



LORD CHIEF JUSTICE
OF ENGLAND AND WALES

THE RIGHT HONOURABLE THE LORD BURNETT OF MALDON

[REDACTED]

3 May 2023

Dear Senior Coroner Arrow,

Prevention of Future Deaths Report – Judicial Training in Firearms Licensing

Thank you for your report of 8 March 2023 following the inquests into the deaths of Maxine Davison, Lee Martyn, Sophie Martyn, Stephen Washington and Kate Shepherd who were shot by Jake Davison in Keyham in August 2021.

I understand that following the inquest you have made a number of reports under regulations 28 and 29 of the Coroners (Investigations) Regulations 2013, identifying a range of matters of concern which you consider may give rise to a risk of future deaths unless action is taken.

Your report to me outlines your concerns about judicial training on firearms licensing. In particular, as a result of the evidence you heard during the inquest, you are concerned that judges may be unfamiliar with the nature of the decision they must make in firearms licensing appeals and may be incorrectly applying the relevant statutory guidance.

These tragic and appalling killings were not committed by someone whose firearm certificate had been revoked by the Chief Constable and who had subsequently successfully appealed to the Crown Court. The subject matter of your report about judicial training was not investigated at the inquests (because it was not relevant to the function of the inquest to answer the statutory questions) although you appear to have received some anecdotal evidence in passing. I proceed on the basis that your report summarises the totality of the evidence you received on the matter.

Responsibility for the training of the judiciary in England and Wales rests with the Lord Chief Justice, as Head of the Judiciary. Under section 7 of the Constitutional Reform Act 2005 I have a duty to maintain appropriate arrangements for judicial training and guidance, which I exercise through, and with the support of, the Judicial College. The statutory duty reflects the fundamental constitutional principle of judicial independence; judges must be independent of government and other public bodies, including in the training they receive to undertake their role. The Judicial College, under my authority, regularly reviews the training it offers, but ultimately the content and focus of judicial

training courses is a matter for me as the independent Head of the Judiciary. All judges are required to complete an induction course before they sit in any jurisdiction and regular annual continuation training thereafter. As you will be aware, there are specialist training courses for those who sit in the Crown Court. The Crown Court exercises a very wide jurisdiction in the criminal sphere and by virtue of statute in discrete areas such as under the Firearms Act 1968. No training course can hope to cover everything a judge might encounter. The judges of the Crown Court are senior members of the judiciary and appeals against the revocation of firearms licences are usually heard by salaried Circuit Judges, rather than fee paid Recorders. They can be expected, with or without the assistance of the lawyers who appear before them, to familiarise themselves with the law and procedure relevant to a case they are hearing.

It is against that background that I have considered your report. I have noted that this was not a case involving an appeal to the Crown Court under section 44 of the Firearms Act 1968 because Devon and Cornwall Police had not revoked the shotgun certificate. The circumstances of the granting and retention of the shotgun licence were not therefore considered by a court in an appeal. The concerns outlined in your report appear to have arisen because of evidence given by the Chief Constable that around 50% of appeals against police decisions to revoke shotgun licences are successful. You cite as an example an unidentified case summary in which the Court granted an appeal against a decision of the Chief Constable to revoke a firearms licence. It is said that in that particular case the court 'appears' to have taken an approach that allegations were unproven and could not be taken into account and the court's approach to risk 'appears' to have set too high a threshold for revocation when considerations of violence and intemperate habits were in play. You were informed that this case is not untypical and the Chief Constable 'strongly suspects' that it is indicative of a national problem.

Section 44 of the Firearms Act 1968 provides for appeals against decisions of Chief Constables made under the 1968 Act to be made to the Crown Court. Appeals are determined on the merits and the court may consider any evidence or other matter, including matters which post-date the decision of the Chief Constable. You rightly point out that under section 44(3A) the court is obliged to have regard to the relevant statutory guidance issued by the Secretary of State, which is publicly and easily available. Procedural aspects of such appeals are set out in Schedule 5 to the 1968 Act, which makes it clear that the Chief Constable may appear and be heard at such an appeal. Indeed, it would be very odd were the Chief Constable not to take a full part in the appeal. Further practice guidance was issued by the Divisional Court of the High Court in *R (Mason) v Crown Court at Winchester* [2018] EWHC 1182 (Admin), which sets out an appropriate approach to the case management of such appeals, in order to ensure a fair hearing. It is clear in this guidance that evidence and submissions are expected from both parties. In *Chief Constable of Essex Police v Campbell* [2012] EWHC 2331 (Admin) the Divisional Court clearly established that an individual's overall conduct and the context of the decision to revoke a licence must be taken into account. In *Campbell* Sir John Thomas, President of the Queen's Bench Division, stressed the overwhelming public interest in the exercise of strict controls over those who possess firearms, and the consequent need to ensure that appeals under section 44 of the 1968 Act are given the most careful and detailed consideration.

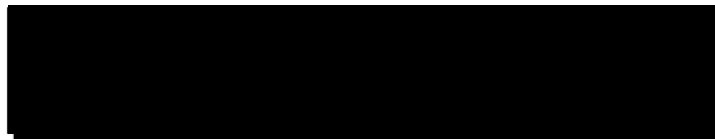
The questions to be answered by the court in appeals under section 44 of the 1968 Act, and the procedure for hearing such appeals, are therefore clear and well-established. They are to be found in a small number of readily accessible places. I have considered the concerns you raise but do not think that your report substantiates the suggestion that judges are not giving such appeals the necessary careful and detailed consideration, are applying the incorrect legal test or are failing to have regard to the statutory guidance.

The Home Office publishes statistics annually of the number of licences held in each police area, the numbers of applications, rejections and revocations etc. Unfortunately, my office has been unable to discover what proportion of Chief Constable revocations (running at about 1,000 per annum) are subject to appeal or the success rate. Statistics of the numbers and success rates of such appeals are not held by His Majesty's Courts and Tribunals Service. Yet if judges were approaching cases incorrectly in the way you suggest it would be reasonable to assume there would be appeals by way of case stated to the High Court. The research of my office suggests that this is simply not happening in practice. The police are entitled to, and indeed do, attend appeals in the Crown Court to give evidence and make submissions in such appeals. Any concerns they have in individual cases should be resolved through the appellate route in the usual way.

I am of course willing to consider the need for judicial training in discrete areas of law, and fully appreciate the need to learn lessons from incidents such as the tragic events in Keyham. However, that consideration must be informed by evidence that there is a training need which, with respect, is not established by the evidence upon which your report is based.

Nonetheless, I have asked the Senior Presiding Judge for England and Wales, Lord Justice Edis, to raise your concerns with the Resident Judges of the Crown Court and to provide them with a copy of this letter.

Yours Sincerely,



THE RT HON THE LORD BURNETT OF MALDON