of Jack amounted to lawful arrest and if they could not do that, it would follow that the restraint of Jack was unlawful and amounted to an assault. Whilst accepting the provisions of section 24 A of PACE it was submitted that Jack did not in fact commit an indictable offence. The men did not make reasonable and timely efforts to ascertain the availability of a police officer prior to Jack's restraint despite the lengthy chase which occurred over several minutes. It was suggested that they preferred arresting Jack rather than getting a police officer to do so. Mr Gartside did not inform him that they were performing a citizen's arrest under section 28 of PACE. There was ample medical evidence that the unlawful act of restraint more than minimally, negligibly or trivially contributed to the death.
216. A conclusion of accidental death or misadventure would be insufficient and inaccurate as they fail to address the central issues in the case.
217. **Mr. Horgan for – Mr. Rowlands, Mr. Fogarty, Mr. Gartside and Mr. Sellers.** The elements of unlawful act manslaughter are set out clearly in the relevant chief coroner guidance law sheet. Subject to the findings of fact that the coroner makes he can safely find those elements proved against any of the four men on the balance of probabilities.

The coroner is the sole arbiter of the law and the facts. The requirement to be satisfied that the Galbraith plus test is met is an ideal benchmark in the light of the recent change in the standard of proof perhaps even more so. Both limbs of the test have to be met and the second one, arguably, provides a wider and more subjective filter than the first in certain cases. This makes sense in the context of a coronial enquiry which is inquisitorial rather than adversarial particularly where the rights of the interested persons to engage in the proceedings are necessarily curtailed and coronial conclusions are at large.

218. It was submitted that there was insufficient evidence to allow a finding that the entirety of the contact outside Australasia was unlawful and would be contrary to the overall thrust of the evidence and furthermore such a finding would not be safe. Section 24 A describes the circumstances in which a citizen's arrest would be lawful. A person may use such force as is reasonable in the circumstances in effecting or assisting in the lawful arrest of offenders or suspected offenders. There was an element of subjectivity in the assessment of reasonableness in that a person's honest belief that action was reasonably necessary is potent evidence that it really was necessary. The question of reasonableness is a matter of fact for the court to determine. In some circumstances a person need not wait for an assailant to strike the first blow but may launch a pre-emptive strike. If a person acts on a mistaken view of the facts, they are entitled to be treated on the basis that the facts were as they perceived them. There is no requirement that their mistaken belief was a reasonable one in the circumstances.
219. The thrust of the evidence is that the four men set out to make a lawful citizen's arrest and hand Jack over to the police. It does not support a finding that the entirety of the physical altercation outside Australasia was a deliberate unlawful act. Jack had assaulted Mr Hedges and then ran away. He was pursued in the belief that he had committed an assault. What was heard on the body cam recordings contains words suggesting that there was an intent to hand him over to the police. When apprehended Mr Sellers asked a member of the public to phone the police and then he did so himself. Jack had immediately before demonstrated his refusal to await the police. In the initial contact between Mr Sellers, Mr Gartside and Jack there was a concern that Jack might use physical violence and/or have a weapon on him. In the circumstances physical restraint was necessary and they only did so for a short period of time during which Jack was heard speaking in a comprehensible manner.
220. Whilst there is some evidence which may allow consideration for the three possibilities postulated or speculated involving a chokehold, pressure to the vagus nerve and other unknown pressure to the neck, any purported deliberate unlawful act remains unknown and therefore the court cannot safely find the first element of the offence established. It was suggested that the range of possibilities underscores the difficulty identifying an unlawful act on the evidence adduced even to the balance of probability standard it would be unsafe to do so.
221. It was suggested that the body cam footage had important limitations and it does not cover or show when or how any purported unlawful act by Mr Rowlands might have taken place. There was no other reliable witness evidence seeing him performing any such act. It was also said that the medical evidence was insufficient to allow a finding that Mr Rowlands performed any one of those particular acts. Whilst the law relating to joint enterprise was correctly stated by counsel to the inquest the court would have to consider the cases of the other three men apart from Mr Rowlands individually and not conflate consideration of their involvement. It will be unsafe to consider any

determination of joint enterprise even if the court found Mr Rowlands committed unlawful act manslaughter as a result of some form of pressure to the neck. It must be asked at what point it is said the joint enterprise unlawful act actually arose. If the pursuit and arrest of Jack was legal that cannot and should not be used to found a basis to support joint enterprise unlawful manslaughter. It is not clear in what way it is said that the individual acts of the three men could have intentionally encouraged or assisted Mr Rowlands' purported unlawful act. It would be unfair and dangerous to equate any purported omission to act in these circumstances as evidence of an intention to encourage or to assist. It was possible that the overwhelming supervening act, if one was found to be committed, could not have been contemplated by the three men.

222. **Ms. Judge for Palladium** – did not wish to add orally to her written submissions. However, she reiterated in them the main features of the Chief Coroner Guidance Document No. 17 A. The three-stage approach to making findings of fact and coming to a conclusion. This is well trodden legal ground as is the “Galbraith Plus” test. Whilst there is no specific definition of what “safe” means there is authority which indicate that this includes avoiding leaving findings that would be perverse or would result in a finding or conclusion that is not in the interest of justice. In respect of unlawful act manslaughter it is immaterial whether or not the individual knew the act was unlawful and dangerous and whether or not he intended harm. It was suggested that no evidence was heard about the reasonableness or otherwise, of the mechanics of those restraints undertaken. It was suggested it would be speculative to make a finding of unlawful act manslaughter caused either by a finding of a choke-hold or as a result of the restraint alone.
223. **Mr Simpkin for TFGM** -agrees the interpretation of the law set out in paragraphs 1 to 5 of counsel to the inquest's written submissions as well as from paragraph 7 onwards. He does not accept that this is a case where article 2 is engaged. The apprehension of Jack took place outside of the Australasia restaurant in Spinningfields in central Manchester, well away from Victoria railway station. The incontrovertible evidence demonstrates that all four men failed to abide by MRDL's walkaway policy but pursued him after the commission of an arrestable offence. None of the men were acting in pursuance of their training or employment.
224. He agrees that it is right for the coroner to revisit and reconsider his initial view that article 2 was engaged. TFGM is a public body when created and became an executive body of the Greater Manchester combined authority that subsequently came into existence. TFGM owned the Metrolink infrastructure and trams. MRDL is a private company who contracted with TFGM to provide suitably qualified and trained staff to operate the tram network. MRDL then contracted with Palladium to provide them the staff. TFGM can be regarded as a public body and is thus capable of being treated as "an emanation of the state". However, only where a death involves a state agent and there is evidence of an arguable breach of a substantive article 2 obligation should the scope of the inquest be widened.
225. Simply because TFGM can be regarded as an emanation of the state does not automatically mean that article 2 is engaged. There is no evidence of an arguable breach of a substantive obligation by TFGM. The pursuit and detention of Jack occurred well away from the Metrolink network and those chasing him had ceased to act in pursuance of their duties. Consequently, it cannot be said that they were performing a public function at the time when Jack was apprehended. If article 2 is not engaged then judgemental words should not be used when describing the conclusion reached. He

agreed with counsel to the inquest's summary of the constituent ingredients of gross negligence manslaughter but stressed that Jack was owed a duty of care applying the ordinary principles of the law of negligence.

226. As the circumstances unfolded each of the men who were restraining Jack would have held their own unique understanding of his condition and consequently, the foreseeability of any injury. That cannot be said to have uniformly attached itself to each of them. In deciding whether or not to consider a particular conclusion the coroner has to apply the Galbraith plus test asking whether there is sufficient evidence on which the court, properly directed itself as to the law, could come to that conclusion and also whether it would be safe for them to do so on the evidence. It was not agreed that the threshold for applying this test is a low one. It was submitted that the court should be slow to accept a potential finding of unlawful killing even if established on the balance of probabilities which indicates criminality on the part of an individual. It is suggested that such caution lies at the very heart of the Galbraith plus test. It was not accepted that the pursuit and detention of Jack was an unlawful act nor could it be submitted that a sober and reasonable person would realise that the pursuit and/or detention carried a risk of harm.
227. **Mr. Murphy for MRDL** - The functions of a governmental nature are frequently discharged by non-governmental bodies. It is necessary to examine with some care whether the nature of the function is public or private. MRDL is neither a charity nor a philanthropist but is operating in a commercial market with commercial competitors. If contracting out the function of a public body in discharge of a statutory duty turns the contractor into a hybrid public authority where does this end? MRDL were operating the Metrolink. There is authority which is comparable to the circumstances in this case. If a national provider of fundamental railway infrastructure operating for profit is not performing an intrinsically governmental function, then neither is a private limited company operating a tram system, within a single city for profit pursuant to a contract with TFGM, a function of a public nature and nor would it be regarded as a governmental function. It was not publicly funded and remained a private commercial entity operating for profit.
228. The pursuit of Jack was not a function of a public nature but private acts which are incapable of engaging Article 2. Even if that were not the case there would have to be an arguable breach of the operational duty. This would require that the public authority knew or ought to have known of a real and immediate risk to the life of Jack and failed to take measures which, judged reasonably, might have been expected to avoid that risk. On the facts in this case there is no arguable breach of the operational duty.
229. Irrespective of the change brought about by the Maughan case which allows a conclusion of unlawful killing to be made on the balance of probabilities, the fundamental elements of the Galbraith test remain. There must be sufficient evidence to make that finding and such a finding must be safe. When making findings of fact these cannot be based on speculation. As a general rule, a statement which contains an admission is always admissible as a declaration against the interests of the maker. Incriminating parts of what a witness may say are likely to be true, otherwise why say them? Exculpatory statements do not have the same weight. The four men who chased and caught Jack knew and understood the walkaway policy and their actions were in contravention of the policy for whatever reason. They could not be said to be acting within the scope of their Metrolink role. It is unnecessary to determine whether they were providing a security role or

security services because that could be interpreted as purporting to determine an issue or criminal liability due to the requirement to have an SIA licence to carry out that activity.

230. **Mr Mercer for SIA** -This is a case where article 2 only engages procedurally so that the coroner determines by what means and in what circumstances Jack died. After a minor altercation in which Jack behaved in an antisocial way when appearing to be intoxicated, he was chased for nearly 9 minutes and physically restrained in the prone position and then suffered a cardiac arrest. It was important to establish whether the arrest and detention by a person other than a police officer was lawful having regard to the power set out in S.24 A Police and Criminal Evidence Act 1984. The first requirement is whether or not the Coroner finds on the balance of probabilities that an indictable offence has been committed. Only then can a citizen arrest somebody they have reasonable grounds for suspecting to be guilty of it. However, the arrest can only be made if it appears to that person it is not reasonably practicable for a police officer to do it and it is necessary because the offender will make off before a police officer can assume responsibility for them. The court should consider whether the disturbance at the station and then the long pursuit was proportionate. When they finally caught up with him was it necessary to physically detain him whilst awaiting the police. On the evidence the coroner would be entitled to find that the men acted jointly even if they were acting lawfully when they initially apprehended and detained Jack, the subsequent restraint by Mr Rowlands could be regarded as unlawful and a criminal act. Was reasonable force used in this process? The law allows a person to use such force as is reasonable in the circumstances in the prevention of crime, or in effecting or assisting in the lawful arrest of an offender or suspected offender. The degree of force used would not be regarded as reasonable in the circumstances that Mr Rowlands or his three colleagues believe them to be if it was disproportionate in those circumstances. Subject to the court finding the necessary ingredients of gross negligence manslaughter proved, that would be a conclusion which would be open to the court to find. If the court concluded that involuntary manslaughter had occurred it would not be necessary to consider gross negligence manslaughter.

Analysis

231. The standard of proof for making findings of fact and coming to a conclusion is the civil standard of proof. In other words, on the balance of probabilities. That applies for all conclusions including unlawful killing. *R (Maughan) v H M Coroner for Oxfordshire* [2020] UKSC 46.
232. Following *R (Secretary of State for Justice) v HM Deputy Coroner for the Eastern District West Yorkshire* [2012] EWHC 1634 (Admin) in deciding whether to consider and reach a particular conclusion it is not only necessary for me to determine that there is sufficient evidence, properly directing myself as to the law of all the constituent ingredients of a particular conclusion but that it is also safe for me to do so. This second limb provides a subjective wider filter than the first element in certain cases and was described as a modest gloss or addition.
233. I accept as correct the submissions of Counsel to the Inquest about the current law as to joint enterprise.

234. I now have to apply the law to my specific findings of fact. In doing so I am not required to consider and come to each and every possible conclusion just because there is technically evidence to support them. As a Coroner sitting alone, I am both the arbiter of fact and the law. I can consider and come to conclusions which reflect the evidence as a whole. In doing so I am exercising my broad discretion to act in the interests of justice.
235. TFGM Is and was a Public body and a State entity. MRDL was never a subsidiary of TFGM and functions of a government nature are frequently discharged by non-governmental bodies. The expression "public authority" does not apply if the nature of the act in question is private. MRDL was a private company being operated for profit in a commercial market. It would not be correct to describe MRDL as an agent of the state in the circumstances. I accept as being correct, without having to repeat all the cited case law, Mr Murphy's submissions that MRDL was not a public authority. Furthermore, that the pursuit and restraint of Jack was not a function of a public nature, but these were private acts by the individuals involved. In the circumstances of this case there is no clear statutory provision defining that MRDL is specifically carrying out the functions of a public authority unlike, for example, but in a different context section 73 of the Care Act 2014 which means that provision of regulated care or support even by a private organisation is a public function.
236. Mr. Sellers, Mr. Rowlands, Mr. Gartside and Mr. Fogarty knew of the existence and meaning of the walkaway policy but did not comply with it. Whilst the State owed a general or systemic duty to Jack. This requires the State to create a framework of laws, precautions and procedures and means of enforcement for protecting life which will to the greatest extent reasonably practicable do so. That would be fulfilled by the creation of the criminal law and the systems and processes to affect compliance with it. In any event MRDL could not have known of a real and immediate risk to the life of Jack, and they did take all reasonably practical measures within the scope of their powers to mitigate that risk. Consequently, there can be no arguable breach of the operational duty. Accordingly, I find that there is no arguable breach of Article 2 of the ECHR.
237. I have found as a fact that Jack did hit Mr. Heathcote-Hilton and Mr. Hedges with a bag and this would justify his arrest. Anyone who has reasonable grounds for suspecting that Jack committed an arrestable offence was lawfully entitled to arrest Jack if they had reasonable grounds for believing that it was not reasonably practicable for a police officer to do it. Furthermore, it was necessary to prevent Jack from making off before a police officer could assume responsibility for him. I have also found that Mr Sellers, Mr Fogarty, Mr Gartside and Mr Rowlands had reasonable grounds to suspect that Jack had committed the offence. Jack had made off and they had reasonable grounds for believing it was not reasonably practicable for police officer to arrest him. The chase that then ensued for over a thousand metres was disproportionate but that does not mean that any physical force used when Jack was caught was automatically unlawful. However, only reasonable force could be used to detain and restrain Jack before a police officer could assume responsibility for him. All four men could have and had the opportunity to contact the police during the course of the chase but did not do so. Even if they had done so there was no clear evidence as to when a police officer could have found Jack and assumed responsibility for him.

Illegal Act or Acts.

238. I found as a fact that Mr Gartside's and Mr Sellers' use of force in the initial restraint was excessive and unreasonable in the circumstances. Jack had been very quickly subdued by two men holding him facedown and with his arms behind his back. I found as a fact that the use of this force was excessive and unreasonable. When he repeatedly indicated that he could not breathe he could and should have been sat up. Mr Rowlands use of force on its own and in combination with the assistance of Mr Fogarty was unnecessarily prolonged, grossly excessive and unreasonable. Mr Rowlands intended to and caused Jack to lose consciousness. This further compromised his breathing and increased metabolic acidosis which contributed more than minimally, trivially or negligibly to his cardiac arrest.
239. I find that these acts were unlawful for the reasons stated. They amounted to the unreasonable and excessive use of force and were assaults upon Jack.

Joint Enterprise

240. The encouragement or assistance in the unlawful act was one which all sober and reasonable people would realise carried some risk of harm. They did so by not only pursuing Jack for a disproportionate distance but were able to easily subdue him by force of numbers as well as taking part in the original restraint by Mr Gartside and Mr Sellers and a subsequent restraint by Mr. Rowlands and Mr. Fogarty. I have found as a fact that Mr. Sellers did hear Mr. Rowlands saying that he was going to put Jack out and put him to sleep. Mr. Sellers did nothing to prevent that happening and Mr. Fogarty assisted in the ongoing restraint when Jack was not able to move or speak coherently.
241. Despite resuscitation Jack suffered a serious hypoxic brain injury and complications which, although treated, caused death on 2nd December 2016.
242. I find that Mr Rowlands and Mr Fogarty's actions were deliberate and was unlawful and amounted to an assault. Objectively a sober, reasonable and responsible person of Mr Rowlands and Mr Fogarty's age would inevitably realise that this was an act likely to cause at least some physical harm, albeit not necessarily serious harm to Jack.
243. I am satisfied my findings of fact demonstrate more than sufficient evidence of all the necessary elements required to be proved to conclude that Jack was killed by unlawful act manslaughter by one person or by joint enterprise. The evidence is compelling and strong. It not only comprises witness accounts but also CCTV and also visual and sound body cam recordings. There is strong medical evidence to support the conclusion that Jack's cardiac arrest was caused or contributed to by a number of factors including the exertion of a long run, the consumption of synthetic cannabinoids and the effects of prolonged restraint and airway obstruction. If I came to those conclusions it would not be perverse or irrational. Where the constituent elements of a conclusion can be met and, if accepted the conclusion reached, that has to be in the interests of justice. In view of the strength of the evidence and my findings of fact I am entirely satisfied that it would be safe for me to come to either or both conclusions. Consequently, there is no need for me to go on to consider gross negligence manslaughter.

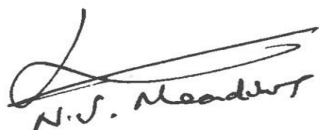
Conclusion

244. I find that Jack was Unlawfully Killed.

The Record of Inquest

245. The contents by reference to the numbered paragraphs including the particulars required by the Births and Deaths Registration Act 1953 to be registered concerning the death:

1. Jack Anderson Barnes
2. 1a Bronchopneumonia
1b Hypoxic-ischaemic encephalopathy
1c Cardiac arrest triggered by a combination physical exertion, the effects of prolonged and the unreasonable amount of force used in restraint, pressure on the neck and consumption of synthetic cannabinoids.
3. On the 11th October 2016 shortly after 23.30 hours at Victoria Station in Manchester City Centre the deceased assaulted two people and then made off. He was pursued and caught over 1,000 metres away on a wide pavement area adjacent to Deansgate. Grossly excessive and unreasonable physical force was used to restrain him and in combination with other factors this caused him to suffer cardiac arrest and consequent severe hypoxic brain injury. He died from the complications of that on the 2nd December 2016.
4. Unlawful Killing.
5. Date and place of birth: 3rd November 1987, Hull.
Name and Surname of deceased: Jack Anderson BARNES
Sex: Male
Date and place of death: Second December 2016 Hull Royal Infirmary, Anlaby Road, Hull.
Occupation and usual address: No Fixed Abode



**NIGEL MEADOWS
HM SENIOR CORONER
MANCHESTER CITY AREA**

26th February 2021