

# OPUS2

Manchester Arena Inquiry

Day 2

July 23, 2020

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1 Thursday, 23 July 2020  
 2 (11.00 am)  
 3 SIR JOHN SAUNDERS: Good morning. There are far more people  
 4 on this hearing that we've had in the past, so I hope  
 5 everything will work smoothly. This hearing is not  
 6 being live streamed and it's not being live streamed  
 7 because the subject matter of what we are discussing may  
 8 result in things being disclosed which shouldn't be  
 9 disclosed. Therefore, also, please, there should be no  
 10 live reporting by the press of what is being said. What  
 11 has been said will be reviewed in any gap which we may  
 12 have, and then clearance will be given to report what  
 13 has been said, assuming nothing's been said which  
 14 shouldn't have been said.

15 Thank you for all coming. Mr Greaney.

16 Introduction by MR GREANEY

17 MR GREANEY: Sir, thank you.

18 This is the eighth preliminary hearing in the  
 19 Manchester Arena Inquiry. As you have observed, many  
 20 are attending this hearing virtually, some on video and  
 21 some on audio only. Many members of the press,  
 22 I believe 16 in total, are, entirely understandably, on  
 23 the line and we are certain they will have heard what  
 24 you have said about reporting. This hearing has been  
 25 arranged to consider a number of issues relating to

1

1 restriction orders that may be made under section 19 of  
 2 the Inquiries Act 2005. There are four issues for  
 3 consideration and some for a ruling, each identified in  
 4 the agenda circulated to core participants, CPs.

5 The four issues are as follows: (1), the  
 6 identification of operationally sensitive, OS, content  
 7 within the material disclosed to the inquiry; (2), the  
 8 use and handling of OS consent during the inquiry's oral  
 9 evidence hearings; (3), the live stream of the inquiry's  
 10 oral evidence hearings and, in particular, the delay  
 11 that ought to be applied to that; and (4), anonymity and  
 12 special measures applications that have been made by  
 13 a number of core participants.

14 Many submissions have been made on those four issues  
 15 by your legal team, sir, and also by those representing  
 16 the CPs. Direct discussions have also taken place on  
 17 a regular basis. The level of engagement by and  
 18 cooperation from the CPs has been truly exceptional and  
 19 it means that there remains little between CTI and CPs  
 20 and little between CPs themselves, and moreover where  
 21 there are issues, they are ones which reflect legitimate  
 22 points of view.

23 Submissions have also been made on a number of the  
 24 issues for determination today or consideration today on  
 25 behalf of seven media organisations, and we will refer

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1 to them collectively as "the media". Discussions have  
 2 also taken place between your legal team and counsel for  
 3 the media, Mr Bunting. While those discussions have not  
 4 generated the same level of agreement that we've just  
 5 described in respect of CTI and CPs, we would make the  
 6 following plain. First, we accept that the media's  
 7 approach is entirely driven by a desire to ensure that  
 8 the principle of open justice remains at the forefront  
 9 of CTI's thinking and, moreover, sir, at the forefront  
 10 of your thinking.

11 Second, we are confident, however, that the approach  
 12 we have adopted and which we'll describe in the course  
 13 of this hearing does place appropriate weight on that  
 14 vitally important principle. The CPs, including the  
 15 bereaved families, do not disagree with the approach of  
 16 CTI, with highly limited exceptions, and that fact  
 17 provides some support for the view that we have struck  
 18 the correct balance.

19 Third, in his dealings with the inquiry legal team,  
 20 Mr Bunting has never failed to be constructive and  
 21 helpful.

22 Sir, we will turn in a moment to deal with the four  
 23 issues separately and in detail, inviting submissions on  
 24 each in turn. But first it may be helpful  
 25 if we summarise the position as it seems to CTI to be.

3

1 First, the identification of OS content, so issue 1.  
 2 No CP has taken issue with the inquiry's process for  
 3 identifying OS content, the threshold that the inquiry  
 4 has applied, or the themes that have been considered in  
 5 determining whether to apply OS redactions to the  
 6 inquiry's disclosure.

7 A small number of discrete points have been raised  
 8 by the family CPs in their submissions, namely the need  
 9 to keep the inquiry's restriction orders, ROs, under  
 10 review as the inquiry progresses, the identification of  
 11 "irrelevant and sensitive" redactions in CP applications  
 12 for ROs, whether certain material referred to in the RO  
 13 applications made by SMG and GMCA has yet been  
 14 considered by the inquiry and the approach that should  
 15 be adopted by the inquiry where HMG has not sought an OS  
 16 redaction but another CP has.

17 Whilst we understand why these issues have been  
 18 raised, we do not consider that they require any ruling  
 19 by you and we'll set out why in due course.

20 The family CPs accept that it may be necessary for  
 21 the inquiry to apply further OS redactions, including to  
 22 newly disclosed material. We'll address our proposed  
 23 approach to this issue in dealing in detail with  
 24 issue 1. But in summary, we suggest that the inquiry  
 25 legal team, ILT, should adopt its existing process,

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1 a process well-known to all CPs, to any further proposed  
 2 OS redactions and the family CPs can raise any issues  
 3 they have with the ILT directly in the normal way.  
 4 If strictly necessary, the family CPs can set out  
 5 any submissions in writing objecting to the  
 6 identification of content as OS and they may invite  
 7 a ruling from you, sir, on the papers unless a hearing  
 8 is necessary. However, CTI consider that this situation  
 9 is very unlikely to arise in practice given the  
 10 effective process that has been adopted to date and the  
 11 desirability of progressing the inquiry without  
 12 diverting significant inquiry and CP resources into  
 13 submissions on individual OS redactions.  
 14 From the submissions, sir, that we have received,  
 15 and the discussions we've had, we do not consider that  
 16 it is necessary to be likely for you to make any ruling  
 17 on this issue today.  
 18 Next, a very significant majority of the redactions  
 19 that have been applied to the inquiry's disclosure on  
 20 grounds of operational sensitivity, all of which have  
 21 been made available to CPs through the Magnum sensitive  
 22 folder, are not disputed by any CP. The family CPs in  
 23 their written submissions suggest that a small number of  
 24 OS redactions should be removed. We have addressed  
 25 those in detail in our written submissions of 20 July.

1 Discussion has taken place since then and we believe  
 2 that no ruling will be required by you today on any of  
 3 those documents and the restriction orders of  
 4 19 February will apply.  
 5 Finally, in summary on this first issue, the media  
 6 submit that the principle of open justice and fairness  
 7 requires that they be given access to the Magnum  
 8 sensitive folder in order to make submissions on whether  
 9 individual OS redactions should be applied to the  
 10 inquiry's disclosure to CPs. Sir, we disagree and do so  
 11 strongly, and we are not aware that any CP positively  
 12 supports the position of the media. A ruling on this  
 13 issue will, we expect, be required.  
 14 The second issue is the use and handling of OS  
 15 content during the course of the oral evidence hearings  
 16 due to commence on 7 September. The simple point  
 17 is that there is no disagreement from any CP with the  
 18 proposed approach set out in the ILT note dated 12 June.  
 19 That approach is positively supported by the families,  
 20 HMG, GMP, ShowSec, and SMG.  
 21 In summary, the proposed approach will involve the  
 22 following: so far as is possible, the inquiry's evidence  
 23 hearings will be conducted in open, with all CPs, RLRs,  
 24 members of the media, and the public able to attend,  
 25 limited only by issues of capacity and the health of

1 those attending given the current health crisis.  
 2 The default position should be that evidence,  
 3 including evidence that's capable of touching on OS  
 4 content, is heard in open. A range of mechanisms should  
 5 be employed to allow this to take place without OS  
 6 content being made publicly available, and those  
 7 mechanisms are set out in the ILT note to which we've  
 8 referred.  
 9 Hearings that are not fully open will be described  
 10 as "restricted hearings", but they should be used only  
 11 where that is absolutely necessary. Sir, if you were to  
 12 determine that a restricted hearing was absolutely  
 13 necessary so that OS content could be considered in  
 14 full, there should be no interference with the ability  
 15 of CPs to attend and participate.  
 16 A restricted hearing should involve the minimum  
 17 restrictions necessary to prevent public disclosure of  
 18 the OS content. Those restrictions, the proposed  
 19 restrictions, are set out in the ILT note.  
 20 Importantly, we can confirm that representatives of  
 21 the media will be entitled to be present at a restricted  
 22 hearing in accordance with the practical venue  
 23 arrangements dealt with in the inquiry's documents on  
 24 the venue and hearing arrangements.  
 25 Sir, we will invite you to adopt the approach that

1 we've just described in summary to the use and handling  
 2 of OS content during the inquiry's oral evidence  
 3 hearings, but no ruling is required to that effect at  
 4 this stage. Should a restricted hearing be necessary,  
 5 a restriction order can be made at that stage. CTI  
 6 consider it would be sensible and preferable to adopt  
 7 that course rather than making a restriction order now  
 8 (a) in order to avoid making an order in the abstract  
 9 before the inquiry has commenced its hearings, (b) so  
 10 that there is no inadvertent drift towards restricted  
 11 hearings where they can be avoided, and (c) so any  
 12 restriction order that is required may be tailored to  
 13 the particular circumstances as they've arisen, informed  
 14 by the inquiry's experience of how its evidential  
 15 hearings operate in practice.  
 16 The third issue, as we have indicated, is the live  
 17 stream of the inquiry's oral evidence hearings. This  
 18 does give rise to a number of complications. The  
 19 starting point is that the inquiry's proceedings will be  
 20 live streamed in accordance with section 18.1(a) of the  
 21 Inquiries Act 2005. It is, as we understand it, agreed  
 22 by all that there should be a delay to the live stream,  
 23 given the sensitive nature of the evidence that may be  
 24 considered by the inquiry. That will allow any concerns  
 25 to be identified and addressed without publication,

1 including enabling you, sir, to make a decision about  
 2 a restriction order if necessary.  
 3 There is, sir, as you'll have read, a degree of  
 4 disagreement as to the appropriate length of the delay  
 5 to the live stream. We initially suggested 3 minutes  
 6 and the families agreed; conversely, HMG sought  
 7 a 10-minute delay, supported by SMG, ShowSec and SMG  
 8 (sic). The media, insofar as any delay relates to them,  
 9 suggests that it should be kept to the minimum possible  
 10 and they submit certainly should not be as long as  
 11 10 minutes.  
 12 Having reflected closely on the submissions we have  
 13 received and for reasons we'll turn to, we, as CTI, now  
 14 support a 10-minute delay across the live stream.  
 15 Furthermore, the media take issue with the  
 16 administration of the delayed live stream as it relates  
 17 to them. In summary they submit that all members of the  
 18 media in the main hearing room, the hearing venue annex,  
 19 the external annex or other annex should have access to  
 20 the non-delayed live stream. They also submit that  
 21 members of the media should be provided with secure  
 22 links to the non-delayed live stream so that they can  
 23 view a non-delayed live stream from their homes or  
 24 offices. Sir, we disagree, and again on this issue it  
 25 will be necessary, we submit, for you to make a ruling.

1 So before I turn to deal with the fourth issue in  
 2 summary, could I just indicate to Henry that I'm being  
 3 routinely asked to admit people to this meeting, which  
 4 I'm finding distracting, so it would be helpful if that  
 5 responsibility could be removed from me and taken up by  
 6 someone else.  
 7 The fourth and final issue is anonymity and special  
 8 measures. There is an application on behalf of  
 9 Witness J, the MI5 corporate witness, for anonymity and  
 10 prescribed measures that would apply when Witness J  
 11 gives evidence, including screening, that there be no  
 12 live audio or video streaming of Witness J's evidence,  
 13 and a prohibition on the use of electronic devices  
 14 during Witness J's evidence, save for limited  
 15 exceptions.  
 16 Assuming that you determine that the Article 2 and 3  
 17 real and immediate risk thresholds are met, as we  
 18 suggest you should determine, the families do not object  
 19 to the proposed restriction orders, save that they  
 20 contend that Witness J should not be screened from CTI,  
 21 from the families or from their legal representatives,  
 22 and they oppose the breadth of the application for  
 23 a prohibition on the use of electronic devices during  
 24 Witness J's evidence.  
 25 The media do not oppose the anonymity application

1 made on behalf of Witness J, but they do object to the  
 2 proposed prohibition on the use of electronic devices by  
 3 journalists when Witness J gives evidence. Again, sir,  
 4 we suggest that you will need to rule upon those issues  
 5 today.  
 6 There is also an application on behalf of Police  
 7 Constable Richardson that he be screened from the public  
 8 and the media but not core participants when giving  
 9 evidence, and that he be permitted secure entry and exit  
 10 to the hearing venue.  
 11 The families do not oppose the application, nor do  
 12 the media, and so you may find that application simple  
 13 to resolve. On balance we submit that it should be  
 14 granted.  
 15 Finally, there is an application on behalf of  
 16 a witness we'll describe as F1 for anonymity and  
 17 screening from the public and the media but not from  
 18 core participants. The families do not oppose the  
 19 application. They note that it is not clear that the  
 20 Article 2 or 3 thresholds are met, but submit that given  
 21 that F1's evidence is not central to the inquiry's terms  
 22 of reference, the Article 8 and/or common law balancing  
 23 exercise favours the measures that have been sought on  
 24 the witness's behalf by GMP.  
 25 The media submit that the application contains very

1 limited open information and should be scrutinised with  
 2 care by you, sir, given the lack of objective evidence  
 3 of a real and immediate risk to F1's life, and given  
 4 that the process of giving evidence in public is part  
 5 and parcel of the office of constable.  
 6 Sir, we agree with the media that you should  
 7 scrutinise that application in common with all  
 8 applications, but on balance we suggest that the  
 9 application should be granted.  
 10 Sir, along the way of that quite long introduction,  
 11 we have identified the issues upon which a ruling will,  
 12 we suggest, be required by you. But they are identified  
 13 in any event at paragraph 4 of our submissions of  
 14 20 July. Sir, we won't invite submissions from any core  
 15 participant or the media at this stage, but instead  
 16 we'll turn to deal with issue 1, the identification of  
 17 operationally sensitive content, in further detail.  
 18 Application re operationally sensitive content  
 19 Submissions by MR GREANEY  
 20 MR GREANEY: First, the families invite the inquiry to keep  
 21 its restriction order determinations under review. CTI  
 22 agree. It may be necessary, both to remove but also add  
 23 OS redactions as the inquiry progresses. There are  
 24 a number of reasons for this, including that the  
 25 section 19 balance may shift in light of the evidence

1 that is head, because limited further redactions covered  
2 by the inquiry's existing OS may be identified which  
3 ought to be applied for consistency, and because further  
4 disclosure may be made which requires the application of  
5 OS redactions.

6 The families indicate that they may make further  
7 submissions on specific OS redactions as the inquiry  
8 progresses. Should any such submissions be considered  
9 by the families, and indeed by any CP, we suggest that  
10 in the first instance they should be raised directly  
11 with the ILT in the normal way so that they can be  
12 discussed and considered. This flexible approach will  
13 allow any representations to be considered quickly  
14 following constructive dialogue between the ILT and  
15 relevant CPs without the need for formal written  
16 submissions from CPs and without the need for formal  
17 ruling.

18 Sir, I'm just going to pause for a moment because  
19 Mr Suter is drawing a matter to my attention.

20 (Pause)

21 Thank you very much, Mr Suter. Sir, I have been  
22 told that some members of the media have joined this  
23 hearing late and it's important therefore that they  
24 should be informed that you have imposed a reporting  
25 restriction which prohibits any live reporting, whether

1 by tweet or otherwise, during the course of this hearing  
2 until it has been confirmed that there can be reporting.  
3 I'm sure they have heard that.

4 Sir, I was dealing with the flexible approach that  
5 we invite all CPs to adopt if they consider during the  
6 course of the hearing further OS redactions are or are  
7 not required. That flexible approach will ensure that  
8 quicker decisions on the inquiry's restriction orders  
9 can be made without requiring the diversion of  
10 significant inquiry and CP time and resources into  
11 written submissions and further hearings. As we are  
12 certain everyone will appreciate, we don't want to be  
13 spending every Friday dealing with restriction orders  
14 and the like, but instead engaging with the preparation  
15 of the oral evidence hearings.

16 If, nonetheless, strictly necessary, CPs can provide  
17 submissions on the inquiry's OS redactions and invite  
18 a ruling from you, sir, on the papers unless a hearing  
19 is absolutely necessary. However, CTI consider that  
20 this situation is very unlikely to arise given, as we've  
21 indicated in our summary introduction, the effective  
22 process that has been undertaken to date, the  
23 desirability of progressing the inquiry and not  
24 diverting it into extensive consideration of OS  
25 redactions, and the expectation that CPs will not,

1 unless there is a good reason to do so, seek to revisit  
2 the OS redactions that have been made to date given the  
3 thorough process that has been conducted.

4 Next, the families have sought confirmation  
5 in relation to a number of irrelevant and sensitive,  
6 I&S, redactions that have been included in the RO  
7 applications made by SMG and ShowSec. It's right to say  
8 that this is an issue that has been raised by Mr Cooper,  
9 in particular, on a number of occasions, and I'm sorry  
10 it has taken us a little bit of time to get back to him,  
11 but we're now going to set out the position as indeed  
12 we've set it out in writing previously.

13 For the avoidance of doubt, simply irrelevant  
14 content is not redacted. Where content is identified by  
15 the ILT to be both irrelevant and sensitive, so we  
16 stress both irrelevant and sensitive, an I&S redaction  
17 is applied and CTI can confirm that where redactions are  
18 marked I&S they do not contain any relevant content.  
19 I&S content therefore does not fall for disclosure to  
20 CPs while OS content is relevant and operationally  
21 sensitive and so does fall for disclosure to CPs in  
22 accordance with the inquiry's process.

23 As we have said, Mr Cooper was keen for that  
24 clarification and we hope that our written and oral  
25 submissions have provided it.

1 SIR JOHN SAUNDERS: Mr Greaney, that matter of whether  
2 things are irrelevant will be kept under review during  
3 the inquiry, no doubt.

4 MR GREANEY: It certainly will, sir, yes. Indeed, I was  
5 just about to say that in light of the families'  
6 reasonable and well-reasoned submissions on these I&S  
7 redactions, the ILT has taken steps already to revisit  
8 the documents containing only I&S redactions included  
9 in the RO applications made by SMG and ShowSec to ensure  
10 that they are appropriate and to ensure that we are  
11 satisfied that that is the case, but no ruling will be  
12 required, sir, certainly today.

13 The families also submit that the inquiry should in  
14 effect take a cautious approach to OS redactions where  
15 they're proposed by ShowSec, SMG and GMCA and where HMG  
16 have not also sought an OS redaction.

17 In CTI's submission, no change of approach by your  
18 legal team is required. As stated in the ILT note of  
19 12 June, the inquiry conducts its own independent  
20 assessment to any proposed OS redaction. In conducting  
21 that assessment, the inquiry will consider all relevant  
22 matters including, importantly, the reasons put forward  
23 for the proposed redaction. The inquiry will then apply  
24 its own threshold to the proposed OS redaction.

25 Ultimately, the inquiry will consider all requests

1 for OS redactions irrespective of their source and apply  
 2 its own independent assessment, and that approach should  
 3 continue. Again, sir, no ruling is required.  
 4 Next, the families have indicated that it is  
 5 unclear:  
 6 "... whether the material included in SMG's  
 7 appendix B and GMCA's schedules 1, 2 and 3 have already  
 8 been considered and agreed or rejected by the ILT."  
 9 We are grateful to the families for raising this  
 10 issue. We've addressed it at paragraphs 13 to 16 of our  
 11 written submissions. In short, we believe that all  
 12 concerns have been dealt with and that no ruling is  
 13 required.  
 14 The families have also indicated in their  
 15 submissions that:  
 16 "It has not been possible for the families to review  
 17 all the material in the sensitive folder by the deadline  
 18 for these submissions and in any event the sensitive  
 19 folder is not up to date."  
 20 We have addressed this at paragraphs 20 to 25 of our  
 21 recent submissions. In short, as far as the inquiry is  
 22 aware, all OS content which was capable of disclosure to  
 23 CPs was available to CPs as at 10 July when the  
 24 submissions of the families were due and were provided.  
 25 However, we well understand the concern and we're keen

1 to ensure a system is in place to address any concerns.  
 2 CTI suggest the following approach. Following  
 3 today's hearing, should the families wish to raise any  
 4 issues concerning those OS redactions, they should do so  
 5 in accordance with the approach we've set out already.  
 6 They can be assured that they will be given the closest  
 7 attention. Sir, we know that the representatives of the  
 8 families will be careful to raise issues only when  
 9 important, indeed that's the approach that they have  
 10 certainly adopted to date, because we have no doubt that  
 11 they have recognised it is important not to divert your  
 12 legal team from its work of drilling into the truth.  
 13 In their written submissions for this hearing, the  
 14 families sought amendments to a small number of OS  
 15 redactions that are currently in place within the  
 16 inquiry's disclosure. We considered those closely and  
 17 responded in detail at paragraph 26 of our submissions  
 18 of 20 July, accepting that many of the families'  
 19 observations had a sound foundation.  
 20 Sir, at that stage it seemed likely that it would be  
 21 necessary for you to rule on a number of outstanding  
 22 issues, but since then we've had discussions with those  
 23 representing the families, in particular Mr Atkinson,  
 24 HMG, SMG and ShowSec. We would wish to say that we do  
 25 not doubt that HMG, GMP, SMG and ShowSec have sought

1 restrictions where they have done so on the basis of  
 2 genuine concerns that revelation of OS material would  
 3 make terrorist attacks more likely and/or more lethal.  
 4 But furthermore, they have listened to CTI and to the  
 5 families and they have been realistic in the approach  
 6 they've adopted.  
 7 Sir, no one should doubt that HMG, GMP, SMG and  
 8 ShowSec have engaged in a constructive way in the  
 9 process of dealing with OS redactions.  
 10 Sir, the upshot of what has happened over the course  
 11 of the last 24 hours is as follows. The proposals of  
 12 CTI at paragraph 26 have been accepted by those affected  
 13 with two exceptions, or at least initially with two  
 14 exceptions. The first exception was that set out at  
 15 paragraph 26(j) of our written submissions. It relates  
 16 to a document that we'll give the INQ reference to,  
 17 001678, and which is in bundle 2, hearing bundle 2, at  
 18 divider 10.  
 19 Sir, it's not necessary for you to look at that  
 20 document because there is now agreement that that  
 21 redaction will not be applied, so no issue remains.  
 22 The second exception related to a document described  
 23 at paragraph 26(k) of CTI's written submissions. Again,  
 24 we'll give the INQ reference: 001673. It's the document  
 25 at divider 11 of the bundle. I have given the wrong

1 reference, I'm told by Mr Nicholls. It should be  
 2 INQ001471.  
 3 SIR JOHN SAUNDERS: Thank you.  
 4 MR GREANEY: Sir, having reflected on that document and the  
 5 submissions made by the families and discussed it with  
 6 Mr O'Connor and Mr Laidlaw, we agree that that document  
 7 should be the subject of further consideration, which  
 8 consideration will take into account the families'  
 9 views. In due course a further version of the document  
 10 with the OS redactions that in light of that discussion  
 11 we consider necessary will be circulated for  
 12 consideration by all, in particular the bereaved  
 13 families, but we do not consider that any ruling is  
 14 required by you at the moment; it would, in short, be  
 15 premature.  
 16 Sir, may we make plain that we're grateful to  
 17 Mr Atkinson on behalf of the families, Mr Laidlaw on  
 18 behalf of ShowSec and Mr O'Connor on behalf of SMG for  
 19 discussing those issues with me yesterday evening and  
 20 enabling a constructive way forward to be identified.  
 21 Next, type 2 material, as it has been described by  
 22 the parties in their submissions. There is a very small  
 23 quantity of OS material that is so sensitive that it  
 24 cannot be included in the sensitive folder on Magnum but  
 25 can be made available for inspection. That material is

1 the subject of a separate restriction order imposed by  
2 you, sir, dated 19 February in common with the type 1  
3 restriction order.

4 Due to the public health crisis, core participants  
5 and, in particular, the families have not been able to  
6 review the material that is subject to the inquiry's  
7 type 2 restriction order and it follows that they have  
8 therefore not been able to make representations to the  
9 inquiry upon it. Accordingly, this hearing will not  
10 review the type 2 material.

11 CTI consider that as lockdown measures have now  
12 eased to a degree, CPs should be invited to review the  
13 type 2 material in order that any outstanding issues can  
14 be dealt with. There are now just eight documents  
15 subject to the type 2 restriction order and they're  
16 listed in the updated type 2 restriction order included  
17 in the hearing bundle, hearing bundle 1, that has been  
18 prepared for today.

19 Sir, should you agree with our approach, CTI propose  
20 that the core participants should review the type 2  
21 material as quickly as possible given the desirability  
22 of resolving any issues prior to the inquiry's start  
23 date.

24 CTI therefore suggest that the following steps are  
25 adopted if feasible and we strongly believe that they

21

1 are feasible. CPs should be provided with access to the  
2 type 2 material in accordance with the type 2  
3 restriction order as quickly as possible and by no later  
4 than 5 August. This is to allow the issue to be  
5 considered at the hearing on 17 August if required.

6 Arrangements for inspection will be circulated by  
7 STI but it is anticipated that inspection will be  
8 offered at the offices of Field Fisher in London and  
9 Manchester. But we anticipate, given our familiarity  
10 with the documents, that the inspection will take no  
11 more than 1 hour. Hudgells, one of the firms of  
12 solicitors acting on behalf of the bereaved families,  
13 are examining that material early next week on, as  
14 I understand it, Tuesday, and we will accommodate all  
15 other CPs next week.

16 Should any CP wish to submit that content currently  
17 covered by the type 2 restriction order should not be,  
18 those submissions should be provided by 4 pm on  
19 6 August. Clearly, the requirement not to refer to OS  
20 content as required by the type 2 restriction order will  
21 be imperative in such submissions. Therefore core  
22 participants will need to adopt the approach that they  
23 have already adopted in dealing with the type 1 material  
24 so as not to defeat the very purpose of the restriction  
25 order.

22

1 Any CP wishing to respond to those submissions  
2 should do so by 4 pm on 10 August. If required, CTI  
3 will provide submissions on the type 2 material by 4 pm  
4 on 13 August, and then, as we've indicated, if  
5 necessary, the type 2 material should then be considered  
6 by you, sir, at the hearing scheduled for 17 August.

7 SIR JOHN SAUNDERS: Mr Greaney, can I perhaps ask at this  
8 stage whether any core participant objects to that  
9 timetable. Obviously, it can be subject to review if  
10 there are real difficulties.

11 MR ATKINSON: Sir, on behalf of the families that  
12 I represent, our only concern is the speed with which  
13 we can receive access in London to the material. If  
14 we can have access to it this coming week, we have no  
15 difficulty with the timetable.

16 SIR JOHN SAUNDERS: Thank you.

17 MR GREANEY: Sir, that's very helpful. I'm sure that such  
18 access can be permitted next week. Certainly those are  
19 my instructions.

20 Sir, I was just about to say, in fact, that before  
21 turning in relation to issue 1 to deal with the media's  
22 application to be granted access to the sensitive  
23 folder, the proper management of the hearing would  
24 benefit from hearing from any CP who disagrees with  
25 anything we've said so far. We would invite submissions

23

1 in the following order: Mr Atkinson on behalf of the  
2 families -- and sir, it would be obvious to you that  
3 Mr Atkinson has taken the lead on behalf of all bereaved  
4 families in relation to many of the issues for  
5 consideration today and we're grateful to all of the  
6 families' representatives for adopting such  
7 a cooperative approach between themselves. Second, from  
8 any other family representative. Thirdly, from HMG if  
9 they have any submissions. Fourthly, from SMG if they  
10 have any. Fifthly, from ShowSec if they have any.  
11 Sixthly, from Mr Horwell on behalf of GMP, if he has any  
12 submissions. And then finally from the media on the  
13 issues that we've addressed so far, although may we make  
14 plain to Mr Bunting that we're going to turn to the  
15 issue of the sensitive folder next, so he does not need  
16 to and indeed should not deal with that issue at this  
17 stage.

18 SIR JOHN SAUNDERS: Thank you. Mr Atkinson.

19 MR ATKINSON: Sir, can I begin by apologising even more than  
20 usual for my voice.

21 SIR JOHN SAUNDERS: You're coming through loud and clear if  
22 that's any consolation to you.

23 Submissions by MR ATKINSON

24 MR ATKINSON: Well, long may that continue. It's important,  
25 not least for those of the families listening to this

24

1 hearing -- and it is made clear from the outset on this  
2 issue -- and indeed this applies to the issue of special  
3 measures for Witness J -- that the families have been  
4 the victims of terrorism . The last thing, the very last  
5 thing, they would want to do would be to assist any act  
6 of terrorism in the future .

7 Equally, they have lost loved ones through terrorism  
8 and the last thing they would want to do is risk the  
9 lives of others through terrorism . But they do seek  
10 answers as to how it was that they came to be the  
11 victims of terrorism and whether things could have been  
12 done to have stopped that happening. It is that that  
13 underpins our approach to restriction orders and  
14 in relation to operationally sensitive material .

15 We have not sought at any stage, nor do we now, to  
16 seek to undermine the careful approach that has been  
17 adopted by your legal team throughout this process, nor  
18 do we disagree in any way with the approach that they  
19 have taken as a matter of principle .

20 Two practical matters that I should mention. First ,  
21 as touched on by Mr Greaney a little earlier , we do not  
22 invite you, sir , to adopt a different approach, nor do  
23 we invite your legal team to adopt a different approach  
24 to material where OS is advanced by any organisation  
25 other than Her Majesty's Government.

25

1 Rather, our concern was that given that those  
2 organisations , for example SMG and ShowSec, in their  
3 written submissions in applying for restriction orders  
4 had themselves vouchsafed a lack of comparative  
5 experience and certainty to Her Majesty's Government in  
6 identifying that which could assist in a future  
7 terrorist attack, the inquiry team should take the very  
8 independent approach to that material which they have  
9 made clear that they have. We don't seek to suggest  
10 that those organisations were not seeking to do their  
11 best to identify that which might have a risk of  
12 assisting terrorism , but given their own circumspection  
13 in that regard, we were keen that an independent  
14 approach be taken. It has been and we are grateful for  
15 it .

16 Second, in relation to those matters that we  
17 identified at our paragraph 9 of our note, which is at  
18 page 329 of your bundle, sir , as to the fact that we had  
19 identified that we were not able to review all of the  
20 material and make submissions on all of the material  
21 that was the subject matter of applications for  
22 restriction orders, in fairness to us, and despite  
23 perhaps the slightly defensive tone of your legal team  
24 in their response to it , we were not seeking to make any  
25 criticism in that regard, but we were right to be

26

1 cautious . As your legal team's note in response makes  
2 clear, we were right to identify that the sensitive  
3 folder did not, as of 10 July, contain all the material  
4 that was the subject matter of restriction order  
5 applications .

6 There were, for example, 34 documents from GMCA,  
7 12 documents in the annex A of SMG, eight in their  
8 annex B, and five from ShowSec that had not yet made it  
9 into the sensitive folder , in part because they had no  
10 place being there , for example because documents were  
11 claimed as OS when they should have been I&S, as we sink  
12 ever more into acronyms.

13 But that clarification now having been sought, we  
14 are happy that going forward, the flexible approach set  
15 out by Mr Greaney shortly earlier and set out in your  
16 legal team's note at paragraph 7 is the right approach.  
17 We will cooperate with it .

18 We note Mr Greaney's concern that you are not  
19 diverted , sir , by lengthy consideration of individual OS  
20 redactions . We share that concern. Indeed, our reasons  
21 for raising our concerns in relation to certain of those  
22 redactions is to avoid you being diverted from, to use  
23 Mr Greaney's phrase, drilling into the truth . That is  
24 what the families want and we will do all we can to  
25 assist you to do that .

27

1 Whilst we entirely agree with the flexible approach  
2 that Mr Greaney has set out, we would invite you, sir ,  
3 to apply to that process the principles that we have  
4 sought to identify at paragraph 4 of our note, that:

5 "It is important that all material that is relevant  
6 to the terms of reference of this inquiry should be made  
7 available to the wider public in the interests of  
8 allaying public concerns, to ensure that lessons are  
9 learned, to ensure that any wrongdoing is exposed and to  
10 ensure accountability ."

11 That, we submit, must be the approach to any  
12 limitations to the openness of this inquiry .

13 In assessing any further applications either by us  
14 to remove OS redactions or by any other CP to include  
15 further OS redactions, we commend, sir, the principles  
16 that we identify at paragraph 13 of our note, page 329  
17 in the bundle, that care should be taken to assess  
18 whether what is sought to be redacted actually does  
19 relate to the present position or not. If it is  
20 a historical fact rather than the present position , we  
21 submit that that does not necessarily commend it to  
22 redaction .

23 For example, in the list of documents we identified  
24 as examples at our paragraph 14, that identified at  
25 paragraph (a) the PSIA scores. In the sense that those

28

1 are old scores we submit that they are relevant to the  
 2 assessment of PSIA assessments in the past and therefore  
 3 need to be considered at the inquiry , but do not need to  
 4 be redacted and we notice that the CTI team agree with  
 5 us at least with the headlines on that. That is  
 6 something we can discuss further with them, in the same  
 7 way (d) on our list , the CCTV blind spots point is a  
 8 matter that can clearly be resolved .

9 Second in terms of principles , if a matter is  
 10 already in the public domain or is simply a matter of  
 11 common sense, it does not need to be redacted, so for  
 12 example that which had been redacted as OS material from  
 13 Mr O'Reilly's statement, (b) in our list , is to be  
 14 reinstated .

15 Also, a proper assessment of whether the material  
 16 actually would be, to use Mr O'Connor's phrase, a tool  
 17 to be used (inaudible : distorted ) an example of that the  
 18 names of staff who were at particular positions in the  
 19 case of a bomb alert, relevant to our assessment as to  
 20 whether there was an overlap between people and we again  
 21 are grateful for CTI's help in relation to that  
 22 redaction .

23 The only other matter I should touch on as a matter  
 24 of principle going forward in relation to the flexible  
 25 approach and any future claims for OS redaction. It has

1 been a difficulty for us in dealing with documentation  
 2 with our clients that we have in many cases not been  
 3 certain until a late stage as to whether the version  
 4 that we wished to provide to them is the right version  
 5 to provide to them. We've been very grateful for the  
 6 help of your inquiry team, sir , to help us with  
 7 clarification as we've been going along on that.

8 But going forward, it would help us if there is to  
 9 be any further application for any further redaction  
 10 that we are given notice of it when that happens, that  
 11 we are given the reasons why it is sought, so that  
 12 we can be involved in the conversation as to whether  
 13 it is appropriate or not, and that we then know what the  
 14 outcome of that is as soon as we can be told so that we  
 15 know that the right versions of documents are going to  
 16 our families .

17 You will appreciate , sir , that not all of them are  
 18 able to deal with material in an electronic format. We  
 19 need to give hard copies of documents to our clients ,  
 20 particularly those who are unable to be in Manchester  
 21 during the proceedings from September. So certainty as  
 22 to that would greatly help us going forward.

23 Sir, in relation to the specific documents we  
 24 identified at our paragraph 14, our list of documents,  
 25 I think the only ones that I need to touch on at all at

1 this stage are, first , one that Mr Greaney has already  
 2 touched on at K, document 1471. That in fact is the  
 3 same document as is dealt with by us at F. It has  
 4 a different inquiry reference number because it has  
 5 a different set of redactions , one from ShowSec, one  
 6 from SMG, and we, with the greatest of respect , are not  
 7 happy with either set of redactions , and it's clear from  
 8 their response that your inquiry team agree with us at  
 9 least to an extent. We're grateful that that document  
 10 is going to be reviewed by all those concerned. We do  
 11 invite them to consider that it is important to us in  
 12 terms of the terms of reference of the inquiry to assess  
 13 the staffing levels at the arena and whether they did  
 14 give rise to vulnerability because of an inadequate  
 15 number of staff being available . Therefore staff  
 16 numbers do, we submit, matter to your assessment of  
 17 those issues .

18 We note in that regard that each of those  
 19 organisations identifies that staffing levels and the  
 20 way that they were deployed were a case by case  
 21 assessment for each individual instance. It must  
 22 follow , we submit, that those are historical numbers  
 23 that are clearly relevant to the adequacy of staffing at  
 24 the arena but would not assist a terrorist in the future  
 25 because an individual case-by-case basis would continue

1 to be being applied to them.

2 There is , of course , an element of common sense to  
 3 deployment levels , which is set out by a number of  
 4 witnesses . So although there are redactions , for  
 5 example, as to the numbers thought appropriate to  
 6 different types of concert and who might go to them,  
 7 that is set out by a whole range of witnesses . It is  
 8 perhaps not the precise name of the band that matters,  
 9 but it is that there is this assessment depending on the  
 10 nature of the concert , and that is clearly something  
 11 we will need to address and we welcome the fact that  
 12 that is going to be looked at again.

13 Similarly and briefly , sir , two other documents are  
 14 H, inquiry reference 001454, the Manchester Arena  
 15 operation plan. We understand that is a document that  
 16 was brought in after this event and our concern  
 17 therefore is to look at a compare-and-contrast of  
 18 what was considered appropriate before and after .  
 19 We are sure that in conversation , particularly with  
 20 Mr O'Connor and Mr Greaney, we can reach agreement about  
 21 that when we get to any witness that we need to deal  
 22 with that with , so I don't need to trouble you, sir ,  
 23 further on that.

24 Or for that matter the third document I would  
 25 mention, J on our list , 0001673, the stakeholder meeting

1 note. It remains our contention that many of the  
 2 matters there identified as relevant to security are  
 3 matters of common sense and indeed in some instances  
 4 geography.  
 5 We would invite again further consultation with  
 6 Mr O'Connor, Mr Greaney and any others concerned to work  
 7 out a way through that that won't reveal anything either  
 8 geographic or otherwise that is, in fact, sensitive .  
 9 I have already made my submissions on type 2, so  
 10 unless I can assist you further, sir, those are my  
 11 submissions at this stage and I am grateful for the  
 12 chance to make them.  
 13 SIR JOHN SAUNDERS: And I'm grateful for all the hard work  
 14 that's obviously gone into that and the amount of  
 15 discussions that have been made. So thank you very much  
 16 for that.  
 17 Mr Cooper?  
 18 Submissions by MR COOPER  
 19 MR COOPER: Thank you, sir, for that, and indeed, as you've  
 20 noted, work has gone on behind the scenes between all  
 21 family CPs on the issue so that we can identify the  
 22 matters and have it easily identified to the inquiry .  
 23 J and K were a particular concern of ours. It 's on  
 24 the issue of what we consider to be care to be taken  
 25 against overzealous applications . Obviously, in the

1 context of this hearing, I am not going to repeat what  
 2 it was that in J and K were sought to be deleted or  
 3 redacted. But I would invite you, sir, when you have  
 4 a moment, to look at exactly what was being proposed in  
 5 J and K, and if I had the opportunity, and I don't  
 6 because obviously no ruling has been made yet, I would  
 7 be submitting to this tribunal now how spurious those  
 8 suggestions were.  
 9 I can't and I won't, but I do invite you, sir, to  
 10 look at exactly what it was that was sought to be placed  
 11 into the OS category in J and precisely what it was that  
 12 was sought to be placed into the category in K, which we  
 13 submit were overzealous in the extreme and spurious  
 14 given that some of them can even be found on Google.  
 15 It 's as spurious as that.  
 16 We would, sir, on the basis of the low threshold  
 17 seemingly being taken as an example in J and K ask the  
 18 inquiry, as I know they will do, to carefully assess  
 19 submissions and applications that may be made in the  
 20 future that may fall into what we're calling this  
 21 overzealous category. Obviously, through agreement  
 22 between ourselves and CTI, much agreement, as it were,  
 23 has been reached, and you can see that in paragraph 26.  
 24 I'm not commenting now on paragraph 26 as such.  
 25 My submissions really go to any future submissions

1 that may be made on restriction orders and for you, sir,  
 2 to guide yourself, if we may, on the very low and  
 3 overzealous thresholds applied to J and K, and I would  
 4 be surprised if in due course you're not told in the  
 5 future that J and K are no longer persisted with.  
 6 We hope we don't see such overzealousness again. On  
 7 that point, we have no further submissions.  
 8 SIR JOHN SAUNDERS: Thank you very much. I may say, I have  
 9 actually looked at all the redactions which have been  
 10 made, but obviously I won't comment at the moment.  
 11 Mr Weatherby.  
 12 Submissions by MR WEATHERBY  
 13 MR WEATHERBY: Very briefly, I adopt the submissions  
 14 Mr Atkinson made earlier. The principles here are  
 15 relatively straightforward, but the task is huge and is  
 16 more difficult to apply than the principles might  
 17 suggest. It has so far generally been dealt with  
 18 effectively and efficiently and we're happy with the  
 19 proposal of Mr Greaney that the way forward is to deal  
 20 with matters as informally as possible and only seek  
 21 rulings where absolutely necessary .  
 22 SIR JOHN SAUNDERS: That's obviously very helpful to me.  
 23 MR WEATHERBY: Yes. A mention was made about the media  
 24 submissions and the families ' position on them at the  
 25 start . I don't know whether it's appropriate, I only

1 have a small number of things to say on that, I don't  
 2 know whether it's appropriate to say that now.  
 3 We made submissions in January that the media should  
 4 be fully involved in the discussions around restriction  
 5 orders. No doubt you would have had that in mind  
 6 anyway.  
 7 We're pleased to see that the media have been fully  
 8 involved. We've consistently made submissions in  
 9 support of open justice from the vantage point of the  
 10 families. Obviously, the media come at it from  
 11 a different perspective and we would make it clear that  
 12 we are adopting a neutral position on their submission  
 13 in terms of the restriction orders and the discussions  
 14 today.  
 15 SIR JOHN SAUNDERS: Thank you, Mr Weatherby.  
 16 Mr Payter.  
 17 MR PAYTER: Nothing further from me, thank you, sir.  
 18 SIR JOHN SAUNDERS: Thank you very much.  
 19 Ms McGahey?  
 20 Submissions by MS McGAHEY  
 21 MS McGAHEY: Sir, on behalf of the Secretary of State,  
 22 I would just like to say that the team has tried as hard  
 23 as it can to keep redactions to an absolute minimum and  
 24 to make those redactions conscientiously. Occasionally  
 25 we will make mistakes and there will be inconsistencies ,

1 it's inevitable with the vast number of documents that  
2 have to be addressed, and the Secretary of State will  
3 always cooperate in any review.

4 SIR JOHN SAUNDERS: Thank you very much.

5 Mr O'Connor?

6 Submissions by MR O'CONNOR

7 MR O'CONNOR: I'm grateful, sir. I'm also grateful to  
8 Mr Greaney for setting the background to these matters  
9 out in such detail; it means I will not need to detain  
10 you for very long.

11 First of all, sir, may I make a point echoing that  
12 of Ms McGahey. The fact that we're now focusing on  
13 a very small number of documents may conceal the fact  
14 that this exercise of identifying operationally  
15 sensitive material has involved a very large number of  
16 documents, detailed consideration of an even larger  
17 number of sections of material within those documents,  
18 an exercise that has been conducted by my clients,  
19 ShowSec, other core participants, and of course your  
20 team over several months. I'm grateful to Mr Greaney  
21 for his volunteering of the view that this is an  
22 exercise that all have conducted with care and in good  
23 faith and conscientiously. That is certainly the  
24 position as far as SMG are concerned, and sir, I don't  
25 accept for a moment that there have been any spurious or

1 overzealous claims that have been made.

2 Just as the position is with the families, so it is  
3 with SMG, and perhaps for reasons that are obvious and  
4 don't need to be explained in any detail, SMG's  
5 overriding concern in this area of this inquiry is to  
6 take steps to ensure that nothing takes place in the  
7 course of these proceedings that makes another attack  
8 either on the arena or, for that matter, on any other  
9 entertainment venue either more likely, or were it to  
10 take place, more deadly or more likely to succeed. So  
11 we certainly regard our interests in this part of  
12 the proceedings as being entirely aligned with that of  
13 the families.

14 I don't need to spend very much time on any of the  
15 particular matters that have been raised. In general,  
16 like Mr Greaney, sir, we welcome the consensual and  
17 cooperative approach that has been taken in the last day  
18 or so and certainly we anticipate that as we get into  
19 the substantive hearings, that approach will continue,  
20 and it is very likely that if all concerned work  
21 together, we will avoid the need in the majority, or  
22 perhaps even in all cases, to go into any restricted  
23 hearings.

24 Sir, all I will say about the particular claims that  
25 have been made -- first of all, the documents on the

1 list identified by the families at K and F are, as  
2 others have mentioned, in fact the same document, or at  
3 least the document that is the document at K is entirely  
4 reproduced within the longer document that is at F. So  
5 the position, just so that others understand, is it was  
6 not a mistake so much as the fact that SMG disclosed one  
7 of those documents to your team and ShowSec disclosed  
8 the other. There was then a parallel process, as I have  
9 said, within that much, much larger process where  
10 hundreds of documents were being considered. The net  
11 result is that similar but not quite identical  
12 redactions were produced on those two documents and, as  
13 Mr Greaney has said, it seems the sensible approach will  
14 be to review the redactions to that document and come up  
15 with a single version.

16 We do take the same view as your team, sir, as far  
17 as the points that are made in relation to document K is  
18 concerned. In other words, we say some of those  
19 redactions are well made and should remain, but others  
20 can be removed, but in any event, sir, we will consider  
21 of course with care all the points that have been made  
22 both in writing and orally with your team in reviewing  
23 that document with CTI.

24 As far as document J is concerned, Mr Greaney has  
25 already made the point that the small redaction

1 identified by the families on that document we have  
2 agreed should be removed.

3 SIR JOHN SAUNDERS: I'm grateful, thank you.

4 Mr Laidlaw?

5 Submissions by MR LAIDLAW

6 MR LAIDLAW: Sir, as Mr Greaney has told you, ShowSec agree  
7 with the reassessment of the OS content of the five  
8 documents between D and H, as set out in CTI's written  
9 submissions.

10 We agree with Mr Atkinson about ShowSec's position  
11 on the issue of OS material. He's right, we are not  
12 well-placed to make the final decisions. It is ILT,  
13 together with HMG, who are better placed to bring that  
14 assessment to bear upon this material, so we will  
15 continue to identify what might attract OS, but  
16 ultimately of course we'll be guided by your team.

17 In terms of the overriding concerns, as Mr O'Connor  
18 has set them out for SMG, ShowSec share them.

19 Again, sir, unless I can assist you further, those  
20 are our submissions.

21 SIR JOHN SAUNDERS: Thank you. I'm grateful.

22 Before Mr Bunting addresses you, I make no findings  
23 because I have not heard detailed arguments about the  
24 merits of any of these redactions which have been made  
25 and I'm very grateful for the amount of agreement which

1 has been reached between the parties. I will of course  
2 make decisions if necessary, but it's very much better  
3 if these matters can be agreed.

4 Mr Bunting.

5 MR BUNTING: Sir, I listened carefully to Mr Greaney QC's  
6 warning about when I should make my submissions.

7 I won't make any submissions now, I will wait and  
8 respond at the appropriate stage.

9 SIR JOHN SAUNDERS: Thank you, Mr Bunting.

10 Mr Greaney.

11 Reply by MR GREANEY

12 MR GREANEY: Sir, we don't consider it's necessary to  
13 respond in any detail to the constructive submissions  
14 that have been made, but we will just make two points  
15 really to provide some context for certain of the  
16 submissions that have been made.

17 First of all, sir, as you will appreciate and as the  
18 CPs know, some 88,000 documents have been disclosed to  
19 CPs, and the process that has been adopted to  
20 operationally sensitive material has meant that we are  
21 reduced to arguing about just a single document out of  
22 those 88,000 documents. That, sir, we hope, will  
23 demonstrate to you, and indeed to the public, the  
24 effective nature of the process that has been  
25 undertaken.

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1 The second point is to echo something that  
2 Mr Laidlaw has said. We accept that there has been no  
3 failure by SMG or ShowSec to acknowledge in the  
4 discussions that they have had with us that both ILT and  
5 HMG are in a better position than they are to recognise  
6 the mosaic effect of the disclosure of particular pieces  
7 of information. Having made those points -- sir, would  
8 you bear with me one moment, please? I'm told it's  
9 88,000 pages, not 88,000 documents. But the point  
10 remains good.

11 SIR JOHN SAUNDERS: Before you go on, there has been no  
12 other indication about the directions that you've sought  
13 in relation to type 2 material and therefore I will make  
14 those directions. Obviously if there are difficulties  
15 in seeing the documents, people can revert to me for an  
16 extension if it becomes absolutely necessary.

17 MR GREANEY: Thank you very much, sir. We'll ensure that  
18 those directions are incorporated in the formal order  
19 that will be made following this hearing.

20 SIR JOHN SAUNDERS: Thank you.

21 Application re access to sensitive folder

22 Submissions by MR GREANEY

23 MR GREANEY: We'll turn next and, finally, on issue 1 to  
24 address the media's application to be granted access to  
25 the inquiry's sensitive folder.

42

1 The starting point, we submit, is that the media  
2 will be afforded significant access to your inquiry.  
3 They have been able to access and report on all of the  
4 inquiry's preliminary hearings, numerous aspects of the  
5 inquiry's proceedings are available on the inquiry's  
6 website for the media to access. The media will be  
7 permitted to attend the inquiry's hearings, despite the  
8 difficulties posed by the current public health crisis.

9 Arrangements are being made to allow the media  
10 presence in the main hearing room in an annex at the  
11 hearing venue with access to the live feed and at  
12 a dedicated media annex close to the hearing venue with  
13 access to the delayed live stream, and all of that  
14 at the inquiry's expense.

15 The media can view the live stream of the inquiry's  
16 proceedings on YouTube or on the inquiry's website.

17 Members of the media will be permitted to attend any  
18 restricted hearings, as we've made plain, at which OS  
19 content is considered. Transcripts of the inquiry's  
20 evidence will be made available on the inquiry's  
21 website, as will material that has been adduced in  
22 evidence.

23 The media will be permitted to report the inquiry's  
24 proceedings fully, subject only to any necessary  
25 restriction orders and reporting restrictions.

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1 Your report in due course, sir, will be made public  
2 and will be available to the media. So very, very  
3 significant efforts have been made to ensure that  
4 section 18 has been and will be complied with and that  
5 the open justice principle has been and will continue to  
6 be fully respected.

7 SIR JOHN SAUNDERS: Mr Greaney, may I just interrupt you for  
8 a moment. Mr Horwell, I owe you an apology. I'm afraid  
9 that I omitted to ask you if you had any comments on the  
10 last issue and you were on my list for people to ask and  
11 I do apologise for that. But as you can't unmute  
12 yourself at the moment, it doesn't look like you're  
13 going to be able to make submissions anyway. There  
14 should be a button on the bottom of the screen.

15 MR HORWELL: My screen doesn't have one for some unknown  
16 reason. Sir, no apology is required. I had nothing to  
17 add, but thank you very much.

18 SIR JOHN SAUNDERS: I'm grateful. I'm sorry.

19 Mr Greaney.

20 MR GREANEY: The point we were making by way of introduction  
21 to this issue is that we of course entirely accept -- as  
22 we know, sir, you do -- that the media has a vital role  
23 in shining a light on the circumstances of the  
24 Manchester Arena bombing but that very, very significant  
25 efforts have been made to ensure that section 18 has

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1 been and will be complied with and that the open justice  
 2 principle has been and will continue to be fully  
 3 respected.  
 4 In respect of the inquiry's restriction order  
 5 process, this has been conducted as openly as possible  
 6 and on notice to the media. The media have been  
 7 informed since late January that the inquiry is  
 8 conducting a restriction order process, including  
 9 in relation to OS material. The inquiry's restriction  
 10 order process has been mentioned by your legal team  
 11 in the public inquiry hearings during the course of this  
 12 year. The media have been offered access to the  
 13 inquiry's and CPs' documents on the RO process. They've  
 14 been given such documents prior to and for the purposes  
 15 of this hearing and they've been provided with the  
 16 detailed thematic bases for the OS redactions that have  
 17 been applied by the inquiry.  
 18 While of course the media have not provided  
 19 submissions on individual OS redactions, the media have  
 20 not been prejudiced, as they've made detailed written  
 21 submissions on, among other matters, the OS process, the  
 22 inquiry's live stream, and applications that have been  
 23 made for anonymity and special measures.  
 24 It is against that background that the media apply  
 25 to be granted access to the inquiry's sensitive folder.

1 The effect of the media's application is this: they seek  
 2 access, prior to the inquiry's hearings and before any  
 3 evidence has been adduced, to all material identified by  
 4 the inquiry as operationally sensitive and which meets  
 5 the inquiry's broad approach to relevance. That  
 6 includes substantial material that is most unlikely ever  
 7 to be adduced in evidence.  
 8 The media's application would also necessarily  
 9 require access to the entirety of the inquiry's  
 10 disclosure database, principally for two reasons.  
 11 First, because operational sensitivity cannot be  
 12 assessed without reference to the totality of the  
 13 disclosure in order to consider what we have already  
 14 described today as the mosaic effect. And second,  
 15 because the practical way in which the sensitive folder  
 16 works with disclosure of OS content through reverse  
 17 redactions means that in order to assess the OS content  
 18 within a document, access is needed to the wider  
 19 disclosure database.  
 20 The media's application to be granted access appears  
 21 to be based on two principal submissions. First, that  
 22 the media has been treated unfairly in the inquiry's OS  
 23 redaction process and so should now be granted access to  
 24 the sensitive folder, and second, that open justice  
 25 requires that such access should be granted. Those

1 submissions are not accepted by CTI. We will respond  
 2 under three broad headings, a first, a second and  
 3 a third.  
 4 First, the media has not been treated unfairly. To  
 5 the contrary, for the reasons we've set out, the inquiry  
 6 is facilitating extensive media involvement in this  
 7 inquiry, including in the restriction order process.  
 8 We've already explained why. In short, there has been  
 9 extensive engagement with the media over this issue.  
 10 Second, there is no legal requirement, as a matter  
 11 of open justice or otherwise, to grant the media the  
 12 access they seek to the sensitive folder and beyond.  
 13 (1). Section 18 of the Act of 2005 gives effect to  
 14 the open justice principle within inquiries.  
 15 Section 18.1 requires a chairman of an inquiry, subject  
 16 to any restriction orders made under section 19, to take  
 17 such steps as he considers reasonable -- and we  
 18 emphasise that word -- to ensure that members of the  
 19 public, including reporters, are able to attend the  
 20 inquiry or to see and hear a simultaneous transmission  
 21 of its proceedings and to obtain or to view a record of  
 22 evidence and documents given, produced or provided to  
 23 the inquiry.  
 24 Section 18.1 applies to the media. A chairman,  
 25 it is obvious, is not required to take all possible

1 steps to provide the media with access to the material  
 2 provided to the inquiry. He is required to take only  
 3 those steps that he considers reasonable. So, sir, it  
 4 comes to this, that what you are required to do by  
 5 section 18.1 is to do what you consider reasonable.  
 6 (2). Section 18 has been applied in numerous  
 7 inquiries under the 2005 Act. As far as CTI is aware,  
 8 in no previous or current statutory inquiry has  
 9 section 18.1 operated to give the media the blanket  
 10 advance disclosure of sensitive material that is sought  
 11 here. The media cite no inquiry where this approach has  
 12 been adopted. It follows that it has not been  
 13 considered reasonable by numerous other inquiry chairs  
 14 to provide the media with the access being sought here.  
 15 Whilst, sir, of course that doesn't bind you, it  
 16 does provide a clear signpost to the answer to the  
 17 media's application.  
 18 (3). Numerous steps are being taken to provide the  
 19 public, including the media, with access to the  
 20 inquiry's proceedings and evidence. We've set some of  
 21 those out already today and others are set out in our  
 22 written submissions.  
 23 (4). There is no support for the media's position  
 24 in the main practitioner text on inquiries. In the book  
 25 of Mr Beer QC, Public Inquiries, there is no suggestion

1 of a requirement to provide the media with advance  
2 access to the inquiry's disclosure before the inquiry's  
3 evidence begins. Sir, for further detail, see  
4 paragraph 37(b) of our recent written submissions.

5 (5). The media are not given access to complete  
6 advance pre-trial disclosure in other types of legal  
7 proceedings, even where there are no sensitivity issues  
8 involved. For example, the media are not provided with  
9 the entirety of the prosecution disclosure in criminal  
10 proceedings. In inquests the media do not receive the  
11 evidence bundles made available to interested persons.  
12 In civil proceedings, the media are not granted advance  
13 access to material before it has been adduced in  
14 evidence.

15 The media are able to follow these proceedings as  
16 they will be able to follow the inquiry. The media are  
17 then able to consider the evidence that is adduced and  
18 invite the relevant tribunal to provide disclosure if  
19 it is not already provided, and that is the approach the  
20 inquiry is taking. In short, the media have provided no  
21 reason why they should receive wholly exceptional  
22 treatment within this inquiry compared to other forms of  
23 legal proceedings and other inquiries.

24 (6). The effect of the media's application would be  
25 to afford the media the same level of disclosure as all

1 CPs within the inquiry, despite them not being CPs.  
2 This, in our submission, would create a bizarre  
3 situation. CPs are given disclosure that is not  
4 provided to the public, including the media, because  
5 they have a particular interest and role in the  
6 inquiry's proceedings. The media do not have that same  
7 status. Their interest is in providing the public with  
8 access to the inquiry. Yet the media's application  
9 would collapse this distinction between CPs and the  
10 public. It would also afford the media substantially  
11 greater advance disclosure than numerous witnesses  
12 within the inquiry and, put simply, there is no basis  
13 for such an approach.

14 (7). If OS material does become relevant during the  
15 course of the oral evidence hearings, it will be  
16 adduced, either in a managed form in open hearings or in  
17 full form in a restricted session. The media will be  
18 present for both. They will be in a position to report  
19 anything that's said in open and be in a position to  
20 make submissions on whether the OS designation is  
21 appropriate if they wish to do so. Therefore the open  
22 justice principle will be fully respected.

23 Just to develop this point slightly, sir, could we  
24 take you, please, to page 53 of our original submissions  
25 on operationally sensitive material. This was the first

1 note. This is the lengthy note that dealt with the  
2 principles. Page 53, paragraph 128.

3 Sir, we there refer to rule 12 of the Inquiry Rules.  
4 Ordinarily, an application by the media for access to  
5 material subject to a restriction order application  
6 would be made under rule 12, and what would happen  
7 is that the media would make an application for  
8 potentially restricted material. But in this case, we  
9 accept they could not make such an application because  
10 there is a restriction order in place already, although  
11 it's important to say that that's for good reason,  
12 because the imposition of the restriction orders on  
13 19 February allowed the material to be disclosed  
14 promptly to all CPs and in particular to the bereaved  
15 families.

16 But it nonetheless seems to CTI that the rule 12  
17 regime is informative in considering the application now  
18 made by the media. Sir, the test, or part of the test,  
19 as you'll see from paragraph 128, is that you may rule  
20 in favour of such an order if you consider that  
21 disclosure to an individual, here the media, is  
22 necessary for the determination of the application. The  
23 word "necessary" in rule 12.4 was considered by the  
24 court in the Azelle Rodney case. We'll give it its  
25 citation: 2012 EWHC 2783 Admin.

1 As we have put it at paragraph 129 of our written  
2 submissions, the word was there construed narrowly. In  
3 particular, you'll see, sir, that the Administrative  
4 Court said in the final sentence we have quoted:

5 "In our judgment, what is required is the chairman's  
6 conclusion that, without limited disclosure, the  
7 section 19 application cannot satisfactorily be  
8 determined."

9 We would submit that that cannot possibly be said  
10 in the circumstances of this application.

11 (8) and finally under our second broad heading. At  
12 paragraph 37(g) of the more recent submissions, so those  
13 of 20 July, we have addressed the authorities on open  
14 justice. We won't rehearse them in detail now, but we  
15 do submit that there is no doubt that the steps taken by  
16 the inquiry satisfy the open justice principle.

17 We'll turn next to our third broad submission, which  
18 is that there are positive reasons and positive good  
19 reasons not to grant the media the access they seek.  
20 They include the following in addition to those we've  
21 set out already.

22 (1). Doing so would substantially increase the  
23 number of people with access to OS content. That poses  
24 a risk of inadvertent disclosure and breach of the  
25 inquiry's restriction orders, which the inquiry

1 understandably seeks to guard against . We emphasise  
 2 that this is not a question of whether the inquiry  
 3 trusts the media to act responsibly , there is no such  
 4 mistrust on the part of the inquiry , and we underline  
 5 that, but rather, the concern is in increasing the  
 6 number of people with access to the OS content because  
 7 that poses an increased risk of inadvertent disclosure .  
 8 (2). Were the media granted access to the inquiry 's  
 9 disclosure database, they would have access to material  
 10 similar but not identical to that which may subsequently  
 11 be adduced in evidence and/or posted on the inquiry 's  
 12 website. The risk of inadvertent breach and inadequate  
 13 reporting in those circumstances is self -evident and  
 14 should be avoided unless there is some compelling reason  
 15 to adopt such an approach.  
 16 (3). The inquiry 's restriction order process is , as  
 17 will be apparent to all watching or listening to this  
 18 hearing today, well advanced, and the inquiry 's start  
 19 date is imminent. Receiving extensive submissions from  
 20 a range of media organisations , or even from the media  
 21 as a whole, on individual OS redactions at this stage  
 22 simply will not assist in the efficient management and  
 23 progress of the inquiry .  
 24 (4). Were the media granted full access to the  
 25 inquiry 's disclosure , consideration would need to be

1 given as to whether other non-CPs, including witnesses ,  
 2 should be given such access, including as a matter of  
 3 fairness , and the inquiry is dealing with hundreds of  
 4 witnesses . The implications of this course are obvious  
 5 and would significantly interfere with the inquiry 's  
 6 preparations and indeed progress .  
 7 (5). There would be no meaningful benefits to the  
 8 inquiry and the wider public of providing complete  
 9 advance disclosure to the media of sensitive material .  
 10 The media are not expert in assessing what is and is not  
 11 operationally sensitive . A number of the inquiry 's CPs  
 12 have such expertise and have provided it . The family  
 13 CPs who have a stated interest in ensuring the inquiry  
 14 is open and public have had access to all the OS content  
 15 and have made detailed submissions. They have been  
 16 integral to the process .  
 17 The inquiry, sir , has in you a highly experienced  
 18 chairman who is under a duty to take reasonable steps to  
 19 ensure public access to the inquiry 's proceedings. The  
 20 inquiry 's independent legal team are committed to  
 21 ensuring as much openness as possible -- again, we  
 22 emphasise that -- and it 's clear , we suggest, from these  
 23 submissions from previous CTI documents on the  
 24 restriction order process and from the ILT documents.  
 25 (6) and finally under this third broad heading, CTI

1 does accept that the media have expertise in assessing  
 2 what is and is not of editorial interest and therefore  
 3 potentially of interest to the wider public . However,  
 4 that expertise is not engaged by advance disclosure ;  
 5 it 's engaged when evidence is adduced. The media are  
 6 entitled to be present when that occurs and can follow  
 7 the evidence in numerous ways. At that stage they can,  
 8 if they wish, raise with the chairman any issues that  
 9 occur. That 's the proportionate way for these issues to  
 10 be dealt with as they occur during the inquiry 's  
 11 hearings when it 's clear what evidence is in fact  
 12 adduced, not through wholesale advance disclosure to the  
 13 media followed by extensive written submissions on  
 14 redactions to documents that may not be adduced in  
 15 evidence .  
 16 Sir, that 's as much as we wish to say on this issue  
 17 at the moment, at any rate. We may have reached the  
 18 point at which it 's appropriate to take a break to  
 19 assist the stenographer, following which, if a break is  
 20 necessary, we 'll call first from Mr Bunting, then from  
 21 the family CPs, then from any other CPs who wish to make  
 22 submissions, including Mr Horwell, but the final word,  
 23 subject to CTI, should, we suggest, go to Mr Bunting.  
 24 SIR JOHN SAUNDERS: Thank you.  
 25 We will have a break then. Is 10 minutes

1 sufficient ?  
 2 Can I just say this about people making submissions?  
 3 All of us here, and me included, accept the need and the  
 4 principle of open justice . The issue in this case is  
 5 going to be how to apply it and what is required in the  
 6 name of open justice , so I don't need to be reminded by  
 7 anybody of the importance of the principle of open  
 8 justice .  
 9 Thank you. Mr Weatherby, that 's not meant to be  
 10 a reference to you in any way, but I don't need to have  
 11 it further remarked to me, but thank you very much.  
 12 We 'll meet together in again in 10 minutes' time, which  
 13 is 12.30.  
 14 (12.20 pm)  
 15 (A short break)  
 16 (12.30 pm)  
 17 SIR JOHN SAUNDERS: Mr Greaney.  
 18 MR GREANEY: Sir, before we hear from Mr Bunting, I'm going  
 19 to ask whether you would be prepared to sit on into and  
 20 through lunch in order to finish this hearing. There is  
 21 a good reason for that request. I can indicate that  
 22 I have asked all of the participants in the hearing  
 23 whether they have any problem with that and they've all  
 24 indicated that they do not.  
 25 SIR JOHN SAUNDERS: Nor do I and I'm grateful for everyone's

1 cooperation about that. Thank you.  
 2 MR GREANEY: Thank you, sir.  
 3 SIR JOHN SAUNDERS: Mr Bunting.  
 4 Submissions by MR BUNTING  
 5 MR BUNTING: I act for seven media organisations which  
 6 include newspapers and broadcast media and our  
 7 submissions are set out in the hearing bundle at  
 8 pages 336 to 340D.  
 9 Before I explain those submissions to the inquiry,  
 10 can I make four short introductory points. The first  
 11 is that the media recognises that many other people, and  
 12 indeed all of the core participants, have a very  
 13 significant interest in accessing in inquiry and in  
 14 getting answers. But nevertheless, sir, as you've  
 15 already indicated you're well aware, the media also has  
 16 an important role in this inquiry and its takes its role  
 17 in the open justice principle very seriously. It acts  
 18 as the eyes and ears of the public and seeks to shine  
 19 a light on the proceedings which are underway.  
 20 For those reasons, they do not advance the  
 21 submissions that are in the hearing bundle lightly.  
 22 They don't seek to cause inconvenience, they don't seek  
 23 to add expense; rather, what they seek to ensure is  
 24 fairness and that you decide this important issue in  
 25 respect of the designation of OS material in a way which

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1 is fair to all concerned, including the media.  
 2 You will also hopefully have noticed that the media  
 3 seek to limit inconvenience and to act responsibly,  
 4 hence the approach Mr Greaney QC has already introduced  
 5 to the anonymity applications in which the media don't  
 6 take any significant role in opposing. Therefore the  
 7 submissions I'm going to make now will probably be the  
 8 only relatively lengthy submissions I make today and  
 9 after this I will be much quicker and much more to the  
 10 point.  
 11 The second introductory point --  
 12 SIR JOHN SAUNDERS: I'm sure you'll be to the point whatever  
 13 you're saying, Mr Bunting.  
 14 MR BUNTING: I'll do my best.  
 15 The second introductory submission is that we are  
 16 grateful, we are very, very grateful in particular for  
 17 the steps which have been taken by the inquiry team to  
 18 ensure media access to this inquiry and we're  
 19 particularly grateful for the confirmation yesterday  
 20 that a new location has been found for the media annex,  
 21 which is much closer to the inquiry hearing, has much  
 22 more space for journalists, up to 25, and which will be  
 23 available throughout the evidential hearings as media  
 24 interest will continue beyond the opening statements.  
 25 That ensures, sir, that you don't have to resolve

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1 that tricky issue of quite how far away the  
 2 Midland Hotel was from the Magistrates' Court. I am  
 3 personally grateful to Mr Greaney, Mr Suter and your  
 4 team for the assistance and help they've given in that  
 5 regard.  
 6 But that said, the issue today, and this point which  
 7 you have to determine, is not the extent to which the  
 8 inquiry has made provision for the media to access  
 9 preliminary hearings or to attend future hearings, it's  
 10 narrower than that. I make that point because it is  
 11 said that the media has been treated fairly because, for  
 12 example, a media annex may be created at some stage in  
 13 the future. But that's not the question. The question  
 14 is whether material has been correctly designated as  
 15 officially sensitive, or OS, and how that material will  
 16 be then used and handled.  
 17 The thirds introductory submission, sir, is that  
 18 issue is a novel one. From the media organisations'  
 19 research, it's the first time that a public inquiry of  
 20 this kind has envisaged a third species of hearing in  
 21 addition to open hearings and closed hearings. There is  
 22 a helpful and illuminating summary of the various  
 23 restriction orders that have been previously made in  
 24 other inquiries in the note prepared by counsel to the  
 25 inquiry on 22 January. Sir, for your reference, that's

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1 at pages 21 to 23, paragraph 45 of the hearing bundle.  
 2 None of those other examples envisaged this kind of  
 3 approach where you have open hearings, closed hearings  
 4 and also potentially restricted hearings, which the  
 5 public cannot attend, the media can attend, but the  
 6 media cannot report.  
 7 It's my respectful submission that that novel  
 8 approach requires a particular justification. Indeed,  
 9 one of the points put against me is that never has the  
 10 media's application been granted in other inquiries, and  
 11 that may be for the reason that never has this approach  
 12 been taken in other inquiries.  
 13 Then the fourth introductory submission may be  
 14 helpful to narrow the dispute still further, because  
 15 a lot of submissions are made in writing and some have  
 16 been made orally again today about what the media's  
 17 position is. The media's submission is not that it  
 18 should be entitled to all material now by reason of the  
 19 open justice principle as suggested at page 421,  
 20 paragraph 34 of the inquiry's submissions, or that  
 21 there's a legal requirement under the Inquiries Act or  
 22 under the open justice principle that such advance  
 23 disclosure be provided in every inquiry or indeed in  
 24 every set of proceedings.  
 25 The majority of counsel to the inquiry's submissions

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1 against me, some of which have been made in quite  
 2 extreme terms, typifying submissions as "bizarre" or  
 3 "brazen", are directed at that submission, which isn't  
 4 the submission that the media actually advances.  
 5 Indeed, the media's submissions is much more  
 6 straightforward than that and it can be summarised as  
 7 follows. The proposed approach represents an  
 8 interference with the media's rights, both at common law  
 9 and under the European Convention.

10 The justification for that interference needs to be  
 11 determined and it needs to be determined in a way which  
 12 is fair. What fairness requires is a matter for you,  
 13 but the inquiry team has rightly recognised that access  
 14 to the proposed OS material is a requirement of fairness  
 15 when resolving this issue. That's why access to the  
 16 material has been provided both to the CPs and to the  
 17 state bodies. No alternative has been put forward, in  
 18 my respectful submission, that would equally ensure  
 19 fairness in resolving this issue. All the media  
 20 therefore suggest is a strictly limited access to that  
 21 material for a strictly limited purpose, namely to  
 22 assist you with resolving this issue and resolving it  
 23 fairly, and they propose a strictly limited timetabled  
 24 opportunity to do that.

25 So having set out those introductory submissions,

1 can I structure my main submissions in the following way  
 2 just to make the following broad-brush points.

3 (1). The media at a right, under common law and  
 4 under the Convention, to access the inquiry hearing and  
 5 to access the inquiry's material.

6 (2). This proposed approach represents  
 7 a considerable interference with that right.

8 (3). That interference and the justification for it  
 9 needs to be determined fairly.

10 (4). So far, the media hasn't been treated fairly  
 11 in the resolution of this issue. That's not a criticism  
 12 of the inquiry team; it's simply a result of how this  
 13 unusual situation has developed over an unusual period  
 14 of time in the wider society.

15 (5). The submissions which are advanced against me  
 16 either attack a straw man in that they address  
 17 submissions that I haven't actually made or they don't  
 18 withstand scrutiny when we look at them.

19 Going through those submissions in stages.  
 20 Stage 1., the media has a right of access. This, sir,  
 21 is not a novel submission. You've already indicated  
 22 that you're very familiar with the open justice  
 23 principle. I will illustrate it quickly by reference  
 24 solely to submissions of counsel to the inquiry, which  
 25 have been accepted as examples of good law by all core

1 participants in their various written submissions.

2 The starting point is that the Inquiries Act creates  
 3 a presumption of public access to inquiry proceedings  
 4 and information; that's counsel to the inquiry's  
 5 submissions, page 46, paragraph 108(e). That's  
 6 a submission that they take and indeed that reflects the  
 7 judgment of His Honour Judge Teague QC in the  
 8 Grainger Inquiry in his 9 December 2016 ruling on  
 9 anonymity.

10 That ruling of His Honour Judge Teague goes on to  
 11 say:

12 "I remind myself that the right of the press to  
 13 report the proceedings of the inquiry, a key function of  
 14 which, as I have said, is to allay public concern, is  
 15 an important aspect of the right to freedom of  
 16 expression under Article 10."

17 Counsel to the inquiry have rightly quoted that as  
 18 good law in their submissions of 3 March 2020 at  
 19 page 92, paragraph 47.

20 So counsel to the inquiry rightly recognise that the  
 21 media has a right under the Convention to access the  
 22 inquiry and to access the inquiry's material, and they  
 23 also recognise that they have a right of access under  
 24 the common law, hence page 48, paragraph 112, the  
 25 peroration of the open justice principle as

1 a fundamental constitutional principle, and the  
 2 description of the open justice principle as bringing  
 3 with it:

4 "The right of the press to report on legal  
 5 proceedings, the obligation to ensure that evidence  
 6 communicated to a court is presumptively available to  
 7 the public"; that's paragraph 114, page 49.

8 Another way that counsel to the inquiry put that is  
 9 to say that the public has a right to receive  
 10 information; that's paragraph 116 on page 49, citing  
 11 Sir Brian Leveson, then President of the Queen's Bench  
 12 Division, in the DSD case, a case, sir, you may well be  
 13 familiar with through your work in the parole board.

14 For those reasons, counsel to the inquiry have set  
 15 out rightly a right, both under the Convention and the  
 16 common law, of access to the inquiry and of access to  
 17 the inquiry's material. That is a right that the media  
 18 has over and above the right that core participants  
 19 have.

20 So for example, it has been said that core  
 21 participants also have an important desire to ensure  
 22 transparency in these proceedings. That's correct, but  
 23 the primary focus of the core participants is to ensure  
 24 that their clients can effectively access the inquiry  
 25 and that their clients can have their rights protected.

1 The primary focus of the media is to ensure that the  
2 public can have access to the material and that the  
3 public's rights are properly respected. Whilst there  
4 may be some overlap there, they are not exactly

5 analogous in terms of the interests. So that's stage 1.

6 Stage 2 is that the suggested approach of counsel to  
7 the inquiry represents a significant interference with  
8 these rights. Here, it is necessary to touch briefly  
9 upon some of the submissions that Mr Greaney QC has  
10 already made this morning and which are reflected in the  
11 notes which are before you because once material is  
12 designated as OS, or officially sensitive, then the  
13 media's rights have been interfered with. The reason  
14 for that is because once you're OS, then the material  
15 falls into the type 1 and type 2 restriction orders.  
16 The result of that is that OS material cannot be quoted  
17 in applications, written submissions or oral submissions  
18 as counsel to the inquiry recognise at page 107,  
19 paragraph 20.

20 The second result is that steps will be taken to  
21 ensure that OS content is not in fact mentioned in open  
22 hearings; see page 108, paragraph 23(b)(ii). This means  
23 that the media may never become aware of the OS material  
24 because steps may be taken to ensure that the OS  
25 material is never revealed in the hearings. So the

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1 material will be relevant, all core participants will be  
2 aware of it, so too will all the advocates, so too will  
3 the inquiry when it comes to take its decision -- and  
4 indeed the inquiry may very well rely on it to resolve  
5 the key questions in the inquiry. But all that in  
6 circumstances in which the media may never know that it  
7 actually exists.

8 That undermines the suggested alternative of  
9 Mr Greaney, which is that as and when material is  
10 revealed in hearings, be they open or restricted, the  
11 media can then apply for access to it. But if active  
12 steps are being taken to avoid referring to that  
13 material, then the media may never become aware that it  
14 exists and therefore will simply be unable to make the  
15 application at that stage, and of course any such  
16 application at that stage would represent a considerable  
17 distraction to the inquiry whilst it's in the midst of  
18 hearing evidence.

19 The third consequence of OS material being  
20 designated as such is that if it is going to be  
21 addressed in a hearing then there will be a restricted  
22 hearing, and the public will not be permitted access to  
23 the restricted hearings, the media may be allowed to  
24 attend it, but they won't be allowed to report it, and  
25 they are functionally therefore closed hearings with, if

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1 I can use the words perhaps inappropriately, a fig leaf  
2 of open justice by the media being present in them but  
3 not being able to report what is said in them.

4 Indeed, not only could they not report it, but under  
5 the current restriction orders that are in place and  
6 that are proposed, the media would not even be able to  
7 ask assistance from editorial or legal colleagues about  
8 whether to even make an application for access to that  
9 OS material because the contents of restricted hearings  
10 are confidential to those present in restricted hearings  
11 and nobody else. That's a further reason undermining  
12 the suggested alternative of Mr Greaney.

13 Then of course the designation of material as OS is  
14 the primary justification for the delay to the streaming  
15 of the evidence hearing. Sir, I don't mean to over-egg  
16 this submission, but those practical results amount to  
17 what the Lord Chief Justice referred to as direct press  
18 censorship. I'm quoting there the judgment in Sarker's  
19 case, which was sent through to the inquiry yesterday.  
20 It's a judgment of 2018 in the first volume of the  
21 Weekly Law Reports at 6023. Sarker, of course, wasn't  
22 a case about restriction orders, nor was it a case about  
23 inquiries, it was a case about section 4(2) orders  
24 in the criminal context, and of course, sir, as you'll  
25 recall, that where a section 4(2) order is made in

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1 crime, the press can attend the proceedings but their  
2 ability to report on those proceedings is postponed for  
3 a period of time so as to avoid the risk of prejudice to  
4 those proceedings or to other proceedings. So the  
5 effect of a section 4(2) order is actually less extreme  
6 than a restriction order because the restriction order  
7 prohibits reporting forever, not merely postponing the  
8 reporting of proceedings for a period of time.

9 Of course in that judgment at page 6033E, the Lord  
10 Chief Justice found that section 4(2) orders represent  
11 direct press censorship even when they only apply for  
12 a short period of time. At paragraph 26 of that  
13 judgment he drew attention to the particular practical  
14 problems that are posed to the press, particularly to  
15 the local press, where section 4(2) orders are made  
16 because it is being said that news organisations will  
17 have to commit journalists to attend hearings that they  
18 may never be able to fully report. So the consequences  
19 of the designation of material as OS and thereby  
20 inclusion of that material in the restriction orders is  
21 more serious than a section 4(2) which the Lord  
22 Chief Justice described in those chilling terms.

23 Why should a news organisation commit the resources  
24 of attending a restricted hearing to listen to evidence  
25 that they cannot report?

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1 SIR JOHN SAUNDERS: I'm not sure the Lord Chief Justice said  
 2 that actually. He said that the delay would be 10 days  
 3 in reporting and he said the reality of the local press  
 4 is they can't afford to have resources to put into court  
 5 to listen to everything, and therefore the reality is it  
 6 may never be reported because they wouldn't have had  
 7 a reporter there.

8 MR BUNTING: Yes.

9 SIR JOHN SAUNDERS: At the end of the 10 days, it could be  
 10 reported; there's no suggestion it would never be  
 11 reported (overspeaking) therefore to listen to.

12 MR BUNTING: Sorry, sir. I didn't mean to interrupt.

13 I think the two points were (1) no matter how long  
 14 the delay, the journalists may not attend. (2),n even  
 15 if they do attend, they will only be permitted to report  
 16 at the end of the proceedings, at which stage they would  
 17 be reporting all of the proceedings, not the individual  
 18 incident that happened on day 3 of the proceedings, for  
 19 example, and as a result there would be less reporting  
 20 of the proceedings than there otherwise would be.

21 So that's a section 4(2) and the consequences of it.  
 22 And the consequences of a restriction order are more  
 23 significant and more serious still. That's the second  
 24 stage.

25 What we have here is a direct interference with

1 common law and Convention rights, which has a serious  
 2 practical impact on the ability of the press to report  
 3 these proceedings.

4 Stage 3 follows from that. That is because of the  
 5 significance of that interference, this issue of  
 6 designation of OS material must be treated and  
 7 determined fairly. That's not just a proposition of  
 8 logic, but it's a requirement of statute, sir, as you  
 9 know, because section 17.3 of the Inquiries Act, which  
 10 is in hearing bundle 1 at page 441, says that:

11 "In making any decision as to the procedure or  
 12 conduct of an inquiry, the chairman must act with  
 13 fairness."

14 Of course, issuing a restriction order is a decision  
 15 as to the procedure or conduct of the inquiry.

16 Of course, when judging what fairness requires, it's  
 17 what fairness requires in determining that issue, not  
 18 what fairness requires in general, and there's authority  
 19 to that extent set out in the bundle. The question here  
 20 is: what does fairness require when you, sir, the  
 21 chairman, are performing this question of designation of  
 22 material and OS?

23 What does fairness involve here? We say, as  
 24 a matter of law, it requires the ability to make  
 25 effective representations to you about the designation

1 of material as OS material, and there is adequate  
 2 authority for that proposition, indeed it's reflected in  
 3 the inquiry's own restriction order protocol, which  
 4 requires, for example, where a restriction order  
 5 application is made for the relevant material to be  
 6 provided to the press so that the press can make  
 7 representations about it.

8 That also reflects rule 12 of the Inquiry  
 9 Rules 2006, which Mr Greaney has helpfully brought us to  
 10 already this morning, which is intended to permit the  
 11 provision of material that may form part of  
 12 a restriction order to non-parties. You've had the  
 13 helpful reminder from Azelle Rodney's case about what  
 14 "necessary" means in rule 12. Rule 12 is exactly the  
 15 type of application that I am making, albeit rule 12  
 16 doesn't apply here because the material which has been  
 17 designated as OS is already subject to restriction  
 18 order. So all the media is asking you to do, sir, is  
 19 what rule 12 envisages, which is the provision of  
 20 material where it is necessary to ensure that  
 21 a non-party can make effective representations or  
 22 because we're in a context in which rule 12 doesn't  
 23 narrowly apply.

24 So too, sir, the additional authorities which I sent  
 25 through yesterday -- Mackay's case in Strasbourg, the

1 BBC case in the Supreme Court, and the Practice  
 2 Direction on interim non-disclosure orders -- all of  
 3 which say that where reporting restriction issues are  
 4 being envisaged, the media must have an effective  
 5 opportunity to make submissions about them, and  
 6 effectiveness in the Practice Direction involves:

7 "... providing sensitive, private confidential  
 8 information to the media in advance so that the media  
 9 can make submissions about it, solely for that purpose,  
 10 not for the purposes of publication."

11 So sir, that's the reasons of authority why  
 12 effectiveness and fairness requires provision of  
 13 material, but it's also a submission which is reflected  
 14 in fact. The precedent on which I rely isn't what's  
 15 happened in other inquiries, it's what happened in this  
 16 inquiry because counsel to the inquiry recognises that  
 17 without sight of the OS material, people cannot make  
 18 informed submissions to you about its designation as OS.

19 So for Her Majesty's Government, page 12,  
 20 paragraph 17 of the note of 22 January, counsel to the  
 21 inquiry said:

22 "Without being cited on these redactions, HMG cannot  
 23 make informed submissions to the chairman."

24 Equally core participants, the proposal note of  
 25 7 February, page 56, paragraph 6(c):

1 "The inquiry legal team considers that CPs should be  
 2 afforded access to the OS content by secure means and,  
 3 subject to the inquiry's confidentiality undertaking, to  
 4 allow CPs and in particular the families to make  
 5 informed submissions on any RO applications that are  
 6 made."

7 And the CTI note there recognised that CP  
 8 submissions were likely to assist you, sir, in deciding  
 9 this very point, namely designation as OS and  
 10 consequential inclusion in restriction orders. That's  
 11 a point which is repeated at page 102, paragraph 6(b),  
 12 in a more recent note by counsel to the inquiry.

13 Indeed, sir, the reason why today's hearing is not  
 14 addressing the type 2 restriction orders and the reason  
 15 why Mr Greaney proposes a new timetable for addressing  
 16 that is because the CPs haven't been able to review it  
 17 and therefore haven't been able to make informed  
 18 submissions about them to you.

19 Then, sir, at paragraph 21 on page 107 -- here we're  
 20 moving more recently to the 12 June submissions of  
 21 counsel to the inquiry. The inquiry legal team do not  
 22 consider that this requirement would prevent CPs making  
 23 informed and thorough submissions on OS content and use  
 24 and handling. All CPs, the inquiry legal team and the  
 25 chairman will have access to the relevant content. CPs

1 are permitted to refer to the location of the contents  
 2 and to invite the chair to consider it.

3 So the consistent theme is that CPs need access to  
 4 this material to make informed representations about it.  
 5 You have been assisted today by those very informed  
 6 submissions and the constructive approach which has been  
 7 taken by Mr Atkinson QC and others. The families have  
 8 made their detailed submissions, the inquiry legal team  
 9 has responded to it, and a compromise or a development  
 10 or a practical alternative has been put in place, and  
 11 that is simply what the media requests: the opportunity  
 12 to make and do the same thing.

13 Stage 4 of my submissions, sir. The media have not  
 14 yet been provided with such a fair opportunity. This  
 15 really follows from the submission that I have just  
 16 made. If it is accepted, as it is, that an individual  
 17 cannot make informed submissions about the designation  
 18 of material as OS without access to it and if it is  
 19 accepted that the designation of material as OS  
 20 interferes with the media's rights, then why is the same  
 21 approach not being taken to the media? That is an all  
 22 the more surprising approach given that all core  
 23 participants and counsel to the inquiry actually accept  
 24 that accredited members of the press can attend the  
 25 restricted hearings which are expressly for the purpose

1 of addressing OS material. If they can attend the  
 2 restricted hearings at which this material is going to  
 3 be set out, why can they not have access to it in  
 4 advance of the hearings for the limited and narrow  
 5 purpose of assisting you with designation as such?

6 The chronology, sir, demonstrates this unfairness.  
 7 It's a chronology which is set out in our submissions at  
 8 pages 337 to 340, and it's a chronology that isn't in  
 9 dispute. In setting out that chronology, I wish to be  
 10 clear that we are not criticising the inquiry legal team  
 11 and we have sought to recognise this in our note;  
 12 paragraph 8 on page 337. The inquiry team have been  
 13 working at speed, they've had the twin imperatives of  
 14 ensuring that all CPs are ready for a September start  
 15 and they've been trying to manage the problems posed by  
 16 the pandemic. Nevertheless, the result of this  
 17 chronology is unfairness for the media.

18 Can I just simply emphasise a few aspects of this  
 19 chronology for you, sir, because now, having seen the  
 20 hearing bundle, I've been provided with more material  
 21 which wasn't previously available to the media. The  
 22 circumstances seem to start with an email from the  
 23 solicitor to the inquiry to CPs on 20 December 2019,  
 24 this email is mentioned at page 7 of the bundle. The  
 25 Home Office then responds to that at page 7,

1 paragraph 6, of the bundle. Neither of those emails in  
 2 which it seems this process was at its nexus was sent to  
 3 the media.

4 Then we have the detailed submissions on 22 January  
 5 in which counsel to the inquiry set out its submissions  
 6 on the proposed process. Those submissions, the  
 7 detailed submissions, weren't provided to the media  
 8 until the media pushed for them and was given them on  
 9 2 July, just a couple of weeks ago, sir, for the  
 10 purposes of making these representations. It was these  
 11 submissions that introduced the OS procedure and set  
 12 what may appear to be a very low threshold for  
 13 designation as OS material where publication of the  
 14 content, whether taken alone or based on all the  
 15 available disclosure, would be capable of assisting  
 16 those who wish to carry out future attacks. That  
 17 threshold was simply not given to the media until very,  
 18 very recently.

19 Then we have the Home Office being invited to make  
 20 submissions and its RO applications by 5 February, which  
 21 they did, page 143 of the bundle. But regrettably,  
 22 those Home Office submissions weren't disclosed to the  
 23 media either, not until 2 July 2020, and they were  
 24 supported by a witness statement and a sensitivities  
 25 note, see page 143, paragraph 2, neither of which were

1 provided to the media. Indeed, the witness statement  
 2 has been provided for the very first time the day before  
 3 yesterday as part of the hearing bundle. The  
 4 sensitivities note has still not been provided to the  
 5 media. The reason those documents ought to have been  
 6 provided is obvious because they set out why the  
 7 documents that the Home Office was seeking OS  
 8 designation for were sensitive and they did so by  
 9 reference to a sensitivities note which we haven't seen.

10 The Home Secretary proposed OS designation in that  
 11 note even for material that was already in the public  
 12 domain, it seems; see page 154, paragraph 40. It set  
 13 the threshold considerably lower, in my respectful  
 14 submission, than counsel to the inquiry did at page 145,  
 15 paragraph 7:

16 "The Secretary of State is committed to assisting  
 17 the inquiry in identifying material that might, if  
 18 publicly disclosed, make it easier for terrorists to  
 19 perpetrate attacks."

20 And that's a different threshold than counsel to the  
 21 inquiry's one, which was publication being capable of  
 22 assisting, it's publication that might make it easier.

23 Of course, counsel to the inquiry intended at that  
 24 stage for the media to have an opportunity to respond to  
 25 the Home Office submissions. We know that because

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1 we can now see they said as much on 22 January, page 9,  
 2 paragraph 10(b). They accept the media couldn't respond  
 3 to the Home Office submissions because they weren't  
 4 given them until 2 July 2020. It's in those Home Office  
 5 submissions that the interim restriction orders were  
 6 proposed and the media simply didn't know the basis on  
 7 which that application was made or indeed had been  
 8 granted.

9 Then we have now we can see a further proposal note  
 10 being circulated on 7 February, page 55, and that note  
 11 from counsel to the inquiry wasn't provided until the  
 12 day before yesterday. It's that note that proposed the  
 13 type 1 and type 2 restriction orders and the purpose of  
 14 that note was to ensure that people could make informed  
 15 submissions about the disclosure of OS material. That  
 16 note wasn't provided to the media either. Indeed, it  
 17 doesn't mention the media, and it may be simply that at  
 18 that stage, given the speed at which the inquiry team  
 19 were acting, that the media's interests were there  
 20 overlooked.

21 Then there's a further round of submissions about  
 22 the proposal for type 1 and type 2 restriction orders,  
 23 all of this provided for the first time in the hearing  
 24 bundle to the media. One of those notes, of course, is  
 25 the note which Mr Weatherby QC has mentioned today in

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1 which he said that it was essential that the media were  
 2 involved in the decision-making; page 230, paragraph 5.  
 3 Despite that, the media still weren't involved because  
 4 they still weren't sent any of this material at the  
 5 time.

6 The type 1 and 2 orders are then made on  
 7 19 February, and those orders were made without the  
 8 media having made any submissions at all because the  
 9 media didn't know that an application was even being  
 10 made for them.

11 The submissions which are put against me today are  
 12 that the media was in some way on notice of the  
 13 restriction order issues, but that submission hasn't  
 14 been explained, it hasn't been particularised, there is  
 15 no evidence of how the media was actually on notice of  
 16 these important issues, and there's no evidence to  
 17 suggest that the media were in fact on notice of these  
 18 applications.

19 The high point, really, sir, is an email that was  
 20 sent by the inquiry's consultancy team, Crest Consultants,  
 21 to the media on 20 February, and that's set out at page 339,  
 22 paragraph 14 of my chronology. It simply told the media that they would  
 23 have the opportunity to make submissions at some stage  
 24 in the future about the use and handling of OS material.  
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1 Where all of this brings us is the conclusion,  
 2 really, at page 106, paragraph 14(d), counsel to the  
 3 inquiry's note of 12 June, the very point of today's  
 4 hearing, and I'll quote it in terms:

5 "Should any family, CP or the media consider that  
 6 content in the sensitive folder has been redacted by the  
 7 inquiry on OS grounds it should not have been, then  
 8 submissions to that effect should be provided by the  
 9 relevant deadline, 4 pm on 10 July."

10 Simply reading out that proposal underlines the lack  
 11 of fairness because how can the media know whether  
 12 material has been unduly redacted in a sensitive folder  
 13 without access to that sensitive folder?

14 Let me take that a stage further, sir, to illustrate  
 15 the little we do know. Firstly, what we know is that  
 16 the OS material has been identified by reference to  
 17 themes and some of those themes are set out at  
 18 paragraph 10 on page 103. Those themes are broad and  
 19 they include important public interest topics such as  
 20 the emergency response. But of course the fact that  
 21 a document touches upon one of these themes doesn't mean  
 22 publication of that document will be capable of  
 23 assisting terrorists, nor does the fact that a document  
 24 touches upon one of those themes give any indication to  
 25 the media of how much publication will be capable of

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1 assisting terrorists .  
 2 So the themes are helpful , but they don't given us  
 3 an effective opportunity to address you on the inclusion  
 4 of documents within those themes.  
 5 Secondly, the media has been told the title of some  
 6 of the material , so for example the type 2 material  
 7 proposed by the Home Office, page 142, annex C to the  
 8 Home Secretary's submissions on 5 February, page 159,  
 9 around 223 documents. The title of the documents still  
 10 don't give us any explanation of what the document  
 11 actually is , nor does a schedule of proposed redactions  
 12 by reference to line help the media in understanding  
 13 what the proposed redaction actually involves or whether  
 14 or not it 's an appropriate or inappropriate designation  
 15 as OS. The themes and the OS number columns are, in my  
 16 respectful submission, impossible to cross- refer without  
 17 access to the material itself .  
 18 The next thing that the media know is that some of  
 19 these bodies have put forward witness statements about  
 20 why material is OS but those witness statements are very  
 21 general. I have already dealt with the Home Office  
 22 statement, which simply refers to the sensitivities note  
 23 which we don't have. The SMG witness statement provides  
 24 no meaningful detail ; see page 290, paragraph 11. I do  
 25 not propose to provide a detailed analysis of the

1 sensitivity of any of the particular documents'  
 2 redactions . See also the ShowSec restriction order  
 3 application at page 309. That seems to include entire  
 4 witness statements, such as Kyle Lawler's witness  
 5 statement, that according to the last hearing is  
 6 an important witness in relation to the stewarding of  
 7 the event. The ShowSec witness statement goes no  
 8 further than general concerns; page 319.  
 9 So the question that lingers , sir , is: how has the  
 10 media been involved in this process to the extent  
 11 necessary to protect its interests ? And the answer is ,  
 12 with respect , they haven't been. And despite this being  
 13 the submission which we make today, it's a submission  
 14 which is , in my respectful submission, barely touched  
 15 upon in counsel to the inquiry 's submissions in today's  
 16 hearing, the extent of the fairness , page 418,  
 17 paragraph 36, and that refers back to paragraph 31 of  
 18 counsel to the inquiry 's submissions, which have been  
 19 read out to you again today. There are a number of  
 20 problems with that analysis .  
 21 Firstly , it relies extensively on the extent to  
 22 which the inquiry have taken steps to ensure open  
 23 justice in these proceedings in general. That's not the  
 24 question , sir . The question is whether the media have  
 25 been given a fair opportunity of assisting you with

1 whether material has been properly designated as OS, not  
 2 whether or not the inquiry has taken good or bad steps  
 3 to ensure open justice . Much of that material therefore  
 4 is legally irrelevant to the question that you have to  
 5 determine.  
 6 Indeed, of course it may also be observed that those  
 7 steps haven't been taken out of a desire to treat the  
 8 media fairly , but because the inquiry rightly recognises  
 9 the press and public questions to this inquiry is  
 10 an aspect of the open justice principle .  
 11 Secondly, it 's said that the media hasn't been  
 12 prejudiced because they have been able to make  
 13 submissions on the OS process. Presumably that refers  
 14 to the written submissions which are in the bundle  
 15 before you. But that's a circular submission. The fact  
 16 that the media has been able to make submissions about  
 17 how it's been treated unfairly doesn't mean it has been  
 18 treated fairly . Overall, there is simply no detail in  
 19 counsel to the inquiry 's submissions of how the media  
 20 has been treated fairly .  
 21 Can I turn then to my fifth and final submission ,  
 22 sir .  
 23 SIR JOHN SAUNDERS: Just before you move on, you mention the  
 24 potential circularity of this . I understand your  
 25 submission that it has not been fair to the press that

1 they have not been given the opportunity to make  
 2 submissions about whether material should be properly  
 3 designated as OS because it hasn't had the underlying  
 4 material .  
 5 MR BUNTING: Yes.  
 6 SIR JOHN SAUNDERS: So you say you should have done. If  
 7 that 's right , then counsel to the inquiry were being  
 8 unfair or the inquiry team were being unfair to you, so  
 9 it actually comes down to one issue?  
 10 MR BUNTING: Yes.  
 11 SIR JOHN SAUNDERS: Thank you. The delays in you getting  
 12 things, for which you may well have a justified  
 13 complaint, is something which can be compensated by  
 14 giving you time to make your submissions, which you  
 15 obviously have done today. But the unfairness and your  
 16 complaint really rolls into one: we should have the  
 17 underlying material?  
 18 MR BUNTING: Yes, which is of course counsel to the  
 19 inquiry 's position in respect of everyone else but the  
 20 media. I think that is really the submission, much more  
 21 quickly than I've been making it. I 'll make my final  
 22 submission then much more quickly.  
 23 SIR JOHN SAUNDERS: I wasn't doing that to get you to move  
 24 on; I was just actually clarifying in my own mind by  
 25 asking the question, so please don't think I was

1 criticising you by saying that.  
 2 MR BUNTING: I am very grateful.  
 3 The submissions against me, sir, and I'll take these  
 4 very quickly because they've been set out in writing.  
 5 Page 418, paragraph 37(b). No previous or current  
 6 inquiry has provided blanket advance disclosure of the  
 7 kind sought by the media. That may be correct, it may  
 8 not be correct, but the media doesn't seek advance  
 9 blanket disclosure for its own purposes, it doesn't seek  
 10 it for the purposes of publication, it seeks it solely  
 11 for the assistance of you on this question of  
 12 designation as OS material.  
 13 Next, it's said that Jason Beer QC in his helpful  
 14 practitioner's text has not suggested this approach and,  
 15 again, that's addressing a submission which I haven't  
 16 made. The reason why Mr Beer may not have recommended  
 17 this approach is because this is a novel application and  
 18 a novel approach by counsel to the inquiry and Mr Beer  
 19 won't have envisaged the requirements of fairness in  
 20 every possible point.  
 21 Then it's said that the media aren't given access to  
 22 complete advance pre-trial disclosure in other  
 23 proceedings. Again, that's not what the media is  
 24 seeking. Then there's a lengthy passage on whether the  
 25 open justice principle requires the application to be

1 granted. Of course, as I've already said in my  
 2 introduction, that's not a submission that the media has  
 3 made. It's a doubly irrelevant submission in  
 4 circumstances because it addresses when it's necessary  
 5 for the media to have access to court material for the  
 6 purpose of publication, not for the purpose of fairly  
 7 assisting you on this important question.  
 8 Sir, I note simply for the purposes of clarity that  
 9 there are one or two legal errors in the summary of what  
 10 open justice is and how it works in that stage of  
 11 counsel to the inquiry's submissions. I am not going to  
 12 address them because it is my submission that those  
 13 points simply don't take us anywhere because they  
 14 address a submission which I'm not actually making.  
 15 Then we come to risk and indeed the suggestion that  
 16 provision of this material increases the risk of  
 17 inadvertent disclosure, which was repeated in the next  
 18 sub-paragraph to suggest the risk of inadvertent breach  
 19 or inaccurate reporting. With respect to counsel to the  
 20 inquiry, that's not an obvious risk. It's not an  
 21 obvious risk given that all core participants accept  
 22 that accredited journalists can attend the restricted  
 23 hearings. So the risks in the media accessing the OS  
 24 media is tolerable, certainly at that stage.  
 25 Next it's said that they trust the media, but this

1 isn't a question of trust. Of course, I don't make  
 2 submissions about trust in some sort of gentlemanly  
 3 etiquette way, I make that submission as a question of  
 4 law because Sarker says, as we know, at paragraph 32.3  
 5 that:  
 6 "When considering reporting restriction questions,  
 7 a court must work on the basis that the media will act  
 8 responsibly and lawfully."  
 9 And of course that was a point made in the context  
 10 of contempts of court, which are important, but the  
 11 possibility of breaching a restriction order with a  
 12 penal notice in circumstances in which the risk of  
 13 inadvertent publication may pose a risk of terrorism is  
 14 something that the media will unquestionably avoid. And  
 15 of course it's a risk that could be managed in any event  
 16 by limiting the kind of disclosure which I suggested to  
 17 a number of accredited journalists, by limiting that  
 18 disclosure to the provision of undertakings, by limiting  
 19 that disclosure even to location-specific disclosure, ie  
 20 disclosure that couldn't be taken away and moved around  
 21 and inadvertently misplaced.  
 22 The other point in respect of risk is that a large  
 23 number of people plainly can be trusted with this OS  
 24 material, including laypeople amongst the core  
 25 participants who do not have the media's expertise and

1 experience in managing material, including national  
 2 security material.  
 3 Then we come to the suggestion that the start date  
 4 for the hearings is imminent, and that of course is  
 5 correct. But the media's application is for a targeted  
 6 form of disclosure and a targeted form of submissions.  
 7 It can be addressed by setting deadlines in the same  
 8 way, sir, as you have done in the type 2 restriction  
 9 order applications this morning, and it may be,  
 10 of course, that the media make very little submissions  
 11 at all once they actually see this material.  
 12 We've noted the very helpful, short and focused  
 13 submissions that have been made by family CPs. All that  
 14 matters is that the media has a fair opportunity to do  
 15 so, they're realistic, they're responsible and they  
 16 won't make submissions to you unless it's strictly  
 17 necessary.  
 18 Finally, just a few very short points to finish off.  
 19 If the media application were granted then it's said  
 20 that consideration will need to be given to witnesses  
 21 being given access to the material. That, sir, is  
 22 a non sequitur. There's absolutely no reason why  
 23 witnesses would need to be offered access to the  
 24 material that the media seek access to. This is  
 25 a question of fairness in resolving an open justice

1 application and there's no logical reason why witnesses  
 2 have the same or even a similar interest in achieving  
 3 this kind of advance disclosure in this way.  
 4 Then there's the surprising submission, if I can  
 5 respectfully observe, that there are no meaningful  
 6 benefits to granting the media access to this material.  
 7 The media accepts that they don't have the Home Office's  
 8 expertise in judging what is or is not likely to pose  
 9 a risk to terrorists, but nor indeed are many of the CPs  
 10 who have been given an opportunity to make informed  
 11 decisions based on that very material, and the media  
 12 does, as counsel to the inquiry accepts, have a proper  
 13 interest in ensuring that material is not wrongly  
 14 designated as being operationally sensitive. They are  
 15 experts in the other side of the section 19 balance,  
 16 namely the extent to which a restriction order will  
 17 inhibit the allaying of public concern, and there is  
 18 therefore an obvious benefit to ensuring that the media  
 19 can assist you and can assist you in an effective way  
 20 with whether or not material ought to be OS.  
 21 Finally in terms of impracticalities, it's said that  
 22 the disclosure of the sensitive folder will mean  
 23 disclosure of all material to the media. Respectfully,  
 24 that's something which is a question of practicalities  
 25 rather than a question of inevitability. There are 464

1 documents, it seems, that have been designated as in  
 2 whole or in part OS. They're in a file, the sensitive  
 3 file, in Magnum. The redacted parts are in Magnum and  
 4 the non-redacted parts are in another file. It may be  
 5 that it is possible to simply put together a file  
 6 including all of those documents, the redacted and the  
 7 non-redacted parts. It may be that that is something  
 8 that would involve some small expense but, of course, as  
 9 Azelle Rodney makes clear, expense in ensuring that this  
 10 type of decision is taken lawfully and fairly is expense  
 11 which is correctly incurred.  
 12 Sir, just in conclusion, material has been  
 13 designated so far as OS on the basis of very broad  
 14 themes and what appears to be a very low threshold.  
 15 I have noted with concern the eloquent submissions made  
 16 by family CPs, that some of the applications have been,  
 17 to quote, overzealous and spurious. The media have not  
 18 yet been provided with a fair or effective opportunity  
 19 to address those issues. Their proposal is limited,  
 20 it's realistic, and it's practical, and if there is  
 21 another proposal that would ensure fairness, then the  
 22 media would reflect carefully on that and ensure that  
 23 they provide you with submissions on that basis, but  
 24 none has yet been identified. For those reasons, sir,  
 25 I respectfully invite the inquiry to grant this limited

1 application.  
 2 Can I assist you any further on those points, sir?  
 3 SIR JOHN SAUNDERS: Just one issue which I would like you to  
 4 help me with. You will be aware that in this case,  
 5 there has been a PII application which has been granted.  
 6 MR BUNTING: Yes.  
 7 SIR JOHN SAUNDERS: Before that application was made, the  
 8 families made what submissions they could possibly and  
 9 properly make, limited as they could be, because  
 10 of course they did not know the underlying material  
 11 which went for the application, they couldn't be told  
 12 it, so they were obviously restricted in the submissions  
 13 they could make.  
 14 The OS material, I am told, has been decided on the  
 15 basis of material which was capable of assisting those  
 16 who could carry out attacks, terrorist attacks, or to  
 17 make those attacks more effective. It is possible that  
 18 an argument could be made that that came within the  
 19 context of national security and that a PII application  
 20 could have been made in relation to that.  
 21 The inquiry team have decided, or the inquiry has  
 22 decided, that because of the importance to CPs, and  
 23 particularly family CPs, of knowing as much as can  
 24 safely and properly be done, that has not been the  
 25 subject of a PII application but a more limited

1 application, which you have been made aware of.  
 2 Because that limitation has been relaxed in the case  
 3 of CPs, does that actually mean that it should go  
 4 further and include the press, who couldn't clearly make  
 5 submissions on a PII application? So where is the  
 6 distinction?  
 7 MR BUNTING: Sir, I make two points in response to that.  
 8 Obviously, I wasn't present during the PII proceedings  
 9 in the inquest and I haven't read back in to understand  
 10 quite how that process works. My understanding of PII  
 11 in other contexts, be they civil or crime, is that very  
 12 often it's encouraged that everything that can possibly  
 13 be said in open about the PII material is, but the  
 14 material is, for example, gisted or there's some sort of  
 15 explanation given as to the closed material, so as to  
 16 ensure that fairness applies to those who have an  
 17 interest in fighting against the PII application.  
 18 The same here goes. If there is an alternative  
 19 proposition, for example, that this OS material can be  
 20 properly gisted so we can understand what it is, then we  
 21 could potentially address you on that. So we know, for  
 22 example: here is the title of a document, this document  
 23 includes the following types of things. That may be  
 24 some way in which an aspect of fairness could be  
 25 achieved, but it hasn't yet been done.

1 The second point, sir. I think you said in your  
 2 helpful question to me that the PII process has been  
 3 relaxed in respect of the OS material so as to ensure  
 4 that the CPs have access to it. But it's important to  
 5 recognise the reasons why the CPs had been provided  
 6 access to it. Of course there's a reason that in the  
 7 long-term CPs know what material the inquiry is relying  
 8 on, but the reasons which I have read out, and I have  
 9 read out the quotations to you already, the reasons they  
 10 were provided with the material at this stage is to  
 11 ensure that they could make informed representations to  
 12 you about whether the material is properly designated as  
 13 OS. That recognises from counsel to the inquiry's  
 14 position that the CP's couldn't make informed  
 15 representations about the designation as OS without  
 16 access to the material.

17 SIR JOHN SAUNDERS: I agree, Mr Bunting, for what it's  
 18 worth, that the 12 June 2020 note was not very helpful  
 19 to the media.

20 MR BUNTING: I'm grateful for that indication. The question  
 21 which is posed in those submissions of, "Is material  
 22 in the sensitive folder rightly in there?" is simply  
 23 a question we can't assist you with.

24 SIR JOHN SAUNDERS: I understand that.

25 MR BUNTING: Those are my submissions, sir.

1 SIR JOHN SAUNDERS: Thank you very much, Mr Bunting. Do any  
 2 of the family CPs wish to make any submissions on this?  
 3 Thank you.

4 Ms McGahey?

5 Submissions by MS MCGAHEY

6 MS MCGAHEY: Yes, please, sir. The Secretary of State  
 7 respectfully agrees entirely with the submissions made  
 8 by counsel to the inquiry and we wish to emphasise just  
 9 one issue, which is that of national security.

10 The Secretary of State accepts entirely that  
 11 fairness is key to inquiry procedure, of course it is.  
 12 But one element of that is the risk to the public of  
 13 disclosure of sensitive material.

14 Everybody accepts that there is some material that  
 15 has to be restricted under type 1 or type 2 restrictions  
 16 in order to protect lives from terrorist attack while at  
 17 the same time giving the families the greatest possible  
 18 access to the material.

19 In my submission, fairness is achieved through  
 20 providing that access to core participants. As  
 21 Mr Greaney has already said, the media do not have the  
 22 same status as that of core participants. The core  
 23 participants, and including most importantly the  
 24 families, have all been able to make detailed and fully  
 25 informed submissions on whether redactions should be

1 made.

2 As you know from this morning, sir, in the light of  
 3 all those submissions, there has been only a handful of  
 4 areas of dispute, now whittled down to next to nothing.

5 The media do have access to knowledge of the subject  
 6 matter through the sensitivities document. Crucially,  
 7 sir, if one goes back a bit to how we got here, the  
 8 type 1 and type 2 restriction order process was ordered  
 9 by you in response to an application made for  
 10 a restriction order made by the Secretary of State. She  
 11 made that application and put forward the process of  
 12 disclosure -- type 1, type 2, nature of the restricted  
 13 hearings -- on the basis of her knowledge of the number  
 14 of people who would see that material and the question  
 15 of the number of people was central.

16 You may recall, sir, that when the survivors applied  
 17 for core participant status, the Secretary of State  
 18 raised the concern that if there were to be many more  
 19 core participants, the way in which restriction orders  
 20 covering the sensitive material worked might have to be  
 21 revisited, and the inquiry team recognised the  
 22 legitimacy of that concern and indeed relied on it  
 23 in the subsequent judicial review.

24 Media access to the type 1 sensitive material would  
 25 change entirely the basis on which access was given and

1 ordered under the restriction orders and the basis on  
 2 which those restriction orders were made. It would,  
 3 with the greatest of respect to Mr Bunting, hugely  
 4 increase the risk of inadvertent disclosure on the basis  
 5 that any significant increase in the numbers of people  
 6 with access to material increases that risk of people  
 7 losing things, printing things they shouldn't, saying  
 8 something they shouldn't in the wrong place. It is not  
 9 a question of trust, it is a question of human nature  
 10 and the inevitability of error.

11 In the Secretary of State's respectful submission,  
 12 the mechanism that you have ordered has given the  
 13 greatest possible access to those who really need it and  
 14 want it while protecting national security and balancing  
 15 the risk to it as well as can possibly be done. This  
 16 mechanism is not suitable for access to the media more  
 17 widely.

18 Unless I can assist you further, sir, those are my  
 19 submissions.

20 SIR JOHN SAUNDERS: Thank you very much.

21 Mr Horwell.

22 Submissions by MR HORWELL

23 MR HORWELL: I have very little to add. GMP have an obvious  
 24 interest in this application. We support the  
 25 submissions of Mr Greaney. Evidence is marked sensitive

1 for a good reason, and the fewer people who have access  
2 to it the less chance of it being inadvertently  
3 disclosed . It is not as if you are short of opinions  
4 and submissions on relevance and sensitivity . For all  
5 of the reasons given , we oppose this application .

6 SIR JOHN SAUNDERS: Thank you.

7 Mr O'Connor, you're affected as well . Do you have  
8 anything to add? Mr Laidlaw? Thank you.

9 Does anyone else wish to make any submissions on  
10 this topic? Thank you.

11 Mr Greaney?

12 Submissions by MR GREANEY

13 MR GREANEY: Sir, yes, we would like to reply on seven  
14 points, and we'll do so briefly and take them in the  
15 order in which they were dealt with by Mr Bunting.

16 First of all , Mr Bunting suggested at an early stage  
17 of his submissions that the media have "a right of  
18 access to the inquiry materials ". We disagree and point  
19 out that section 18 does not provide that . What  
20 section 18 requires is reasonable access to the inquiry  
21 materials and that , for the reasons we've given , is  
22 provided by access to the hearings , to the transcripts  
23 and to the documents and in the other ways that we've  
24 set out already .

25 Secondly, Mr Bunting submitted that what the media

1 was seeking was strictly limited access, but what his  
2 submissions did not address is how that could work. Our  
3 submission is that it is unrealistic and unworkable to  
4 suggest that that could occur. What in fact the media  
5 is seeking is inevitably full access to all of the  
6 inquiry's materials , and that , as we have submitted, is  
7 for two reasons. First of all , because some of the OS  
8 redactions have been applied, not simply because of the  
9 particular phrase in a particular document but because  
10 of the mosaic effect , and the media would be unable to  
11 make a judgment about that decision and that redaction  
12 without access to the broader material .

13 Secondly, sir , the way in which the OS material has  
14 been arranged, that is to say by way of reverse  
15 redactions , means that the media simply would not be  
16 provided with what they claim to seek by providing them  
17 with access to the sensitive folder .

18 Thirdly, it was not, as we have understood it ,  
19 submitted that the restricted hearings that will , we  
20 suggest, occur, would be unlawful nor indeed could that  
21 submission be realistically made because you are  
22 obviously empowered by section 17 and section 19 to  
23 follow the approach that we have submitted. We would  
24 make the point that in devising the scheme of restricted  
25 hearings what CTI have been seeking to do is to retain

1 as much transparency as possible in relation to its  
2 process and to give the CPs as much access as possible  
3 to materials .

4 At a restricted hearing, the press will be able to  
5 be present . They will hear the OS material. If they  
6 take the view that OS does not in fact apply to  
7 a particular document, they can make the submission that  
8 that material should be made public. That is entirely  
9 fair .

10 If material , on the other hand, is managed at an  
11 open hearing, that will mean that that which is relevant  
12 has been made public, and again, that is entirely fair  
13 to the media.

14 Four, rule 12. Again, as we have understood the  
15 submission, Mr Bunting agrees that the approach that  
16 would be taken if this were a rule 12 application is  
17 relevant to the approach that you should take to it . He  
18 put the test in this way: that rule 12 provided that  
19 there should be disclosure to a person where it is  
20 necessary for the, and I quote, "making of effective  
21 submissions". But once again, that is not the test .

22 As we pointed out already, rule 12.4(a) provides  
23 that the first condition for the making of such an order  
24 is that the chairman considers the disclosure to an  
25 individual is necessary "for the determination of the

1 application ", and that test is not satisfied on the  
2 basis of the arguments presented by the media.

3 Fifth, the chronology point. Can I make plain that  
4 not every aspect of the chronology that's been set out  
5 by Mr Bunting is accepted and, in particular , there are  
6 other dates that are relevant . So for example, on  
7 19 February the media was sent an email that made plain  
8 that applications for restriction orders were being made  
9 and attached a number of documents, so they've known  
10 that for literally months.

11 In any event, as you yourself , sir , have observed,  
12 the complaint that has been made about the chronology  
13 and the time at which material has been provided to the  
14 media takes them absolutely nowhere because there has  
15 been no submission that they have not had an adequate  
16 opportunity to formulate their submissions .

17 Sixth of the seven points. Mr Bunting suggested  
18 that the inquiry is giving all of the underlying  
19 material to "everyone apart from the media". We submit  
20 that that substantially overstates the position .  
21 Witnesses do not get access to the underlying material .  
22 Even where the witness is likely to be the subject of  
23 significant criticism , or criticism at any rate, during  
24 the course of the oral evidence hearing , they will get  
25 only a limited amount of documentation, and moreover,

1 not all core participants get all relevant material.  
 2 Sir, in dealing with the application made on behalf  
 3 of Kyle Lawler, you ruled that he should not get access  
 4 to material save for the access that bears directly upon  
 5 the chapter that he is concerned with.  
 6 Seventh and finally, the submission made on behalf  
 7 of the media is that fairness requires that the media  
 8 must have access to OS content now because that is what  
 9 CPs have been given. In other words, they stand, it's  
 10 submitted, in exactly the same position as the CPs. Our  
 11 response is that fairness does not require the media to  
 12 have the same access as core participants. Core  
 13 participants have status in the inquiry, they are given  
 14 access to disclosure for that reason so that they can  
 15 inform the inquiry's process and prepare for the  
 16 inquiry's oral evidence hearing. The media,  
 17 self-evidently, does not have the same status. Fairness  
 18 for the media is achieved by allowing them access to the  
 19 inquiry and to allow them to make submissions once  
 20 evidence is adduced and, at the risk of repeating  
 21 ourselves, the requirements of fairness are reflected in  
 22 rule 12. Rule 12 does not require disclosure to allow  
 23 effective submissions; it may allow disclosure if  
 24 that is necessary to determine the application and it is  
 25 not necessary here.

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1 So sir, when considering what's fair, we submit that  
 2 you should take account of all the circumstances,  
 3 including the consequences of adopting the approach that  
 4 is sought by the media. And once that is done it's  
 5 quite clear, we submit, that the application should be  
 6 refused.  
 7 SIR JOHN SAUNDERS: Mr Greaney, just help me on this,  
 8 please. Paragraph 17 of the submissions on behalf of  
 9 the media, which is at page 339 of the bundle, sets out  
 10 the inquiry team's note on restriction orders dated  
 11 12 June. Not helpful? How can the media comply with  
 12 that without the underlying material?  
 13 MR GREANEY: Sir, would you just give me a moment to read  
 14 back through? This is sub-paragraphs (c) and (d) of  
 15 paragraph 7?  
 16 SIR JOHN SAUNDERS: No, paragraph 17 on page 339 of the  
 17 bundle.  
 18 MR GREANEY: Sir, I'm looking at page 339 and that's  
 19 paragraph 7. Bear with me, sir.  
 20 (Pause)  
 21 I think on reflection, that paragraph could have  
 22 been better expressed.  
 23 SIR JOHN SAUNDERS: Okay, thank you very much.  
 24 Mr Bunting, you have the last word.  
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1 Reply by MR BUNTING  
 2 MR BUNTING: Taking six points. Mr Greaney says that the  
 3 media doesn't have a right of access to materials and  
 4 I just want to be clear that where I make that  
 5 submission, I'm quoting the authority of Mr Greaney in  
 6 his submissions, which are in the bundle at pages 48 to  
 7 49, paragraphs 112 to 116, which helpfully cross-refer  
 8 to the authority, including Supreme Court authority, to  
 9 that effect, and at page 92, paragraph 47.  
 10 On any sensible view, this decision infringes the  
 11 media's ability to report on these proceedings because  
 12 it means that they aren't allowed to report OS material.  
 13 Their rights both at common law and in the Convention  
 14 are infringed. That's what His Honour Judge Teague said  
 15 in any event.  
 16 Second point, practicalities: how could it work?  
 17 Mr Greaney says that the media haven't set out  
 18 sufficiently practically how this could work. All the  
 19 media says is, all we want is a rule 12 type approach,  
 20 where we have access to the material that's necessary  
 21 for you to fairly determine this question. That can be  
 22 a truncated timetable, that can be material which is  
 23 limited to a small number of journalists, so for example  
 24 one or two accredited journalists from each of the  
 25 organisations. That could be disclosure which is

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1 location-specific, ie a journalist must come to X  
 2 location to access this material. Then a short period  
 3 of time to make submissions and then, sir, you could  
 4 either determine those submissions at the hearing on  
 5 17 August or at an early stage of the proceedings  
 6 in September. That's practically how the media's  
 7 approach would work.  
 8 I want you to compare that to the practicalities of  
 9 how Mr Greaney's approach would work. He says material  
 10 that's revealed in the hearings, the media will be able  
 11 to apply for access to that at the hearings.  
 12 I have already set out some of the problems with  
 13 that. The first problem is an obvious one, which is  
 14 that the inquiry team is positively urging people not to  
 15 refer to OS material in the hearings. So it may be that  
 16 the media never becomes aware of that OS material,  
 17 notwithstanding the fact that it is relevant.  
 18 The second problem with that is that any submission  
 19 which is advanced at that stage would have all the same  
 20 problems that Mr Greaney says now. So for example, say  
 21 on day 14 of the evidential hearings a reference is made  
 22 to a document and the media pops up and said, "I would  
 23 like to have access to that document", Mr Greaney will  
 24 then say, "How are you able to do that because we're  
 25 judging that as part of a mosaic including all of the

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1 disclosure which has already been provided?"  
 2 The third problem with that is how could the media  
 3 make informed legal submissions about it when they're  
 4 not even allowed to tell people about what's said, for  
 5 example, in restricted hearings?  
 6 The fourth problem with that is that you, sir, will  
 7 then have every day, or frequently during the evidential  
 8 hearings, media applications interrupting and  
 9 interfering with your ability to get to the truth.  
 10 The fifth problem with that is even if it were  
 11 possible, it would mean that the media wouldn't have  
 12 a practical way of getting that material quickly because  
 13 they would have to make an application, you would have  
 14 to hear submissions about it, then you'd have to go away  
 15 and take a decision as to whether or not to provide that  
 16 material. And all of that would mean that material  
 17 which is put out in evidence on a Tuesday may not be  
 18 provided, if it is all, until the following week at  
 19 which stage the news agenda has moved on.  
 20 Practically, what the media are suggesting is a very  
 21 focused and tailored approach and what counsel to the  
 22 inquiry is suggesting is an approach which actually  
 23 doesn't achieve any practical results and would achieve  
 24 considerable disruption.  
 25 The third point is the media have a different status

1 to witnesses; that's correct. The media also have  
 2 a different status to core participants; that's correct.  
 3 But when we come to this issue, mainly the designation  
 4 of material as OS, and thereby the ability not to report  
 5 that material, the media has a direct interest and  
 6 indeed a direct right and they have every right to make  
 7 fair, effective submissions about that.  
 8 Fourth point, Ms McGahey. She says the media knows  
 9 what's sought because the media has access to the  
 10 sensitivities document. Well, again, with respect,  
 11 that's not correct. We don't have the sensitivities  
 12 note. That's the submission that I'm making.  
 13 Then she says, fifth point, that any increase in the  
 14 number of individuals with access to the OS material  
 15 automatically increases the risks and would lead the  
 16 Home Secretary to going back and revising everything  
 17 that the Home Secretary has ever decided in relation to  
 18 this case. That can't be the case either because in the  
 19 5 February submissions the Home Secretary envisaged the  
 20 media being able to access restricted hearings at which  
 21 OS material would be revealed. So it's accepted by all  
 22 CPs that revelation of OS material to the media is  
 23 a risk that can be tolerated. It's all the more risk  
 24 that can be tolerated where fairness requires it.  
 25 That deals with the submission which is made by the

1 Greater Manchester Police, that evidence which is marked  
 2 sensitive is sensitive for a reason. Well, with  
 3 respect, that doesn't take us very far when what we are  
 4 deciding is whether or not material actually is  
 5 sensitive in the first place.  
 6 The final point to address the submission made by  
 7 Greater Manchester Police. It's said, sir, that you are  
 8 not short of opinions and submissions about whether or  
 9 not this material ought to be designated as OS, and that  
 10 may be correct. What that shows, sir, is that everyone  
 11 else has had a fair opportunity to make effective  
 12 submissions, by which I mean everyone else with a direct  
 13 interest in this question, except the media, and the  
 14 fact that others have been provided with a fair  
 15 opportunity doesn't mean that the media has been, and  
 16 that's all I ask.  
 17 SIR JOHN SAUNDERS: Thank you very much, Mr Bunting. I'm  
 18 grateful to everyone for their submissions --  
 19 MS MCGAHEY: Sir, I'm sorry, may I just correct an error?  
 20 Mr Bunting is absolutely right that the media do not have  
 21 the sensitivities document; what I should have said is  
 22 that they are aware of the sensitivities because they  
 23 are summarised in the restriction order application.  
 24 MR BUNTING: I'm very grateful.  
 25 MS MCGAHEY: That's my error for which I apologise.

1 SIR JOHN SAUNDERS: Mr Greaney.  
 2 Application re WITNESS J  
 3 Submissions by MR GREANEY  
 4 MR GREANEY: Sir, for good reason, that is not necessary to  
 5 go into, we're going to turn next to issue 4, anonymity  
 6 and special measures applications. The relevant  
 7 principles are set out at paragraphs 12 to 57 of CTI's  
 8 note, dated 3 March, and in particular paragraphs 21 to  
 9 46, which identify the applicable tests that apply under  
 10 section 19 in respect of applications such as those  
 11 made; that's pages 77 to 92 of the hearing bundle 1.  
 12 As we've understood it, sir, no one disagrees with  
 13 CTI's analysis of the law and therefore we won't go into  
 14 that in any further detail.  
 15 The application of those principles to the three  
 16 applications before you, sir, can be dealt with  
 17 relatively briefly.  
 18 First, Witness J, the MI5 corporate witness. CTI  
 19 have considered both the open and closed documents  
 20 carefully, as we know, sir, you will have done. In  
 21 light of that material, CTI consider that the Article 2  
 22 and 3 thresholds are met in respect of Witness J and  
 23 CTI, moreover, do not consider that a closed hearing is  
 24 required to deal with this issue.  
 25 On the basis that the Article 2 and Article 3

1 thresholds are met, no CP or the media take issue with  
 2 the restriction order sought on behalf of Witness J,  
 3 save in two respects: screening from CTI, the families  
 4 and their legal representatives; and the prohibition on  
 5 the use of certain electronic devices during Witness J's  
 6 evidence.

7 The questions for you are therefore whether those  
 8 two measures are required in order to guard against the  
 9 identified risks. Not without some hesitation, we  
 10 submit that both measures are required with one caveat.  
 11 CTI consider that the same outcome would be reached were  
 12 it necessary to consider the matter under the common law  
 13 balancing exercise, although that is not required here  
 14 on the facts.

15 In respect of screening, CTI have paid particular  
 16 regard to the families' submissions, including why they  
 17 would wish to see Witness J give evidence without being  
 18 screened from the families, and the responsible approach  
 19 they would adopt. CTI do not suggest that they would  
 20 adopt any other approach and are sympathetic to their  
 21 desire to see Witness J face to face. Indeed, we  
 22 recognise that the Administrative Court has recently  
 23 recognised that seeing a witness give evidence is  
 24 an important factor in assessing their demeanour and  
 25 credibility and that family members have an interest in

1 seeing those who might be implicated in a death give  
 2 evidence, and in particular we have had regard to the  
 3 recent decision of the Administrative Court in the case  
 4 of Dyer, [2019] EWHC 2897.

5 It seems to us that the points made on behalf of the  
 6 families are ones of real substance. We think, having  
 7 reflected, that the witness should not be screened from  
 8 CTI. The question of screening from the families'   
 9 lawyers and the families themselves is, however, we  
 10 recognise, more complex. On balance, in the case of  
 11 Witness J, allowing evidence to be given without the  
 12 screening that's sought in respect of the families and  
 13 their lawyers would, in our view, give rise to a risk  
 14 that the inquiry must guard against.

15 Importantly, the alternative approach, with the  
 16 families able to be present and to hear Witness J's  
 17 evidence, while less than they would wish, will still  
 18 allow them to engage with and follow Witness J's  
 19 evidence in a meaningful way.

20 CTI note that the families take issue with the  
 21 suggestion that the approach to MI5 witness evidence at  
 22 the Westminster Bridge and London Bridge inquests, which  
 23 is materially identical to what is proposed for  
 24 Witness J, save in respect of the live feed of  
 25 Witness J's evidence to other locations, caused no

1 detrimental effect to the quality of the evidence that  
 2 was given.

3 However, CTI do not understand that the measures  
 4 adopted in those inquests prevented effective  
 5 questioning by both CTI and the families'   
 6 representatives, albeit that the families would have  
 7 wished in those inquests to have seen the relevant  
 8 witnesses for themselves.

9 In determining what our submission as CTI should be,  
 10 we have considered, as we have indicated, the relevant  
 11 authorities in which screening of witnesses from family  
 12 members during inquests has been permitted by the  
 13 Administrative Court. We would say see in particular  
 14 the case of, Hicks [2016] EWHC 1726, together with the  
 15 case of Dyer to which we have made reference.

16 Those judgments indicate that a range of factors may  
 17 be relevant when considering whether screens are  
 18 appropriate in an inquisitorial process, including the  
 19 ability to assess a witness's demeanour, whether the  
 20 quality of their evidence and effective questioning  
 21 would be undermined with the use of screens and the risk  
 22 that might arise were the families not to see the  
 23 witness giving evidence.

24 In light of the submissions above, CTI do not  
 25 consider that these authorities require a different

1 approach to the one that CTI have proposed.

2 SIR JOHN SAUNDERS: Mr Greaney, can you just help me in the  
 3 case of Dyer? The judge certainly took the view that  
 4 the coroner had asked him or herself, I can't remember,  
 5 the wrong questions. I'm afraid I, at the moment, can't  
 6 remember whether the case was sent back to the coroner  
 7 to reconsider on the right principles or whether the  
 8 judge in the Administrative Court made the decision  
 9 herself.

10 MR GREANEY: We'll just check that. You're quite right, the  
 11 court found that the wrong question had been asked  
 12 in that whilst the coroner had considered the subjective  
 13 fear of the officers concerned, she had not gone on to  
 14 consider the objective reality of the risk.

15 We were about to submit that whilst we haven't found  
 16 this issue, the screening issue, easy, and we do  
 17 recognise the force of the submissions of Mr Atkinson on  
 18 behalf of the families on this particular point, we  
 19 consider that the measures sought so far as screening is  
 20 concerned is one that you would be entitled to grant  
 21 with the caveat that we have indicated.

22 Next, the use of electronic devices during  
 23 Witness J's evidence. The measures that are sought  
 24 will, we consider it arguable, provide necessary  
 25 protection in circumstances where the Article 2 and 3

1 thresholds are met and will ensure that no inadvertent  
 2 identification of Witness J occurs. That does not  
 3 indicate any mistrust on the part of the inquiry towards  
 4 the families , other CPs or the media; there is no such  
 5 mistrust . However, in light of the risk involved , there  
 6 is , we accept, a compelling need to avoid inadvertent  
 7 identification and there's no doubt that the proposed  
 8 restriction order will meet that need.

9 When assessing the proposed restriction order , CTI  
 10 note that it will not prevent a record of Witness J's  
 11 evidence being made, which will be available to all CPs,  
 12 the media and the wider public . The families will  
 13 therefore be able to follow Witness J's evidence,  
 14 including after it has concluded. The media will be  
 15 able to report it with a relatively limited delay .

16 The families submit as follows :

17 "The SSHD's application does not explain why CPs  
 18 should be permitted during Witness J's open evidence to  
 19 use their laptops and tablets and to take handwritten  
 20 notes but not to take electronic notes."

21 The restriction , they observe, is inexplicable . We  
 22 do have some sympathy with that. It is well  
 23 understandable that lawyers for the core participants  
 24 should want to use their laptops and tablets to (a)  
 25 access documents and notes, (b) make notes for

1 questioning , and (c) communicate with their clients .

2 Following a discussion with counsel for HMG,  
 3 Ms McGahey, we understand in fact that there is no  
 4 objection to (a) in the list we have just set out, but  
 5 there is objection to (b) and (c). Sir , we will ask  
 6 Ms McGahey to explain the basis for that and we will  
 7 also invite her to address why the media should not be  
 8 permitted to use their electronic devices . You will  
 9 then be fully informed in order to make your decision .

10 It's sensible to deal with that particular  
 11 application now. So, sir , before we turn to deal with  
 12 the applications made on behalf of PC Richardson and F1,  
 13 we'll call on Mr Atkinson then any other family CP, then  
 14 any other CP, and then finally HMG, with the final word,  
 15 subject to CTI, for Mr Atkinson.

16 SIR JOHN SAUNDERS: If there's agreement about that with  
 17 everybody, then that's fine , but it seems to me that if  
 18 Ms McGahey is going to give a justification for what  
 19 she's asking for , that should be done before the  
 20 families have an opportunity to respond.

21 MR GREANEY: We agree, on reflection that makes perfect  
 22 sense. So we'll call on Ms McGahey, first.

23 MR BUNTING: Can I just ask very quickly for permission to  
 24 address you as well? I'm not sure if I was overlooked  
 25 there just by mistake.

1 SIR JOHN SAUNDERS: Absolutely. Thank you.  
 2 Yes.

3 Submissions by MS MCGAHEY

4 MS MCGAHEY: Sir, dealing first very briefly with the issue  
 5 of screening of Witness J, the Secretary of State  
 6 recognises entirely the importance of core participants  
 7 seeing witnesses when that's at all possible , but  
 8 a decision on screening is always entirely dependent on  
 9 the circumstances of the individual who's seeking that  
 10 measure. The Secretary of State is content for counsel  
 11 to the inquiry who is questioning Witness J to see that  
 12 witness in open session because, if nothing else ,  
 13 counsel to the inquiry will of course see that witness  
 14 in closed session .

15 There are, as you're aware, sir , detailed reasons  
 16 set out in a closed submission for the application for  
 17 screening for this particular witness . As you'll also  
 18 be aware, I cannot elaborate on them in an open session ,  
 19 so I can ask only, if you are minded to go beyond what  
 20 counsel to the inquiry has suggested and to order any  
 21 wider form of access to Witness J, that he should be  
 22 screened from anyone other than yourself and counsel to  
 23 the inquiry , and the Secretary of State would ask for  
 24 the opportunity to make submissions to you in a closed  
 25 session , which could perhaps happen in August.

1 On the issue of note taking, the Secretary of State  
 2 is asking this inquiry to adopt the procedure that  
 3 I understand was adopted in the London Bridge inquest  
 4 and possibly the Westminster one as well . When  
 5 Witness J gives evidence, there is an acknowledged risk  
 6 that he or anybody questioning him who has read the  
 7 closed material will inadvertently disclose closed  
 8 information . It can happen hideously easily .

9 The difficulty is that at least three people who  
 10 might ask him questions, counsel to the inquiry , counsel  
 11 for the Secretary of State, and indeed you yourself ,  
 12 sir , will have seen the closed material . It can  
 13 sometimes be enormously difficult , particularly in  
 14 a split second, to distinguish between what you know in  
 15 closed and what you know in open.

16 To take an example that is , I assure everyone,  
 17 entirely made up. If the witness says something  
 18 unexpected, "We thought that the situation was X", it is  
 19 so easy for counsel to come back and say, "One moment,  
 20 at the meeting of the 17th, you were told exactly the  
 21 opposite", only to remember at that stage that what was  
 22 said at the meeting of the 17th is highly sensitive and  
 23 closed.

24 It's because of the recognition of that risk that  
 25 nobody objects to the restrictions on live streaming, on

1 access to the feeds that have already been described,  
2 but the issue then arises as to what happens with note  
3 taking. It is for this reason that we ask for  
4 electronic devices to be switched off and for all notes  
5 to be taken only in manuscript.

6 The reason is that if somebody inadvertently  
7 discloses something that they shouldn't, the  
8 Secretary of State will ask you, sir, to make  
9 a restriction order over that evidence because of the  
10 measures that will already have been put in place only a  
11 very limited number of people will have heard that  
12 wrongly given evidence, but as part of the restriction  
13 order, the Secretary of State will undoubtedly ask that  
14 any handwritten notes be surrendered to the inquiry for  
15 destruction, obviously the arrangements being made that  
16 people can keep other permissible notes on the same  
17 page.

18 The reason for the Secretary of State asking that  
19 electronic devices should be turned off is to stop  
20 anyone from taking electronic notes because of  
21 the existence of autosave functions and the fact that  
22 some electronic devices save material to the Cloud, in  
23 practice it's absolutely impossible to recall and  
24 destroy notes once they've been taken electronically.

25 However, it was recognised at the London inquests

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1 that a complete ban on the use of electronic devices  
2 caused or would cause real difficulties for lawyers  
3 because they wanted to look at documents and the notes  
4 that they'd already made on their screens, and in this  
5 case, the lawyers may very well wish to look at Magnum  
6 to look at other documents in order to prepare their  
7 questions. So in those inquests, as I understand it,  
8 a compromise was reached, whereby lawyers would be able  
9 to use their laptops and tablets in order to access  
10 documents and pre-existing notes but not to take notes  
11 of the evidence. It is that restriction that we request  
12 in this case for just that reason.

13 We oppose the lawyers being permitted to communicate  
14 with their clients electronically because the risk of  
15 irretrievable dissemination of inadvertently disclosed  
16 material would be very substantially increased if  
17 a lawyer could write down the evidence that he'd just  
18 heard and send it to his client with a request for  
19 instructions because the material would have then gone  
20 on further electronic devices and been further steps  
21 away and we would never, ever get it back.

22 It's my understanding, sir, that in the London  
23 inquests no issue as to communication between lawyer and  
24 client arose because everybody -- the clients could be  
25 in the same room as their lawyers. Obviously for this

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1 inquiry, acting as we are under the current  
2 restrictions, communications may well be very difficult.  
3 The Secretary of State would therefore ask that you be  
4 willing to order a certain number of breaks at  
5 appropriate points in the evidence so that lawyers can  
6 consult their clients and take instructions in that way.

7 Sir, the explanation that I have given for  
8 requesting lawyers not to take electronic notes applies  
9 equally to the media and equally the reason we ask that  
10 media electronic devices be switched off is to prevent  
11 anybody from writing down something, entirely  
12 innocently, because at the moment the witness is giving  
13 that evidence or counsel is asking the question he or  
14 she shouldn't, nobody will know that the question is  
15 wrongly asked, the information wrongly given. So things  
16 will be written down instantly by people who are typing  
17 very quickly and it will be almost impossible to get it  
18 back.

19 SIR JOHN SAUNDERS: You have no objection to the media  
20 taking handwritten notes either?

21 MS McGAHEY: Absolutely not. If members of the media were  
22 to write down something in manuscript that had been  
23 wrongly divulged then we would ask for those notes to be  
24 destroyed, but we have absolutely no objection to  
25 anybody present in the hearings or present on the

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1 permitted feeds taking handwritten notes. None at all.

2 SIR JOHN SAUNDERS: One other matter if you've finished,  
3 Ms McGahey?

4 MS McGAHEY: Yes, sir, thank you.

5 SIR JOHN SAUNDERS: Counsel to the inquiry, you have already  
6 indicated, can see the witness.

7 MS McGAHEY: Yes, sir.

8 SIR JOHN SAUNDERS: Some other advocates find it  
9 disconcerting to ask questions of a disembodied voice  
10 and therefore actually, and this happens in criminal  
11 cases, or can happen, where someone has been given  
12 anonymity and may be in very great danger if they're  
13 identified in any way, and sometimes counsel are allowed  
14 to see the witness for the purpose of asking their  
15 questions, provided they give an undertaking not to  
16 disclose anything which might lead to that person's  
17 identification. Do you know the Secretary of State's  
18 attitude to that or would you prefer to take  
19 instructions about that?

20 MS McGAHEY: Sir, we do oppose it because the risk is of  
21 inadvertent identification of somebody, for example,  
22 recognising somebody on a bus later and saying something  
23 that they shouldn't. No one suggests that anybody would  
24 deliberately do anything to risk Witness J's safety.  
25 Therefore for that reason, undertakings aren't actually

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1 particularly useful because we're not seeking to guard  
2 against the risk of someone doing something  
3 deliberate -- we have no doubt that no lawyer would --  
4 it's the accidental that poses the great risk .

5 You'll be very aware of Witness J's vulnerabilities  
6 and the reasons for which this screening application is  
7 made.

8 While it is true that it is disconcerting to ask  
9 questions to someone who is behind a screen , it 's  
10 something I've done myself, and probably most of us  
11 have. It is something that all lawyers can do. Many of  
12 us, until COVID-19, would have said we didn't like  
13 questioning witnesses on video link or even making  
14 submissions on video link . It is something that one can  
15 get used to doing and when the risk to Witness J meets,  
16 as we submit it does, the Article 2 and Article 3  
17 threshold, the Secretary of State's respectful  
18 submission is that there is really no balance to be  
19 struck in terms of access and the ability of the CPs'  
20 lawyers to see him.

21 SIR JOHN SAUNDERS: Okay, thank you.

22 MR GREANEY: Just before you hear from Mr Atkinson next,  
23 we can confirm that in the case of Dyer,  
24 Mrs Justice Jefford did not remit the decision to the  
25 coroner but made the decision herself ; the relevant

1 paragraphs are paragraphs 69 and 70.

2 SIR JOHN SAUNDERS: Thank you. I'm grateful.  
3 Mr Atkinson.

4 Submissions by MR ATKINSON

5 MR ATKINSON: I think herself, in fact , in relation to  
6 Mrs Justice Jefford .

7 Sir , to clarify first , we're going to slightly  
8 divide up our submissions on behalf of the families , so  
9 I won't deal with the electronic devices point ; I adopt  
10 in advance Mr Weatherby and Mr Cooper's submissions on  
11 that. My focus will be on the screens application . But  
12 in doing so, can I just clarify that it is our  
13 understanding in relation to the live streaming that  
14 what is proposed is that any of the specified locations  
15 to which there will be live streaming will be permitted,  
16 as per the Secretary of State's application , and that  
17 will include any location that is approved for a family  
18 member to be at when they cannot be in Manchester,  
19 either because there is no room or because, more  
20 particularly , they are unable to travel because of the  
21 pandemic? We can clearly develop that in due course as  
22 it arises , but we would not want a flat ruling that  
23 there can be no other live links before we know what the  
24 possibilities are in that regard. I see Ms McGahey  
25 wants to say something.

1 MS McGAHEY: If I may, sir. The Secretary of State has made  
2 clear in her application that any form of live streaming  
3 should only be to links that can be identified as  
4 secure. There would have to be further consideration  
5 given to whether links to particular locations are safe .  
6 At the moment, the Secretary of State does have concerns  
7 that in fact anywhere outside Manchester may give rise  
8 to serious difficulties .

9 MR ATKINSON: It may be that that is a submission which  
10 we'll have to revisit as and when we know what the  
11 position is in relation to any family members who cannot  
12 be in Manchester for reasons beyond their own control .  
13 I don't seek to invite you to make a ruling . I'd  
14 certainly not invite you to rule against that  
15 possibility in advance.

16 Turning, if I may, to the primary focus that I have  
17 of my submissions, which is the screens application .  
18 It is right to note that counsel to the inquiry in their  
19 document setting out the restriction order regime back  
20 on 20 January of this year -- it's page 22 of the  
21 bundle -- identified that one of the restrictions that  
22 might be required in relation to a witness was referring  
23 to an applicant by a cipher or pseudonym, using a screen  
24 when an applicant gives evidence to shield him or her  
25 from sight of the public but not CPs, providing a secure

1 method of entry and exit from the inquiry hearing room  
2 so as to shield an applicant's identity from the public  
3 and media.

4 Can I make clear that an order based on that, which  
5 was as envisaged by counsel to the inquiry back in  
6 January, would not be resisted by the families that  
7 I represent . It is because the Secretary of State seeks  
8 to go beyond that that I'm making the submissions that  
9 I am now.

10 It is pertinent in our submission to note at the  
11 outset that Witness J is the witness that the security  
12 service have chosen to give their evidence as  
13 a corporate witness. As they rightly identify in their  
14 submissions, the security service have a witness who  
15 would not need these measures to be put in place, namely  
16 the Director General. They could have chosen that their  
17 corporate witness, who, like their Witness J, had not  
18 been involved in any of the pre-attack investigations ,  
19 who had not been involved in the post-attack review  
20 could give their evidence who would not need to be  
21 screened from the families or their legal  
22 representatives . It is because they have chosen not,  
23 for example, like the GMP, who have put forward as  
24 a witness, quite properly, their Chief Constable, not  
25 like the Fire Service , who have put forward their Chief

1 Officer , they have chosen not to put forward a witness  
 2 who could give evidence without such screening and have  
 3 chosen instead to call this witness . We respectfully  
 4 submit that they could not have envisaged in advance  
 5 that you, sir , would necessarily grant this application  
 6 for screening from the families , who you have rightly  
 7 put at the centre of this investigation and this inquiry  
 8 from the outset . So it must have been envisaged by the  
 9 witness that this possibility would arise and yet this  
 10 is the witness they have chosen to call .

11 We submit that an analysis of the relevant cases  
 12 does underline that what is being suggested on behalf of  
 13 the Secretary of State would not deliver that open and  
 14 fair inquiry to which you, sir , have always committed  
 15 yourself .

16 The Secretary of State in her submissions refers to  
 17 the decision in Europe of Bubbins v the United Kingdom.  
 18 With the greatest of respect , it does not support what  
 19 is now being sought. It was a case focused on  
 20 anonymity. It did not involve , nor did  
 21 the European Court countenance, a witness who was  
 22 anonymous also being screened from the legal  
 23 representatives of families in the sense that is now  
 24 being countenanced. Nor, with the very greatest of  
 25 respect , did the case of Dyer and the decision of

1 Mrs Justice Jefford .

2 In that case, what was being sought was that the  
 3 witness be screened from everyone for good reasons, but  
 4 the decision by Mrs Justice Jefford was that the  
 5 families were in a different position to the public ,  
 6 both because their interest in seeing the witness was  
 7 greater , and also because the risk to the witness from  
 8 the families seeing the witness , as opposed to the  
 9 public more generally , was not made out.

10 We have asked -- and I hope, sir , you have the case  
 11 of Dyer available to you -- I don't seek to take you  
 12 through all of it now, but if I can flag up some  
 13 paragraph references if that would help.

14 SIR JOHN SAUNDERS: Mr Atkinson, I have obviously read it.

15 There is a distinction to be made in that case in that  
 16 the policemen who were going to be screened, as  
 17 I understand it , were people who hadn't actually  
 18 participated in what led to the death of the person  
 19 about whom the inquest was being held rather than  
 20 a corporate witness, as I understand it , that we have in  
 21 this case. As you've said yourself , I think at the  
 22 beginning of your written submissions, this is not  
 23 a class action and each case has to be taken on its own  
 24 facts .

25 MR ATKINSON: The point I seek to make in relation to Dyer,

1 sir , is first that it recognised there the very great  
 2 importance of the principle of open justice ,  
 3 paragraph 16 makes that clear , and it was that failure  
 4 to take proper account of that factor that led  
 5 Mrs Justice Jefford to reverse the decision of the  
 6 coroner in that case.

7 Paragraph 37 of her judgment, if I read out the  
 8 relevant part, what was said there in relation to the  
 9 approach the coroner had taken was:

10 "He appears to have considered the quality of the  
 11 evidence is likely to be improved by the use of screens ,  
 12 which in itself is in the interests of justice , and he  
 13 weighed against it simply whether the effectiveness of  
 14 questioning will be impeded by the presence of  
 15 a screen ."

16 A matter that has been addressed by Ms McGahey  
 17 today:

18 "That in my judgment is too limited a balancing  
 19 exercise . If those were the only factors to be taken  
 20 into account, it would have the almost invariable  
 21 consequence that if a witness genuinely expressed fear  
 22 that the families of the deceased were able to  
 23 cross-examine, screens would be directed . That would  
 24 not, and in the present case does not, take into account  
 25 the interests of the public and the family has in seeing

1 those who may have been implicated in the death give  
 2 evidence, an interest the coroner had already recognised  
 3 and it takes no account of the fundamental importance to  
 4 the public confidence in the process of the inquest ,  
 5 particularly where the death involved raised issues of  
 6 more general public concern ."

7 Sir, we submit that it is that public confidence and  
 8 also the interests of the families of those who died in  
 9 Manchester seeing the only witness who is to be called  
 10 from the service who they are entitled to consider ought  
 11 to have stopped this happening in relation to Mr Abedi,  
 12 who was on their radar, the only witness who is to be  
 13 called , and they are not to be able to see him or her  
 14 give their evidence on this crucial topic because the  
 15 service have chosen to call a witness they say cannot be  
 16 seen rather than the Director General of the service who  
 17 ought, it might be thought, to account for what that  
 18 service did or did not do.

19 That, I hasten to add, is not to prejudge our  
 20 submissions on 17 August in relation to other witnesses  
 21 from that service who ought to be called and we  
 22 recognise there may be different considerations  
 23 in relation to screening in relation to them.

24 But it's also right to note that in the case of  
 25 Dyer -- and it was at paragraph 50 Mrs Justice Jefford

1 distinguished the case of Hicks to which my learned  
 2 friend has made reference. Henry Hicks was a young man  
 3 who had been chased by two teams of police officers  
 4 through Islington and had come off his moped and died.  
 5 The inquest was to happen in very unsatisfactory  
 6 accommodation at St Pancras Coroner's Court. Originally  
 7 what had been envisaged was that witnesses granted  
 8 anonymity would give evidence with the lawyers  
 9 representing the family in the room and able to see  
 10 them, and the immediate family in the room able to see  
 11 them, because there were not facilities at St Pancras  
 12 Coroner's Court for the witness to be screened.

13 That position was changed in relation to the  
 14 families, as opposed to their representatives, because  
 15 there became positive evidence via social media of  
 16 a risk of the families divulging the appearance or  
 17 identity of the witnesses.

18 There is no such risk identified here. There was no  
 19 such risk identified in the case of Dyer, hence the fact  
 20 that the families were allowed to see the witnesses, as  
 21 paragraph 64 makes clear in the case of Dyer.

22 We submit that a useful analogy is with the approach  
 23 adopted by Baroness Hallett in the 7/7 inquest, and  
 24 again we have -- I hope you have seen, sir, the ruling  
 25 that she gave, having heard very much the same

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1 submissions from Mr Hall in that case that you, sir,  
 2 have from Ms McGahey here, and she recognised -- and  
 3 again we submit that this is an important distinction  
 4 that is relevant in this case and justifies the course  
 5 that we submit you should take here -- at page 7 of her  
 6 ruling she said this:

7 "The bereaved families have been waiting over  
 8 5 years to see this witness or a witness from the  
 9 security service give evidence. The issue of  
 10 preventability is exceedingly important to them. It has  
 11 been at the heart of most of their submissions to me  
 12 ever since my appointment as coroner. It would, I am  
 13 confident, make a considerable difference to many of the  
 14 bereaved families for them to see the witnesses'  
 15 demeanour and to see them in court and give their  
 16 evidence rather than to hear their evidence come from  
 17 a disembodied voice."

18 She then went on to consider whether there was any  
 19 risk from the families of seeing that witness that would  
 20 put that witness in danger and concluded that there were  
 21 not.

22 With the very greatest of respect, no such factor  
 23 has been identified here in any material that we have  
 24 seen. There is no interest on the part of any of the  
 25 families in seeking to identify this witness. One can

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1 test it perhaps by reference to the explanation  
 2 Ms McGahey gave for why counsel acting on behalf of the  
 3 families should not see the witness, which is that they  
 4 might see him in the street.

5 To take that to its logical conclusion what would be  
 6 envisaged on behalf of an advocate for one of the  
 7 families is we would see Witness J on the street and say  
 8 to him, "You're Witness J who has worked for the  
 9 security service for the last 28 years, let me point you  
 10 out to other members of the public who happen to be  
 11 passing."

12 In the same way on behalf of any member of a family  
 13 who saw him in the street were he, for example, to find  
 14 himself on the north-east coast where some of my clients  
 15 come from. Again, what would be envisaged would be not  
 16 only that they would see him and recognise him, but that  
 17 they would take some step to share that recognition with  
 18 others. With the very greatest of respect, one just has  
 19 to say that to realise what a nonsense that is. We  
 20 submit that there is a very clear public interest in the  
 21 families and the public more generally having confidence  
 22 in this process that things are not being hidden from  
 23 them that should not be, that questions are being  
 24 answered that should be, and that those who need to  
 25 account for themselves should do so.

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1 For them to hear from the only witness put forward,  
 2 if that remains the position, from the security service  
 3 as a disembodied voice who they cannot be trusted to see  
 4 and not reveal to others is, we submit, not going to  
 5 create that public confidence that you have worked so  
 6 hard, sir, to achieve thus far, and we respectfully  
 7 submit that this application for screening from the  
 8 families and from their legal representatives ought to  
 9 be refused.

10 In other respects, I defer to Mr Weatherby and  
 11 Mr Cooper, unless I can assist you further on that  
 12 point, sir.

13 SIR JOHN SAUNDERS: Thank you, Mr Atkinson very much.  
 14 Mr Weatherby.

15 Submissions by MR WEATHERBY

16 MR WEATHERBY: Thank you very much, I adopt those  
 17 submissions by Mr Atkinson and I won't repeat them.

18 Can I start with the anonymity position. Our  
 19 submission, as you've quite rightly referred to, was  
 20 that this should be rejected if it amounts to a class  
 21 claim. Of course there is an Article 2/Article 3 claim  
 22 and of course we're not in a position to make any kind  
 23 of detailed comment or submissions on that, simply  
 24 because we haven't seen it. But we do submit that you  
 25 ought to consider this carefully, and if it does amount

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1 simply to a class claim, and by that I mean that it's  
 2 really a claim that any MI5 witness should be given  
 3 anonymity by virtue of their position as an MI5 officer,  
 4 then you ought to reject it on that basis.  
 5 We know a little bit about Witness J. Gender. We  
 6 know that he is a director general and therefore we know  
 7 that he is a senior manager rather than an operational  
 8 officer. Given that MI5 put the identity, as a matter  
 9 of policy, of the actual head Director General in the  
 10 public domain, we say that the proximity of Witness J to  
 11 the Director General should be something which you  
 12 should take account of in the close scrutiny that you  
 13 ought to give to the anonymity claim.  
 14 As we understand it, his position is one of a number  
 15 of, if I can put it this way, number twos to the  
 16 Director General. If he were to step up when the  
 17 Director General retires the question should be asked:  
 18 would he be named once he is named Director General?  
 19 And if the answer to that is yes, then it's difficult in  
 20 our submission to see how any Article 2 or Article 3  
 21 claim could be properly maintained here. Therefore  
 22 that's an issue that should be addressed. We make it  
 23 clear in our submission that MI5 witnesses have no  
 24 special status on anonymity by virtue of the fact that  
 25 they are MI5 officers; they are subject to the same law

1 as police officers or indeed anybody else.  
 2 The point that Mr Atkinson made that Witness J has  
 3 been chosen by MI5 is an important one here. It's  
 4 recognised that it's asserted that he has no personal  
 5 knowledge of the facts, that is he is what has been  
 6 termed a corporate witness. In fact, he's a replacement  
 7 for the original corporate witness, Witness X, who  
 8 himself or herself was also subject to an anonymity  
 9 claim.  
 10 We raise the question that if there is a choice  
 11 involved here, which there is, with a corporate witness,  
 12 then MI5 ought to be asked to nominate a corporate  
 13 witness for whom no Article 2 issue arises or no  
 14 anonymity issue arises, and Mr Atkinson has already  
 15 referred to the Director General himself. Therefore we  
 16 say that in considering an anonymity application in  
 17 respect of Witness J, that issue should be borne in  
 18 mind, that it's actually a choice, and where the real  
 19 underlying consideration is a minimum interference with  
 20 the normal process, MI5 ought to be asked to reconsider  
 21 that position before anonymity is in fact considered.  
 22 With respect to screens, we simply adopt what  
 23 Mr Atkinson has said.  
 24 With respect to the electronic devices submissions,  
 25 our basic submission is that the restrictions that are

1 sought at 9 and 10 of the draft order, which prohibit  
 2 the recording in the sense of an audio recording of the  
 3 evidence and to prohibit broadcasting of any reference  
 4 to it until you raise an embargo on it, we say they're  
 5 unobjectionable but they're also sufficient, and  
 6 therefore the measures that are suggested in terms of  
 7 electronic devices are not necessary and should not be  
 8 allowed.  
 9 We say it's a disappointing submission from HMG  
 10 because this is a corporate witness. This is a witness  
 11 who will be prepared, the advocates that know about the  
 12 closed evidence will be prepared. The risk of anything  
 13 being said that is closed is extremely small, it is  
 14 likely to be rectified immediately, and if any kind of  
 15 record is made either handwritten or electronically,  
 16 a request can be made to delete it. The fact that it  
 17 may be subject to an automatic recording to the Cloud is  
 18 nothing to the point. It can be deleted then in any  
 19 event.  
 20 In essence, this is such a tiny risk that, in our  
 21 submission, it's not one which should interfere with the  
 22 normal methodology.  
 23 Similarly, in respect to mobile phones and the  
 24 ability to communicate with clients or other members of  
 25 the team outside of the hearing room, which of course is

1 particularly important where the special arrangements  
 2 have been made, this is a lesser point, in our  
 3 submission. Personally, it's not my practice to  
 4 communicate via my mobile device; I know it is for other  
 5 people. It is certainly possible for us to use  
 6 practical methods to get around that issue. But this  
 7 really misses the point in our submission that an  
 8 insufficient reason has been given to raise the  
 9 substantive interference with what is the normal way  
 10 that we conduct business.  
 11 Underlying this is a theme, in our submission, that  
 12 the MI5 position is more one of security than of  
 13 openness. I say that with the caveat that I fully  
 14 support the submission made earlier by Mr Atkinson about  
 15 the position of the families and how nobody in the room  
 16 has a greater wish to safeguard national security than  
 17 they do. But unless there is an approach of  
 18 transparency and openness and a realistic approach taken  
 19 to these matters, then we risk putting an overriding  
 20 approach towards the security aspect rather than the  
 21 openness.  
 22 Those are my submissions.  
 23 SIR JOHN SAUNDERS: Thank you very much.  
 24 Mr Seddon, we have been going for a very long time  
 25 without giving you a break. Would you like to have a

1 break at the moment? I'm sorry, it was me not noticing  
 2 the time.  
 3 (Pause)  
 4 Mr Cooper, would you mind waiting? Maybe we should  
 5 have -- does that give everybody enough time? I will  
 6 break off for half an hour. So people could be back at  
 7 2.55, I'd be grateful, thank you very much.  
 8 (2.28 pm)  
 9 (A short break)  
 10 (2.55 pm)  
 11 SIR JOHN SAUNDERS: Mr Cooper.  
 12 Submissions by MR COOPER  
 13 MR COOPER: Sir, as is I think apparent from all the  
 14 applications made under this tranche, the essence is  
 15 proportionality: are the requests being made  
 16 proportionate to the problem or the risks that are  
 17 faced? I have to submit at the top of this submission  
 18 that it is, and it does seem to those we represent, an  
 19 element of trust, and whatever my learned friend says,  
 20 the perception, certainly for those we represent,  
 21 is that they are not trusted, and certainly in terms of  
 22 the constraints proposed to be put upon the lawyers,  
 23 again I have to submit that there is a feeling here of  
 24 lack of trust.  
 25 Whatever is said, the words are comforting, and

1 indeed well-received, but the actual essence of it seems  
 2 a distinct lack of trust, not just to the families but  
 3 also of their advocates, particularly when we have the  
 4 scenario given that we may be on a bus, for instance,  
 5 with Witness J and then, for some inadvertent reason,  
 6 completely lose all link or association with our senses,  
 7 common sense and experience, and suddenly declare, "Oh,  
 8 are you the MI5 witness?" It certainly wouldn't be  
 9 something any of the lawyers would do and certainly  
 10 wouldn't be anything our clients would do.  
 11 It's that sort of submission, sir, we have to submit  
 12 in the context that I will come on to in a minute, which  
 13 does, in our submission, some disservice both towards  
 14 both to how the families are perceived perhaps by my  
 15 learned friend who makes this application and, more to  
 16 the point, by my learned friend's clients, by the  
 17 security services of how they perhaps perceive the  
 18 families and indeed how they may perceive the lawyers,  
 19 which does ill-service to the general tone and trend of  
 20 this inquiry, which has been that of inclusion and that  
 21 of a supportive attitude to the families.  
 22 At the start of my brief submissions, we would like  
 23 to say we are disappointed in the tone of the  
 24 submissions my learned friend makes, obviously on  
 25 instructions, I totally accept that, and we say in

1 passing we are disappointed clearly with the  
 2 instructions that she has been given.  
 3 May I deal first, if I can, briefly with screening  
 4 because that's already been touched upon by those who  
 5 represent other family members and I adopt, of course,  
 6 their submissions.  
 7 The context I spoke of a moment ago, sir, is this:  
 8 the families thoroughly understand and accept the need  
 9 for closed session hearings with these witnesses on  
 10 these topics and on issues of preventability,  
 11 preventability being a very important matter, of course,  
 12 for them. But they thoroughly accept, being responsible  
 13 individuals, that certain issues just have to be behind  
 14 closed doors or that certainly redactions have to take  
 15 place for perfectly proper reasons.  
 16 But it's on the back of all that that it is  
 17 difficult for those we represent to understand, and  
 18 rightly difficult for them to understand, because we  
 19 don't understand it, that we have these rather draconian  
 20 submissions on the subject of screening.  
 21 Why can't, sir, we ask rhetorically, at the very  
 22 least counsel representing the families see the witness?  
 23 It goes back to our primary submission at the start of  
 24 this address: trust. What is my learned friend  
 25 suggesting in, on her instructions, depriving us, the

1 legal representatives, base 1, of seeing and  
 2 appreciating the witness they may be asking questions  
 3 of?  
 4 We're not going to in any way, and let me reassure  
 5 her, if her clients think we might, suddenly commit an  
 6 indiscretion on the local tram back to the Midland  
 7 Hotel. That's just not going to happen. And if that is  
 8 the only concern, it comes down to trust and we simply  
 9 submit this: we can be trusted, base 1, as advocates to  
 10 see this witness, to properly question this witness,  
 11 in the context that we're not seeing much when it comes  
 12 to security, for proper reasons. At the very least, we  
 13 submit, our families should be able to say, "My  
 14 advocate, a member of my legal team, at least, has seen  
 15 this witness who they are questioning", given that we're  
 16 seeing very little of anything of this corporate sector.  
 17 So sir, so far as the screening is concerned, we  
 18 submit that MI5 have chosen this witness ...  
 19 (Pause)  
 20 Sir, forgive me, I'll recalibrate. As far as the  
 21 screening is concerned, those are our submissions, that  
 22 we should at the very least be entitled, as advocates of  
 23 the families, to say we have seen this witness. MI5  
 24 have chosen the witness they wish to put in this  
 25 position. It's not a matter for us putting them in

1 a difficult position or, for instance, in a criminal  
 2 matter requiring the calling of a witness upon which  
 3 MI5, for instance, have no control over the calling of  
 4 that witness. They've chosen this witness, and in our  
 5 submission, the consequences of that choice should  
 6 indeed follow through.  
 7 (Pause)  
 8 I'll start again. As I have indicated, those that  
 9 we represent feel it appropriate, and we support that  
 10 approach, that this witness should be seen at least by  
 11 the advocate. In fact, we take the submission further,  
 12 that there is no reason whatsoever that the families too  
 13 can be trusted as far as their sensibilities,  
 14 sensitivities and common sense is concerned when seeing  
 15 this witness.  
 16 But as a compromise, if the court feels  
 17 proportionately the witness should be protected from  
 18 some element of public or family gaze, then at the very  
 19 least we see no reason whatsoever why the advocates  
 20 should not see this witness and conduct their  
 21 examination, if there is any, appropriately.  
 22 Can I move on now to electronic devices, if I may.  
 23 We are concerned about the application, again, as far as  
 24 that is concerned. We are particularly concerned,  
 25 firstly, about the far-reaching nature of it. It's all

1 electronic devices. One of the problems, of course, as  
 2 you know, sir, we have, because of the present health  
 3 crisis, is that not only will we not be in the same room  
 4 as our clients, or indeed the same room as our own legal  
 5 teams, we could be some geographical distance away from  
 6 them. So although we hear from my learned friend there  
 7 may be short adjournments whereby we may be able to  
 8 communicate, that communication will be far from  
 9 straightforward.  
 10 But again, sir, in our submission, there is no  
 11 reason why we should not be able to communicate,  
 12 if we felt it appropriate, and with discretion with  
 13 either our lay clients or our professional clients and  
 14 colleagues during the course of the examination of this  
 15 witness. Again it falls as a matter of trust.  
 16 The suggestion has been made by my learned friend  
 17 about some form of inadvertent dissemination is, in our  
 18 submission, highly unlikely, in fact virtually  
 19 impossible, and the proportionate response to deprive us  
 20 of all electronic communication, we submit, is  
 21 completely out of kilter, in our respectful submission,  
 22 for the risk or the evil faced.  
 23 Of course my learned friend accepts, and of course  
 24 she does, that we're talking about inadvertent  
 25 dissemination. But the chances, we submit, much

1 inadvertent dissemination are very minor indeed.  
 2 In terms of us being able to communicate with our  
 3 professional clients and our lay clients in the context  
 4 of this aspect of the evidence, we submit it is  
 5 appropriate we have some form of electronic  
 6 communication.  
 7 Sir, those are effectively our submissions on both  
 8 points. It comes down to: we are told it is not  
 9 a matter of trust, but so far as those we represent, it  
 10 really comes over as that, particularly when one  
 11 considers the screening, when one considers the reasons  
 12 being given for screening, and indeed for the non-use of  
 13 electronic devices. The fact of the matter is we are  
 14 responsible, our clients are responsible, and there  
 15 should be an element of trust here, particularly when it  
 16 comes to the fact that, as far as this evidence is  
 17 concerned, there's also a very severe restriction,  
 18 perfectly properly placed, but a severe restriction upon  
 19 our clients seeing witnesses, hearing what they say, and  
 20 being present when they say it.  
 21 Preventability, as you'll understand, sir, as we  
 22 conclude, is one of the most important aspects and  
 23 certainly of interest and importance for our clients.  
 24 So the least dilution of that, the better. There is  
 25 dilution, there is understandable dilution of

1 participation, there is no need for any further.  
 2 Unless my learned friend comes up with something  
 3 better than meeting someone on a bus on the way from  
 4 court, those are our submissions.  
 5 SIR JOHN SAUNDERS: Thank you, Mr Cooper.  
 6 Mr Bunting.  
 7 Submissions by MR BUNTING  
 8 MR BUNTING: Sir, the media's submissions on this point  
 9 address solely the electronic devices prohibition. It  
 10 will be immediately apparent that the use of electronic  
 11 devices, in particular laptops, is part and parcel of  
 12 responsible journalism. Journalists take notes on them,  
 13 them, they communicate with their editorial colleagues  
 14 and their legal advisers to ensure that any reporting  
 15 that they carry out is responsible, properly  
 16 cross-referred, properly informed, properly accurate --  
 17 SIR JOHN SAUNDERS: Mr Bunting, I'm sorry to interrupt you  
 18 for a moment. It does occur to me that at least an  
 19 investigation should be made into the -- I'm not sure  
 20 all laptops do automatically record to the cloud,  
 21 certainly if they are not connected to the internet in  
 22 any way. It may be that something like that could be  
 23 done that could be investigated.  
 24 MR BUNTING: Sir, I lost you briefly there.  
 25 SIR JOHN SAUNDERS: I'm thinking aloud really as to what the

1 options are.  
 2 MR BUNTING: I think I got the point, which is that it's not  
 3 clear that every laptop will not back up automatically  
 4 to the Cloud particularly when not connected to the  
 5 internet. I think that must be correct. Cloud  
 6 connectivity depends on you being connected to the  
 7 internet in the first place and if you are not then  
 8 things won't be backed up.

9 But can I just echo the submissions that have  
 10 already been made on this point and make, I think, three  
 11 further points.

12 The first is that the precedent for this which is  
 13 set out is in the London Bridge and Westminster Bridge  
 14 inquests, in which this point wasn't realistically  
 15 argued in any focused way, such as the way things are  
 16 happening today. The arrangements were announced at the  
 17 first of those inquests, a lay member of the press  
 18 sought to oppose them, and the learned Chief Coroner,  
 19 who was in charge of those inquests, indicated that he  
 20 himself had left his iPad outside of the hearing room  
 21 for that occasion, and he expected everyone else to do  
 22 the same. That was realistically the extent of the  
 23 analysis of these issues in those proceedings and they  
 24 don't really stand with any real precedent value as  
 25 a result.

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1 Equally, when one looks back at other sensitive  
 2 inquests, right back to 7/7, but also more recently in  
 3 Al-Suwaidi, in Litvinenko, in and other cases, and this  
 4 type of approach isn't an approach which is commonplace  
 5 and there's a creep in the MI5 cases of this type of  
 6 approach now being advocated.

7 The second point is that it seems to be accepted,  
 8 sir, and this may be the point that you were getting at,  
 9 that laptops can be used for some things by some people,  
 10 but not for others. That from the media perspective is  
 11 problematic. Of course, lawyers will want to have  
 12 access to their computers for, for example,  
 13 cross-referring documents that are available on Magnum  
 14 and elsewhere. So too will journalists want access to  
 15 their laptops for very good reason and so too can  
 16 journalists be trusted for the same reason that lawyers  
 17 can be trusted.

18 This comes back to the submission that everyone is  
 19 making on trust, which I have made by reference to  
 20 authority that you, sir, should approach reporting  
 21 restrictions involving the media on the basis that they  
 22 will act lawfully, they will act responsibly, they will  
 23 not breach restrictions.

24 The final point in respect of the creep and the  
 25 level of risk is that it's not -- every time this

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1 submission is advanced, first of all in writing and now  
 2 orally, it seems to get ever so slightly worse from  
 3 a journalistic perspective and now there's a spectre of  
 4 security service agents approaching journalists and  
 5 asking to remove bits of their journalistic notebooks in  
 6 circumstances in which those journalistic notebooks, for  
 7 example, may contain confidential journalistic material.

8 The risk here is a manageable risk. This is  
 9 a corporate witness who's well experienced in managing  
 10 the anonymity he or she has asked for. It's simply  
 11 unrealistic to suggest that this stringent prohibition  
 12 on all electronic devices is needed. Can I assist you  
 13 any further on those points?

14 SIR JOHN SAUNDERS: Well, you can't. Just again on  
 15 a practical issue. The reason for asking for written  
 16 notes is that anything which is referred inadvertently,  
 17 which may risk identification of the MI5 officer, can be  
 18 removed with the consent of the journalist, no doubt.  
 19 Would there be any difficulty about doing that or  
 20 deleting things on a laptop, and would the journalist  
 21 consent to that, or is that going to be a problem if  
 22 I made that a condition, say?

23 MR BUNTING: The further you go down this line, things  
 24 become problematic, if I can put it that simply, because  
 25 journalistic notes are gathered together in one place,

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1 they will relate to this case and they may relate to  
 2 other cases, they may relate to confidential sources  
 3 they may not.

4 SIR JOHN SAUNDERS: Quite.

5 MR BUNTING: Providing access to the security services to  
 6 journalistic notes is inherently problematic both from a  
 7 common law perspective and an Article 10 perspective.

8 But more realistically, sir, what do we gain from  
 9 that type of condition in circumstances in which  
 10 a journalist could equally remember what's said, go  
 11 outside the hearing room and write it down somewhere  
 12 else? That's when it comes back to trust because  
 13 removing something physically when you may very well  
 14 remember it and write it down elsewhere is a pretty  
 15 pointless task. I think that really addresses the  
 16 reality of the risk that's being posited here.

17 SIR JOHN SAUNDERS: Okay, thank you.

18 Before I return to Mr Greaney, does anyone else have  
 19 submissions they would like to make?

20 Thank you. Mr Greaney.

21 Reply by MR GREANEY

22 MR GREANEY: Sir, thank you. We have three short  
 23 submissions to make.

24 First of all, as we've submitted already, the  
 25 Article 2 and 3 thresholds are met in relation to

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1 Witness J and so we would approach the matter in the  
2 following way and that you should approach the matter in  
3 the following way by asking when the interests of the  
4 public and family and in public confidence in this  
5 inquiry are balanced against the Article 2 and 3 rights  
6 of Witness J, having regard to both the open and closed  
7 material, what is the answer to this question: would the  
8 risk to the Article 2 and 3 rights of Witness J be  
9 materially increased unless the measures sought were  
10 granted by you? That is the approach we would invite  
11 you to adopt. Furthermore, our submission is that that  
12 question should be asked in relation to each measure  
13 sought, both cumulatively and individually .

14 Moreover, so far as screens are concerned, rather  
15 than ask the questions in relation to the family and  
16 their representatives together, it may be appropriate to  
17 ask the question in stages. First of all, would there  
18 be a material increase in the risk unless there were  
19 screening from the families? And if yes, to go on to  
20 ask that question also in relation to their  
21 representatives .

22 Sir, that is our first submission.

23 Secondly, we respectfully agree with you that some  
24 consideration should be given to whether technological  
25 steps can be taken to guard against the risk described

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1 by the Home Secretary. We would have thought that it  
2 should be possible, and indeed is possible, to turn off  
3 autosave on most computers and, moreover it is possible  
4 to turn off the Internet, and steps could be taken to  
5 ensure that that was achieved in relation to the  
6 computers of all who were present in the courtroom. But  
7 we do observe that imposing a requirement that people  
8 turn off the Internet would not deal with the concern  
9 expressed on behalf of the families and media that they  
10 require the ability to communicate with others outside  
11 the courtroom.

12 Thirdly, we agree with Mr Atkinson that you should  
13 not make any decision today about whether a stream of  
14 Witness J's evidence to outside Manchester may be  
15 permissible. We would invite you to set a timetable  
16 in relation to the resolution of this because it does  
17 need to be resolved sooner than later .

18 Firstly, anyone who suggests that there should be  
19 such a link should say so and should indicate where to  
20 and why there needs to be a link and should do so by  
21 5 August.

22 Secondly, that HMG should respond to those  
23 submissions by 10 August.

24 Thirdly, that any other CP who wishes to make  
25 a submission on this discrete issue should do so by

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1 13 August.

2 Fourthly, that CTI should make their submissions, if  
3 any are appropriate, by 16 August, and that the issue  
4 should then be argued at the hearing which is listed for  
5 17 August.

6 Sir, it may be sensible to ask any CP whether they  
7 have a problem with that.

8 SIR JOHN SAUNDERS: Is there any difficulty with anybody  
9 fulfilling that timetable? It's obviously going to be  
10 important for HMG to know where it's proposed it goes  
11 and why.

12 MR ATKINSON: Sir, the only caveat I would suggest in  
13 relation to that is the one that I touched on in my  
14 submissions earlier, which is that there may between now  
15 and the time when Witness J gives evidence arise  
16 a situation where a family cannot be in Manchester for  
17 reasons potentially connected with the pandemic and  
18 therefore arrangements may have to be made for them to  
19 have a live link from home. Subject to that kind of  
20 unforeseeable -- at the moment I have no difficulty with  
21 the timetable.

22 SIR JOHN SAUNDERS: Thank you. Anybody else? Thank you  
23 very much. I'll make those directions. Thank you,  
24 Mr Greaney.

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1 Application re PC RICHARDSON and WITNESS F1  
2 Submissions by MR GREANEY

3 MR GREANEY: Sir, what we'll do next is, rather than going  
4 back to issue 2, we'll finish off issue 4, so deal with  
5 the applications made in respect of PC Richardson and  
6 F1. We can deal with our submissions relatively briefly  
7 and in relation to both of them at this stage.

8 First of all, PC Richardson. In our written  
9 submissions, we've addressed the Article 2 rights of  
10 this officer and the common law duty of fairness and  
11 we would invite you to have regard to those submissions  
12 without repeating them orally.

13 Ultimately, CTI do see some force in the submission  
14 made on PC Richardson's behalf that his evidence:

15 "... is not so central and the scrutiny he may face  
16 is unlikely to be so significant that allowing his image  
17 to be shielded from the wider public and press would  
18 impede the allaying of public concern."

19 CTI note that neither the families nor the media  
20 oppose the application. No other CP takes a position.  
21 PC Richardson's evidence will not be affected in any way  
22 save that he may feel more comfortable as a result of  
23 having special measures which may assist him in giving  
24 the best evidence.

25 The inquiry will involve a high degree of openness

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1 and transparency. Only three applications for anonymity  
2 and/or special measures have been made, so this is not  
3 an inquiry where substantial amounts of the open  
4 evidence will be subject to such restrictions, and in  
5 those circumstances CTI consider that it would certainly  
6 be open to you to agree to PC Richardson's application  
7 on the public interest grounds in section 19(3)(b) of  
8 the Act.

9 Turning next to F1's application. CTI have  
10 considered the material provided alongside his  
11 application. In short, our position is as follows. The  
12 Article 2 and 3 thresholds are, we suggest, not met.  
13 The evidence relied on in support of the Article 2 and 3  
14 submissions is generic, not specific to F1 and does not  
15 meet the real and immediate risk threshold. However,  
16 Article 8 is engaged. There is a risk that, if F1's  
17 identity is disclosed, that may compromise his ability  
18 to perform his current role in future. Article 8 may  
19 also be engaged by F1's subjective fears as evidenced  
20 in the supporting documentation.

21 Whether the Article 8 balancing exercise favours  
22 granting the application depends upon weighing the  
23 interference with F1's Article 8 rights, the presumption  
24 of openness, the open justice principle, the centrality  
25 or otherwise of F1's evidence to the inquiry's terms of

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1 reference -- and we would submit it is certainly not  
2 central -- and the impact on the inquiry were the  
3 application to be granted.

4 Taking these factors together, whilst recognising  
5 that the media are correct that this application, along  
6 with all others, be scrutinised, taking all of those  
7 factors together, CTI consider again that it would  
8 certainly be open to you to grant the application on  
9 Article 8 grounds and indeed we submit that you should  
10 do so.

11 F1's Article 8 rights are engaged. The inquiry will  
12 remain highly open and transparent if the application is  
13 granted and F1's evidence is not central to the  
14 inquiry's terms of reference. CTI considers that the  
15 position under the common law is the same as under  
16 Article 8 and it would therefore be open to you to grant  
17 the application on that basis.

18 Finally, CTI considers that on F1's particular  
19 facts, it would be open to you to grant the application  
20 on public interest grounds, section 19(3)(b), the  
21 families do not oppose the application, F1's evidence is  
22 not central, F1 will be able to give full evidence to  
23 the inquiry. It appears from his application that  
24 granting the application is likely to facilitate F1's  
25 best evidence. The inquiry will involve, as we have

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1 submitted, a high degree of openness and transparency,  
2 even if F1's application is granted, and it is said  
3 that, if identified during the inquiry, it is very  
4 likely that F1 would be removed from his current role.

5 There is evidence of subjective fear on F1's part  
6 and again those are all matters that favour a grant of  
7 the application in F1's case.

8 Sir, having made those submissions, we will invite  
9 submissions, first of all, subject to your view, sir,  
10 from the media, then from any CP who opposes the  
11 position that CTI have adopted in relation to  
12 PC Richardson and F1, then from Mr Horwell on behalf of  
13 GMP.

14 SIR JOHN SAUNDERS: Mr Bunting.

15 Submissions by MR BUNTING

16 MR BUNTING: Sir, the media doesn't oppose either  
17 application. I'm asked simply to raise in respect of  
18 F1's application the media's concern that the open  
19 application was supplemented by what purported to be  
20 closed submissions which the media had to separately ask  
21 for permission to have access to and the contents of  
22 those closed submissions indeed were entirely anodyne  
23 and were entirely consistent with the types of anonymity  
24 applications which are made up and down the country on  
25 a daily basis.

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1 That gives rise to a degree of concern on the part  
2 of the media of an overzealous approach to things being  
3 done in secret or things being done in closed when they  
4 ought to be done in open.

5 But subject to that concern, the media doesn't  
6 oppose the applications.

7 SIR JOHN SAUNDERS: Thank you.

8 Is there any CP who takes an attitude different from  
9 that taken by CTI? Thank you.

10 Mr Horwell.

11 Submissions by MR HORWELL

12 MR HORWELL: Sir, could I first apologise to Mr Atkinson for  
13 distracting him during his submissions. I was trying to  
14 convey an important message to someone outside. I had  
15 no idea he could see me. I obviously have a lot to  
16 learn about this unsatisfactory but necessary form of  
17 hearing. So I hope he accepts my apologies.

18 SIR JOHN SAUNDERS: It looks as if he does.

19 MR HORWELL: Thank you.

20 On behalf of Greater Manchester Police, I would like  
21 to begin by thanking all core participants and  
22 Mr Bunting for the media for the attitude that they have  
23 taken to these applications. I hope that that is in  
24 part due to the fact that GMP have been as cautious as  
25 they possibly can be with applications of this nature.

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1 These two applications amount in reality to one  
 2 application for anonymity. That cautious approach is  
 3 obviously the right one.  
 4 Sir, in view of the fact that PC Edward Richardson,  
 5 his application is of a very limited nature and,  
 6 we would submit, plainly proportionate. I hope it is  
 7 a better use of your time today if I address you on F1  
 8 and then some very basic legal principles, and if there  
 9 is anything that I can then assist you with in relation  
 10 to Edward Richardson, I will of course do so. But  
 11 plainly, from what Mr Greaney has helpfully said, more  
 12 is wanted in respect of F1 than it is in respect of  
 13 Edward Richardson.  
 14 The reason why Mr Bunting has taken the view that he  
 15 has in his written submission is that on the very  
 16 limited evidence that he has, he was concerned that F1  
 17 played a central or at least an important role in the  
 18 events of that night. So can I deal first with that?  
 19 Because although Mr Greaney has again helpfully said  
 20 that F1's role was not central, it may be desirable to  
 21 expand upon that a little.  
 22 F1 was the tactical adviser to  
 23 Superintendent Thompson in the Silver Control Room, and  
 24 there are two very significant features to the evidence  
 25 which F1 will give. The first is that he did not arrive

1 inside Silver Control under about 23.41 that evening.  
 2 That is the time of the first note that he made once he  
 3 had arrived in Silver Control. Sir, it is obvious from  
 4 that that that is some 17 minutes after the detonation.  
 5 By that time, or certainly by about that time, all of  
 6 the survivors had been evacuated from the City Room.  
 7 Secondly, F1 makes very clear in his witness -- sir,  
 8 this is from paragraph 25 -- that he did not make any  
 9 command decisions. It is clear not only from those two  
 10 features but from his witness statement in general that  
 11 the role that he played that night cannot in any sense  
 12 be described as central.  
 13 Let me then turn to the application itself. Full  
 14 anonymity and screening is requested on F1's behalf,  
 15 though importantly not from the core participants.  
 16 At the centre of this application is the fact that F1 is  
 17 a particular type of firearms officer. I am not going  
 18 to state the role that he has in case this application  
 19 is refused, but it is clear from the application itself  
 20 and the evidence that is attached to it that the role  
 21 that he has at times involves covert work. Police  
 22 officers of his experience and training are, without  
 23 question, a precious and limited resource, and in my  
 24 submission, his operational effectiveness should only be  
 25 compromised if it is necessary to do so.

1 Here, in our submission, it is not necessary to  
 2 compromise his operational effectiveness by refusing  
 3 this application. The two can stand together in my  
 4 submission.  
 5 In addition to his operational effectiveness, there  
 6 are also strong personal reasons behind this  
 7 application. If identified, he believes, on sound  
 8 grounds, that he and his family would be at risk of  
 9 reprisal. We submit, sir, for all of the reasons that  
 10 are set out in the application and the evidence that  
 11 accompanies it, this request is justified and it is  
 12 proportionate.  
 13 In his analysis of these applications, Mr Greaney  
 14 has correctly identified their key elements: a public  
 15 interest ground in respect of Police Constable  
 16 Richardson, though I do not abandon Article 8, and also  
 17 Article 8 in respect of F1. The legal principles are  
 18 very clear, they are not in dispute and they can perhaps  
 19 be summarised as containing four principal issues.  
 20 The first is that if these applications are granted,  
 21 there will be no lack of public confidence in this  
 22 inquiry, and indeed I would submit quite the contrary.  
 23 The public interest is in favour of these applications  
 24 being allowed.  
 25 Secondly, there will be no lack of confidence by the

1 bereaved families; they support these applications.  
 2 Thirdly, there will be minimal, if any, impact on  
 3 the ability of the media to report their evidence.  
 4 Finally, not only will the inquiry not be impeded if  
 5 these applications are allowed, we would submit the  
 6 inquiry will benefit from these applications. Both  
 7 witnesses will be able to give their best evidence if  
 8 these restrictions are permitted so that they can at  
 9 least feel at ease that their concerns have been  
 10 tempered by the applications that we seek.  
 11 Sir, it's set out in detail in writing. There's no  
 12 point in my repeating any of those submissions here  
 13 unless there's anything that I can assist you on.  
 14 SIR JOHN SAUNDERS: There isn't, Mr Horwell. I just wonder  
 15 whether I should just seek to clarify that the families  
 16 don't object to the applications. I think it may be an  
 17 overstatement to say they support the applications, but  
 18 they can speak for themselves. These things can be  
 19 misinterpreted as and when reported.  
 20 MR HORWELL: If I have misinterpreted their position then  
 21 I apologise but I thought that I was doing justice --  
 22 SIR JOHN SAUNDERS: Absolutely. Would one of you like to  
 23 speak for yourselves?  
 24 MR COOPER: Can I simply confirm, I think I probably speak  
 25 for all of us, but famous last words, that's exactly

1 right, sir. It's a matter of being neutral again.  
 2 The only other observation I have, if Mr Horwell is  
 3 trying to influence Mr Atkinson, I wonder whether he was  
 4 ringing me up at the time I was making my submissions;  
 5 I'll resolve that later.  
 6 MR HORWELL: I'll plead guilty to that charge, but I'm more  
 7 than happy to approach the submissions that I have made  
 8 in the fact that the families are neutral.  
 9 SIR JOHN SAUNDERS: I'm obviously being pedantic to an  
 10 extent, but these things, as I say, can be  
 11 misinterpreted.  
 12 MR HORWELL: Sir, it's very important. Thank you, and  
 13 I thank Mr Cooper for that clarification.  
 14 MR GREANEY: Just before we move on from this issue, can  
 15 I deal with one issue of fact? I do so because it may  
 16 be there is sensitivity around it. The submission was  
 17 made, I think, that when F1 arrived all of the survivors  
 18 had been removed. In fact, survivors were still being  
 19 removed from the City Room beyond midnight and indeed  
 20 the last survivor, we believe, was removed at about  
 21 2.30. We simply raise that because, as we have  
 22 indicated, there may be some sensitivity around it from  
 23 those who are listening in, understandable sensitivity,  
 24 but that does not alter the fact that F1's evidence is  
 25 not central.

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1 SIR JOHN SAUNDERS: Thank you.  
 2 MR HORWELL: Sir, the submission I made is based on  
 3 extensive work that we have done and I will share that  
 4 with Mr Greaney as soon as I can.  
 5 MR GREANEY: Thank you very much, Mr Horwell.  
 6 SIR JOHN SAUNDERS: Let's move on.  
 7 Application re handling of OS material  
 8 Submissions by MR GREANEY  
 9 MR GREANEY: Sir, I'm going to in fact not move on but move  
 10 back to issue 2.  
 11 SIR JOHN SAUNDERS: Yes.  
 12 MR GREANEY: The second issue, as I indicated at the outset  
 13 of what is turning into a long day, is the use and  
 14 handling of operationally sensitive content during the  
 15 oral evidence hearings.  
 16 The simple point is that there is no disagreement  
 17 from any CP with the proposed approach set out in the  
 18 ILT note dated 12 June and which I explained this  
 19 morning when I summarised the position in relation to  
 20 the four issues. The approach, we would suggest, is  
 21 positively agreed by the families, by HMG, GMP, ShowSec  
 22 and SMG. Having read out the approach once, I don't,  
 23 sir, propose to read that out again.  
 24 In light of the broad agreement, it may well be that  
 25 you would not be assisted by submissions on this issue,

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1 in particular because we do not invite any ruling from  
 2 you at this stage. But for the sake of transparency and  
 3 fairness we suggest that you should invite any  
 4 submissions that any CP, and indeed Mr Bunting, wish to  
 5 make about our proposal for the use and handling of OS  
 6 content.  
 7 SIR JOHN SAUNDERS: Mr Bunting?  
 8 MR BUNTING: I think I've got somewhat confused as to where  
 9 we've got to.  
 10 SIR JOHN SAUNDERS: We've gone to handling of the OS  
 11 material.  
 12 Submissions by MR BUNTING  
 13 MR BUNTING: The media's approach is really dependent on the  
 14 primary submission which I made this morning, which us  
 15 that we haven't yet had a fair input into the  
 16 designation of OS material. Our primary goal is to  
 17 limit the OS material as best we can, which will then  
 18 bring about a limiting of the need for any restricted  
 19 hearings and everything else. So my submissions here  
 20 are really a repetition of the submissions which I've  
 21 already made.  
 22 SIR JOHN SAUNDERS: Okay, thank you.  
 23 Any other CP have any submissions to make on the use  
 24 of handling of OS material? Right. Thank you.  
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1 Application re LIVE STREAM OF EVIDENCE  
 2 Submissions by MR GREANEY  
 3 MR GREANEY: Sir, we'll turn to what is the final issue for  
 4 the day then. Issue 3, the live stream of the inquiry's  
 5 oral evidence hearings.  
 6 CTI's position is as follows. There should be  
 7 a delay to the live stream of the inquiry's proceedings  
 8 given the sensitive nature of the evidence that may be  
 9 considered by your inquiry. That will allow any  
 10 concerns to be identified and addressed without  
 11 immediate publication through the live stream. As we  
 12 understand it, no one disagrees, whether CP or media.  
 13 Having considered the submissions that have been  
 14 received from a number of CPs on this issue, CTI now  
 15 consider that a 10-minute delay is appropriate where  
 16 there is a risk that OS content may be referred to,  
 17 given the unusual circumstances in which the inquiry's  
 18 hearings are due to take place and the additional  
 19 practical difficulties they pose in ensuring that the  
 20 purpose of the live stream delay is upheld.  
 21 But we add that the 10-minute delay should be kept  
 22 under review. If it becomes clear once the oral  
 23 evidence hearings have started that 10 minutes is more  
 24 than sufficient to address any concerns, the point can  
 25 be reconsidered and consideration should also be given

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1 to reducing the time period if revised working  
 2 conditions were to make that feasible .  
 3 Furthermore, CTI have considered whether a 10-minute  
 4 delay to the live stream is required for all 14 chapters  
 5 of evidence or whether a shorter delay would be feasible  
 6 for some chapters where the risk of OS content being  
 7 referred to is minimal or even non-existent . While we  
 8 recognise that there may be practical advantages in  
 9 adopting a consistent approach across all chapters ,  
 10 including the avoidance of confusion from applying  
 11 a variable delay and the risks that may give rise to ,  
 12 CTI provisionally considers that the following approach  
 13 would be appropriate were you persuaded that a variable  
 14 delay should be adopted.  
 15 Chapter 1, the reading of the names of the deceased  
 16 and the minute's silence . No delay is necessary .  
 17 Chapter 2, your introductory remarks. Again, sir ,  
 18 no delay .  
 19 Equally, no delay for chapter 3, CTI's opening  
 20 statement, chapter 4, the commemorative hearings, and  
 21 chapter 5, the CPs' opening statements.  
 22 So far as chapter 6 is concerned, we suggest that  
 23 the evidence doesn't justify a 10-minute delay but  
 24 instead a 5-minute delay. That's overview evidence.  
 25 Chapter 7., arena complex and security arrangements.

1 There is a risk , so 10-minute delay .  
 2 A 10-minute delay also for chapter 8, planning and  
 3 preparation for the attack .  
 4 Chapter 9, the events of 22 May do not justify delay  
 5 as long as 10 or even 5 minutes, but do justify a delay  
 6 of 3 minutes.  
 7 Chapter 10, emergency response, 10 minutes.  
 8 Chapter 11, detonation and its effect , 3 minutes.  
 9 Chapter 12, the experience of each deceased victim ,  
 10 3 minutes.  
 11 Chapter 13, background and radicalisation , a  
 12 10-minute delay .  
 13 Chapter 14, preventability , a 10-minute delay for  
 14 the open hearing .  
 15 Recommendations, chapter 15, provisionally we  
 16 suggest a 10-minute delay .  
 17 Chapters 16 and 17, closing statements of CPs and  
 18 CTI, provisionally a 3-minute delay .  
 19 Achieving this , sir , that's to say a variable delay ,  
 20 we're told presents no particular technical  
 21 difficulties .  
 22 Could I add that Ms McGahey has had to leave the  
 23 hearing for entirely sound reasons, but I've canvassed  
 24 her position in relation to this particular issue. HMG  
 25 is content with either a blanket 10-minute delay or

1 a sliding scale of delays depending on the sensitivity  
 2 of the material being discussed . So in other words,  
 3 they are content with the submission that we have just  
 4 made to you.

5 Next, the media submit that all members of the  
 6 media, whether in the main hearing room, the hearing  
 7 venue annex or the external annex, should have access to  
 8 a non-delayed live stream. It is also submitted that  
 9 a non- specified number of media representatives should  
 10 be provided with secure links to non-delayed live stream  
 11 to their homes or offices . CTI disagrees with those  
 12 proposals and instead we invite you to rule in favour of  
 13 the following approach.

14 Two accredited members of the media may be present  
 15 in the main hearing room with four further members  
 16 in the hearing venue annex. These numbers may increase  
 17 if social distancing guidance allows it .

18 Those members of the media, so that's to say those  
 19 who are in the main hearing room or the hearing room  
 20 annex, will be able to follow the inquiry's hearings  
 21 live but will not be permitted to report the inquiry's  
 22 proceedings live . Rather, they'll be required to wait  
 23 until the end of the relevant evidence session or  
 24 earlier confirmation from you before reporting on  
 25 proceedings. So very similar , sir , to the approach that

1 was adopted at some of the earlier preliminary hearings .

2 We suggest that approach to ensure that the  
 3 inquiry's hearings are not inadvertently reported before  
 4 the applicable delay has elapsed and to make the live  
 5 stream delay effective . It will also prevent members of  
 6 the media reporting the inquiry's proceedings before the  
 7 applicable evidence has been provided on the public live  
 8 stream, which will be delayed generally , for reasons  
 9 we've given .

10 This approach, allowing members of the media to be  
 11 present in the hearing room and to view a feed in real  
 12 time from the hearing venue annex, but preventing live  
 13 reporting , is supported by a number of CPs.

14 Members of the media in the external annex, so  
 15 that is to say the annex that was initially to be at the  
 16 Midland Hotel but is now to be closer even still , they  
 17 will be able to view the inquiry's delayed live stream  
 18 and will be able to liaise with a member of inquiry  
 19 staff and communicate directly with the hearing venue if  
 20 required . Members of the media watching at home or in  
 21 their offices will also be able to view the inquiry's  
 22 delayed live stream on the inquiry website or on  
 23 YouTube. They will therefore be in the same position as  
 24 members of the public .

25 This is , we submit, consistent with section 18(1) of

1 the Act. There is no requirement to afford all members  
 2 of the media an enhanced status over and above the  
 3 general public. Members of the media in the external  
 4 annex or at home or in their offices will be able to  
 5 report contemporaneously with the public live stream,  
 6 including live blogging and tweeting. They will not be  
 7 at a disadvantage compared with those members of the  
 8 media in the hearing room or the hearing venue annex as  
 9 those members of the media cannot report  
 10 instantaneously, as we have explained. The media will  
 11 therefore be entitled to report as live, so that is to  
 12 say as the public view it, while ensuring that those  
 13 members of the media who wish to be in the hearing room  
 14 or venue annex can do so.

15 The arrangement that we've proposed allows  
 16 (inaudible: distorted) proceedings and report  
 17 accordingly and maintain the necessary protection  
 18 against inadvertent reporting of sensitive evidence.  
 19 This, in our submission, strikes an appropriate and  
 20 reasonable balance. The arrangement that we have  
 21 described has been adopted at the Independent Inquiry  
 22 into Child Sexual Abuse and in the Litvinenko Inquiry.  
 23 It's also consistent with the approach that has been  
 24 adopted at recent inquests into the London terror  
 25 attacks in 2017; in those proceedings, as CTI understand

1 it, OS content was not due to be considered and, when  
 2 sensitive evidence was considered, the press were not  
 3 permitted to report contemporaneously.

4 Here, in our inquiry, OS content is due to be  
 5 considered. In those circumstances the proposal we've  
 6 set out balances the need to ensure that OS content is  
 7 not inadvertently made public, giving rise to  
 8 a materially increased risk of terrorist attacks  
 9 occurring and/or causing greater fatalities with the  
 10 principle of open justice.

11 The alternative approach suggested by the media, in  
 12 which all members of the media would be afforded access  
 13 to a non-delayed live stream and would be required to  
 14 self-refrain from reporting for the applicable period of  
 15 delay whenever a matter was aired in evidence that they  
 16 wished to report would involve, in our submission,  
 17 a significant risk of inadvertent breach of the  
 18 inquiry's restriction orders. It would place members of  
 19 the media in the highly difficult position of having to  
 20 gauge, in respect of every piece of evidence they wished  
 21 to report, whether the applicable period of delay had  
 22 passed since it had been adduced, and that would be  
 23 particularly acute if there are variable time delays.

24 Further, it would give rise to a risk that where  
 25 matters were heard live, a journalist might then leave

1 the room or step away from the live feed and so not  
 2 become aware that the feed had stopped in order for  
 3 submissions and possibly a restriction order to be made  
 4 by you, sir, in order to prevent publication. The risk  
 5 of inadvertent breach in that situation is self-evident.  
 6 This submission involves no criticism or lack of trust  
 7 in the ability of the media to report responsibly, but  
 8 rather reflects a practical reality caused by the nature  
 9 of the inquiry's material. Allowing such a risk of  
 10 inadvertent breach would not be conducive to ensuring  
 11 the protection of sensitive material that the live  
 12 stream delay is designed to achieve. The risk of  
 13 inadvertent breach would significantly outweigh any  
 14 benefit, indeed the purported benefit is minimal if  
 15 there is any at all, as the ILT proposal would allow the  
 16 media to report as live while also allowing members of  
 17 the media to be present in the hearing room.

18 The media's proposed approach of providing a live  
 19 feed to numerous homes and offices of members of the  
 20 media would also pose logistical and resource issues to  
 21 the inquiry and would increase even yet further the risk  
 22 of inadvertent breach.

23 In light of that which we've said, sir, we invite  
 24 you to adopt what we submit are the reasonable and  
 25 proportionate approaches proposed by CTI and the ILT.

1 Having made our submissions on this final topic,  
 2 sir, subject to your view, we would call on Mr Bunting  
 3 first, then the family CPs, then any other CPs, and  
 4 again the final word, subject only to CTI, should go to  
 5 Mr Bunting.

6 SIR JOHN SAUNDERS: Mr Bunting.

7 Submissions by MR BUNTING

8 MR BUNTING: Thank you very much, sir. Could I make three  
 9 points? The first point is that the delay that is  
 10 sought is exceptional and it is also an exceptional  
 11 increase from what counsel to the inquiry originally  
 12 sought. As Mr Greaney has helpfully said, he originally  
 13 sought 3 minutes and now it's become 10 minutes in  
 14 different parts of the inquiry. That delay, which is  
 15 proposed of 10 minutes, is longer than the delay in any  
 16 other inquiry so far as the media is aware, and that  
 17 includes cases in which there were very significant  
 18 national security concerns such as the Litvinenko  
 19 Inquiry, where it was said publicly that the risk of  
 20 inadvertent disclosure was a risk of real and immediate  
 21 damage to national security.

22 Indeed, that 10-minute delay is also longer than  
 23 cases such as the Undercover Policing Inquiry, in which  
 24 it may be objectively said that the risk of inadvertent  
 25 disclosure is significantly greater. Lest we forget,

1 the Undercover Policing Inquiry is an inquiry which is  
2 focused directly at undercover policing and therefore  
3 carries with it a very significant national security  
4 element. In addition, the Undercover Policing Inquiry  
5 is a case in which effectively all the undercover police  
6 officers have the benefit of anonymity orders and in  
7 which a significant number of the non-state non-police  
8 core participants have the benefit of anonymity orders.  
9 So there's a real risk of disclosure of people's  
10 identity in the Undercover Policing Inquiry and yet  
11 in that inquiry the proposal is solely for a 5-minute  
12 rather than a 10-minute delay.

13 Finally then in respect of the precedents, London  
14 Bridge and Westminster. In neither of those cases was  
15 there any delay to the live stream which was in place  
16 in the hearing venue, the Old Bailey in those cases, and  
17 that is notwithstanding the obvious similarities in  
18 terms of a terrorist attack on members of the public,  
19 raising very significant public interest issues.

20 The second submission which I make is that any risk  
21 of inadvertent disclosure of OS material, which is  
22 realistically what Mr Greaney is aiming at, would be  
23 reduced still further if my primary submission this  
24 morning were allowed because that would allow,  
25 hopefully, the narrowing further of OS material and

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1 thereby hopefully the narrowing further of any risk of  
2 inadvertent disclosure.

3 The third point, sir, is that the submission is  
4 based on inconsistencies of approach. So from the  
5 media's perspective, just to summarise, it is suggested  
6 that there will be two members of the media in the  
7 hearing room. They get to watch the evidence live.  
8 They get the benefit of all that comes from being in the  
9 hearing room, so being able to report the proceedings  
10 in the round, the reaction of the witness, the reaction  
11 of the chairman, the reaction of the advocates. So they  
12 get considerable benefits from being inside the hearing  
13 room. There will be considerable premium to those  
14 positions.

15 However, they're not permitted, according to  
16 Mr Greaney's proposals, to actually report on what is  
17 being said in court until some unspecified time in the  
18 future, be it lunchtime, be it at the end of the day,  
19 when permission is eventually granted to report on what  
20 they have heard.

21 In contrast then, you have four members of the press  
22 in two overflow rooms in the Manchester Magistrates'  
23 Court and they will be able to access the evidence live  
24 through a live stream, but they will not have the  
25 benefit of seeing what is happening in the courtroom;

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1 their lens will be limited by the lens of the video  
2 footage. They too, it seems, will not be permitted to  
3 report anything that's said on that live stream until  
4 some unspecified time in the future.

5 Then you have a third category of media involvement,  
6 who will be in the annex which my learned friend's team  
7 has helpfully found. They will have access to a delayed  
8 stream of the proceedings notwithstanding the fact that  
9 their colleagues are trusted to follow the proceedings  
10 live. But they will be reported -- unlike their  
11 colleagues, they will be permitted to report matters as  
12 soon as they are broadcast on that delayed stream.

13 Curiously, I note from the new revised hearing  
14 arrangements note, it is said that a microphone will be  
15 put in place in that media annex so as to permit members  
16 of the press to raise queries directly with you, sir,  
17 in the hearing room. Quite how that works consistently  
18 with the laws of physics in circumstances in which  
19 they'll be 10 minutes behind the hearing room hasn't  
20 really been explained and it really demonstrates the  
21 curious inconsistency of approach that's being taken to  
22 different members of the press. What is the  
23 justification for that differing approach?

24 SIR JOHN SAUNDERS: Mr Bunting, a possible explanation for  
25 that may be: we can't accommodate everybody in the

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1 hearing room, so those who can't be accommodated get the  
2 extra benefit which -- my much more limited experience  
3 than yours is that live tweeting is something quite  
4 a lot of the press actually want to do.

5 MR BUNTING: Yes, indeed, quite. But the submission that  
6 I'm making is that members of the press should be  
7 permitted access to the proceedings as live as they can  
8 and should be permitted to report on proceedings as live  
9 as they can.

10 Realistically, the justification that's put against  
11 me -- and I accept everything, sir, of course, in  
12 respect of the limits that are imposed by the pandemic  
13 and I don't seek to argue against that, but what I do  
14 argue against is an inconsistency of approach between  
15 members of the press and between the press and other  
16 interested persons in this inquiry. I use that term in  
17 the loose sense because we know that not only will core  
18 participants be able to access live streams, and by that  
19 I mean streams which are live, so too, it seems, will  
20 survivors in the Spinningfields Conference Centre, so  
21 too, it seems, will advocates' legal teams and their  
22 clients in various spots around the country. All of  
23 those people will have access to a live stream, but  
24 members of the press in the media annex won't be.

25 Realistically, this comes to a risk, which is said

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1 to be a risk of inadvertent breach, and that risk is, in  
 2 my respectful submission, unrealistic . I'm not going to  
 3 repeat the submission again about the importance of  
 4 approaching reporting restriction questions on the basis  
 5 that the media will act responsibly, and the submission  
 6 of my learned friend is that the press -- is predicated  
 7 on examples of journalists acting irresponsibly rather  
 8 than responsibly, casually listening to potentially  
 9 sensitive information and then walking away from the  
 10 hearing room without checking to see to what extent they  
 11 have permission to report it .

12 If family members and survivors who are not core  
 13 participants can be trusted to have access to  
 14 non-delayed live streams, so too, in my respectful  
 15 submission, can expert and experienced journalists who  
 16 are well used to handling national security cases of  
 17 this nature.

18 Effectively, for those three reasons, namely in  
 19 particular the exceptional nature of this approach and  
 20 in particular the inconsistencies that come as a result  
 21 of it, the practical problems, I would respectfully  
 22 invite the inquiry to limit delay to the most extent  
 23 that's possible and to permit those who are present in  
 24 the Magistrates' Court to report proceedings as soon as  
 25 the period for delay has passed rather than having to

1 wait for the next break or lunchtime or end of the day  
 2 for permission to report because, otherwise, what will  
 3 happen is there will be press present in the  
 4 Magistrates' Court who know that things have been  
 5 broadcast publicly on a delayed stream but who, for some  
 6 reason, have to sit on their hands and not comment or  
 7 report upon that until some unspecified time in the  
 8 future.

9 So for those reasons, sir, the submissions of  
 10 counsel to the inquiry are unrealistic and unsupported  
 11 by the evidence. Unless I can assist you further, those  
 12 are my submissions on streaming.

13 SIR JOHN SAUNDERS: You can just on two things. Obviously,  
 14 I'm aware of the problem which may arise from delays  
 15 continuing to increase in length. So that, of course,  
 16 is a problem. But in reality -- and I know news needs  
 17 to be immediate -- is there that much difference between  
 18 a 3-minute and a 10-minute delay in practice?

19 MR BUNTING: Sir, I'm not going to over-egg that submission.  
 20 Obviously, there is a difference between something being  
 21 instantaneous and something being reported in 10  
 22 minutes' time. There's a still greater difference  
 23 between something being reported after a 10-minute delay  
 24 and something not being reported until the end of the  
 25 day because news, as we know, is a perishable quantity

1 and we know that there is a premium in being the first  
 2 to break news and the first to put these things up  
 3 online .

4 That said, sir, it is open to the inquiry to  
 5 consider that the delay isn't significant, but still it  
 6 requires a justification, and if the justification is  
 7 flawed because of inconsistencies and impracticalities  
 8 then it's an unjustified delay .

9 SIR JOHN SAUNDERS: Okay. Is it practical for -- if there  
 10 is a delay, and everyone's agreed there would be  
 11 a delay, is it practical for the journalists in the  
 12 hearing room itself to be able to time when the  
 13 particular time has gone by for a remark that they may  
 14 want to report?

15 MR BUNTING: Yes. Yes, because one imagines that if there  
 16 is an accidental or inadvertent slip during these  
 17 evidence hearings, in that unlikely event, whoever the  
 18 body is with concern in respect of that OS material, be  
 19 it the Secretary of State for the Home Department,  
 20 ShowSec or anyone else, will almost immediately say that  
 21 there is a problem and will bring that to your  
 22 attention, sir, and will seek to have the delayed stream  
 23 stopped so that people who are outside the hearing room  
 24 can't access it. Where that doesn't happen for 10  
 25 minutes and the hearings are proceeding in the usual

1 way, then it would be immediately apparent to those  
 2 members of the press in the hearing room that they would  
 3 be able to permissibly and responsibly report. That  
 4 doesn't seem to me to be problematic, it's inherent in  
 5 responsible reporting .

6 SIR JOHN SAUNDERS: Final question from me. I'm sorry to  
 7 ask these questions. Clearly, it's accepted by counsel  
 8 to the inquiry that in relation to certain things which  
 9 happen at the beginning of the inquiry, no delay is  
 10 actually necessary. Whatever I say about the length of  
 11 the delay, would the press wish to have no delay on  
 12 those parts, which would include the tributes, which  
 13 would include what counsel to the inquiry says in  
 14 opening the inquiry?

15 MR BUNTING: Yes, the press would wish there to be no delay  
 16 in any part, sir .

17 SIR JOHN SAUNDERS: I understand that. But if that's the  
 18 choice -- I personally think variable delays otherwise  
 19 becomes a bit of a complicating issue. But where  
 20 we have the beginning of the inquiry itself, where  
 21 a delay is not required, then that may be something  
 22 which can be achieved whatever the actual time of the  
 23 delay is for those parts which do need it .

24 MR BUNTING: Sir, yes, the media would welcome there to be  
 25 no delay in that stage in the inquiry. And for the

1 avoidance of any doubt, the media don't see a problem  
 2 with varying delays if that is made clear. This  
 3 ultimate submission is to keep the delay to the minimum  
 4 that's possible.  
 5 SIR JOHN SAUNDERS: Right. Thank you, Mr Bunting.  
 6 Have you finished?  
 7 MR BUNTING: Yes, sir.  
 8 SIR JOHN SAUNDERS: Thank you.  
 9 Have any of the family advocates anything to say on  
 10 this issue?  
 11 Submissions by MR ATKINSON  
 12 MR ATKINSON: Sir, I think our only concern, going back to  
 13 a point I made earlier in relation to live feeds, is if  
 14 the situation arises that we have family members who are  
 15 relying on delayed live feeds to view the proceeds, we  
 16 may on occasion need to ask for time before a witness is  
 17 completed to check if anything has arisen that we need  
 18 to take instructions on from any such person. But  
 19 that isn't a reason not to adopt what Mr Greaney has  
 20 suggested, it's just a nuance, potentially, in certain  
 21 situations.  
 22 SIR JOHN SAUNDERS: Thank you, Mr Atkinson.  
 23 Anyone else?  
 24 Submissions by MR WEATHERBY  
 25 MR WEATHERBY: I wasn't going to say anything, but following

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1 on from that, and very briefly. We have of course made  
 2 submissions on behalf of the families that they will  
 3 either be in the hearing room, on a realtime live link  
 4 near the hearing room, or, if they can make a sufficient  
 5 case out, they should have a realtime live link to their  
 6 home or some other place. As I understand it, that's  
 7 still being looked into.  
 8 If it proves that the inquiry doesn't do that, then  
 9 it would concern me, a 10-minute delay, because there's  
 10 quite a significant difference, obviously, between 3  
 11 minutes and 10 minutes. Otherwise, there's no principle  
 12 involved here, it's a matter of practicalities, but it  
 13 does seem to me that the inquiry team took  
 14 a proportionate view and no doubt one from looking  
 15 around at previous processes of 3 minutes, and it's now  
 16 suddenly jumped to more than three times that. I note  
 17 the points that are made at page 243 of the bundle by  
 18 HMG, but they are rather vague and looking at the other  
 19 inquiries where there have been delays, there is, to  
 20 pinch a word used earlier by Mr Bunting, some creep  
 21 going on here and the delay that's being asked for is  
 22 getting longer and that does create problems.  
 23 SIR JOHN SAUNDERS: Thank you.  
 24 MR COOPER: I will simply say as long as it doesn't affect  
 25 the families, then I have no submissions.

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1 SIR JOHN SAUNDERS: Thank you, Mr Cooper.  
 2 Has anyone else got any submissions? Mr O'Connor  
 3 and then Mr Horwell.  
 4 Submissions by MR O'CONNOR  
 5 MR O'CONNOR: Sir, I'm grateful. As you'll have seen from  
 6 our written submissions, SMG did endorse and support the  
 7 proposal for a 10-minute delay. I wonder if I may  
 8 simply expand slightly on the reasons why we support  
 9 that delay, which are, I hasten to add, extremely  
 10 practical in their nature.  
 11 Sir, as you've heard, the purpose of a delay is  
 12 simply to allow proceedings to be stopped in the event  
 13 of some form of inadvertent disclosure of sensitive  
 14 material to allow you to hear argument as to what should  
 15 happen as a result of that inadvertent disclosure,  
 16 possibly including a restriction order being made and  
 17 the evidence which has been given inadvertently not  
 18 being put on the feed which goes out beyond the hearing  
 19 room. That is the purpose of it and, if I may say so,  
 20 it is certainly something which experience in other  
 21 inquiries and indeed inquests has shown does happen from  
 22 time to time. With the best will in the world, people  
 23 say things that they don't intend to.  
 24 SIR JOHN SAUNDERS: I don't know whether it's just me, but  
 25 something rather disturbing has happened to your sound

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1 and I'm afraid you got very distorted. Try again.  
 2 Something's happened to your ... Can I turn to  
 3 Mr Horwell now and then come back to you and see whether  
 4 you've improved with a little gap in time?  
 5 MR O'CONNOR: Can you hear me now, sir?  
 6 SIR JOHN SAUNDERS: That's better.  
 7 MR O'CONNOR: Experience has shown this does happen, the  
 8 need for some form of delay is common ground before you.  
 9 The question is how long the delay should be. Sir, the  
 10 significance of the length of the delay doesn't in fact  
 11 lie in the sensitivity of the material that might be  
 12 disclosed, nor indeed in the likelihood that an  
 13 inadvertent disclosure might be made, but it is in fact  
 14 all to do with the ease with which the parties  
 15 involved -- and obviously we are really focusing here on  
 16 the parties who may wish you to make a restriction order  
 17 in those circumstances, the ease with which those  
 18 parties can take instructions if that disclosure does  
 19 take place.  
 20 If there is a very short delay, what that means  
 21 is that those in the courtroom who have heard the  
 22 inadvertent disclosure have a very short period of time  
 23 to react and, understandably, therefore, simply have to  
 24 raise an objection, invite you to stop the proceedings,  
 25 and there is then a debate about what will happen.

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1 Where other proceedings have taken place with  
2 a delay of this nature, what the delay has been used for  
3 is for the parties to take instructions as to whether in  
4 fact there needs to be an interruption or whether what  
5 has been said inadvertently can be, as it were,  
6 overlooked on this occasion. But in order to do that,  
7 instructions do need to be taken, for reasons that  
8 you'll understand, because that involves a positive  
9 decision on the part of clients not to object to  
10 something which shouldn't have happened.

11 In other proceedings in normal times, that can be  
12 done relatively easily simply by turning round, a brief  
13 whispered conversation to one's clients, and a decision  
14 being made within two or three minutes. The reason why  
15 an exceptional delay of 10 minutes is being suggested  
16 here, and the reason why we support it, is not, with  
17 respect, anything to do with some sort of creep over  
18 time but is simply to do with the exceptional practical  
19 arrangements that are proposed for these hearings.

20 As you know, sir, when I, for example, am in court,  
21 I will not be with my clients, or at least not with all  
22 of them; some of them will be in other rooms in the  
23 Magistrates' Court, some of them may be in other  
24 buildings, and if a situation like this arises it will  
25 be necessary for instructions to be taken by email,

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1 I suspect. With the best will in the world, that cannot  
2 be done as swiftly as a whispered conversation while the  
3 court hearing progresses. It's really just for that  
4 reason why the lengthier delay is being proposed.

5 What that leads to is it makes it more likely that  
6 there will not be interruptions to the hearings when  
7 inadvertent disclosures take place because experience  
8 shows that often, when these disclosures take place, a  
9 sensible view is taken that on a one-off basis nothing  
10 needs to be done. So what it all boils down to is that  
11 the lengthier period of time is designed in fact to make  
12 the proceedings more streamlined and to reduce the need  
13 for the hearings to be interrupted so that instructions  
14 can be taken. I hope that assists.

15 SIR JOHN SAUNDERS: That's helpful. Thank you.

16 Mr Horwell.

17 Submissions by MR HORWELL

18 MR HORWELL: Sir, two, I hope, very quick points. Reference  
19 to other inquiries and inquests is always interesting,  
20 but the comparisons are sometimes unfortunate in the  
21 sense that there has been reference to the Undercover  
22 Policing Inquiry, where everyone's understanding is that  
23 what concerns the parties and the chairman is the  
24 revelation of a name. Certainly from my experience of  
25 IICSA hearings, the principal concern of everyone in the

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1 hearing room is the same: the revelation of the name of  
2 a survivor or of an alleged perpetrator.

3 Instances such as those, experience reveals that the  
4 acknowledgement that a name has been given is  
5 instantaneous.

6 The operationally sensitive material: the issues are  
7 much more nuanced than the stating or the giving of  
8 a name. In this sense, I support the submissions that  
9 Mr O'Connor has just made. Instructions have to be  
10 taken and whatever experience each of us may have of  
11 other inquests and other inquiries, there must be  
12 a fairly good chance that none of us have experience of  
13 inquests and inquiries during a pandemic, and the effect  
14 of this pandemic is that our clients will not be in the  
15 hearing room. Therefore the taking of instructions, the  
16 ability to discuss what is best to do at the moment is  
17 very difficult for each and every one of us to envisage  
18 because we have no experience of it.

19 Therefore, the suggestions of Mr Greaney set out at  
20 page 425 of the hearing bundle and repeated by him just  
21 now are clearly a sensible start. Sir, it may well be  
22 the case that days or weeks into this inquiry may reveal  
23 that some of those delays are too long and some of them  
24 are too short, and submissions can be made accordingly.  
25 But they are a very good starting point and for that

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1 reason, sir, because of the lack of experience that each  
2 of us has -- and indeed very few of us will have visited  
3 the hearing room and seen the facilities and seen where  
4 our clients will be and will have seen how easy it is to  
5 communicate with them. For all of those reasons,  
6 I would ask you to adopt the suggestions of Mr Greaney,  
7 as I have said, as a starting point.

8 SIR JOHN SAUNDERS: Thank you, Mr Horwell.

9 Mr Greaney -- sorry, Mr Cooper.

10 Submissions by MR COOPER

11 MR COOPER: I was to make no submissions at all on this  
12 until I heard Mr O'Connor and Mr Horwell. I submit in  
13 passing, no doubt the tone of their submissions, they're  
14 absolutely supporting our submissions on electronic  
15 device deprivation as far as MI5 is concerned because  
16 we've expressed the same concerns there, so obviously  
17 we're grateful for their tacit support for those  
18 submissions because logically they must support them.

19 My concern is this. I can quite understand the  
20 submissions being made by Mr Greaney and others in  
21 relation to the delay, but not, in our submission, when  
22 it comes to parties having an opportunity to vet the  
23 evidence that's being given. That's what it comes down  
24 to as far as Mr O'Connor and Mr Horwell are concerned.  
25 They're praying in aid the COVID situation to give

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1 themselves time to take relatively over 10 minutes'  
 2 detailed instructions upon whether certain evidence  
 3 that's been given can be objected to. In terms of  
 4 a perception, in our submission, as far as our families  
 5 are concerned, that's not a perception we're  
 6 particularly comfortable with. There is no need for it,  
 7 there is no need for that delay for instructions to be  
 8 taken, which may result then in the expunging of  
 9 evidence which has already been given.  
 10 SIR JOHN SAUNDERS: Mr Cooper, I don't think there's any  
 11 question of expunging evidence, it's a question whether  
 12 it can be reported without breaking one of the orders  
 13 which has already been made. I don't think those  
 14 submissions were made with a view to trying to suppress  
 15 the evidence.  
 16 MR COOPER: In that case, I just heard those submissions as  
 17 they -- perhaps I should have had a 10-minute delay on  
 18 the live link.  
 19 SIR JOHN SAUNDERS: It may be my misunderstanding.  
 20 MR COOPER: It may well be that I've misunderstood my  
 21 learned friends' submissions. In that case perhaps my  
 22 concerns are not so acute and maybe we can be reassured  
 23 on that because that was my concern, but I'll stop there  
 24 for reassurance.  
 25 SIR JOHN SAUNDERS: Mr O'Connor, are you trying to suppress

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1 the evidence?  
 2 MR O'CONNOR: No, sir.  
 3 SIR JOHN SAUNDERS: Mr Horwell?  
 4 MR HORWELL: I'm certainly not, sir, although I would like  
 5 to suppress the suggestion that if I am silent on  
 6 an issue I agree with it. That is not my approach and  
 7 it should not be that of Mr Cooper either. But nothing  
 8 to add, sir.  
 9 SIR JOHN SAUNDERS: Okay, thank you.  
 10 Mr Greaney.  
 11 Reply by MR GREANEY  
 12 MR GREANEY: Sir, we have just four very short submissions  
 13 to make.  
 14 First of all, you posed of Mr Bunting the perfectly  
 15 understandable question of whether it was practical or  
 16 practicable to expect members of the press who are  
 17 in the hearing room to make their own decisions about  
 18 whether sufficient time had passed for there to be  
 19 reporting. As we understood his reply, it was that it  
 20 was practical because the core participants could be  
 21 expected to identify a problem instantaneously or at any  
 22 rate nearly instantaneously.  
 23 But as others have submitted, that is not  
 24 necessarily so. At page 243 of the hearing bundle,  
 25 paragraphs 24 and following, HMG have set out cogent

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1 reasons, in our submission, why that is not so or may  
 2 not be so. They have emphasised in simple terms that  
 3 instructions will often need to be taken about whether  
 4 a particular issue should be raised because there may be  
 5 circumstances, as HMG have explained, where raising  
 6 an issue simply draws attention to it and creates more  
 7 of a difficulty than it solves. Furthermore, we have  
 8 heard submissions from Mr O'Connor and Mr Horwell very  
 9 much to the same effect.

10 So it seems to CTI that there may well in practice,  
 11 particularly in a COVID world, be situations in which  
 12 it is taking up to 10 minutes in order for decisions to  
 13 be made about whether to raise issues. So we have  
 14 little doubt that there will be occasions upon which the  
 15 journalists in the hearing room, if the media's  
 16 submissions are accepted, will find themselves in the  
 17 position of asking whether sufficient time has passed,  
 18 and that, self-evidently, we submit, does give rise to  
 19 the risk of inadvertent disclosure.

20 Secondly, the question of live streaming, by which  
 21 I mean live streaming in a literal sense, to a location  
 22 for the benefit of core participants. Can we assure  
 23 Mr Bunting that where that occurs, there will be no  
 24 unfair treatment to the press in the sense that those  
 25 CPs will not be treated any differently because where

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1 such live streaming, literal live streaming, does occur,  
 2 the CPs will be subject to a prohibition on any live  
 3 tweeting.

4 Thirdly, Mr Bunting appears to have gained the  
 5 impression from submissions that were made in writing by  
 6 CTI or by ILT that within the hearing room annex there  
 7 will be a microphone by which the press might  
 8 communicate, sir, with you. There has been  
 9 a misunderstanding. There will be a microphone in the  
 10 hearing room annexes, but that will be so that any  
 11 advocates who are present in those rooms are able to  
 12 make submissions remotely.

13 So far as the external annex is concerned, what is  
 14 proposed, as we have set out in writing, is that there  
 15 will be a AV technician and a member of the inquiry team  
 16 present so that if there are any issues that the media  
 17 have, they can raise them with the inquiry team readily.

18 Fourthly, sir, we were going to make a point about  
 19 the significant differences between the Undercover  
 20 Policing Inquiry and this inquiry. It isn't necessary  
 21 for us to do so because we submit that Mr Horwell has  
 22 entirely captured the important difference and indeed  
 23 material difference between the two processes.

24 So sir, those are our submissions on live streaming.  
 25 There is one separate issue that I ought to --

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1 SIR JOHN SAUNDERS: Mr Bunting is going to have the last  
2 word, I think, isn't he, on this issue?  
3 MR GREANEY: Fine, sir, but if I forget, would you please  
4 remind me that there is one correction that I need to  
5 make on a different topic before we finish for the day?  
6 SIR JOHN SAUNDERS: Also -- and this is my fault as well --  
7 we haven't yet said to the press what they can report of  
8 today if there's anything that shouldn't be reported.  
9 I was relying on Mr Bunting as the representative of the  
10 press to tell me about that at a convenient time, but  
11 we can all forget everything.  
12 Right, Mr Bunting.  
13 Reply by MR BUNTING  
14 MR BUNTING: Sir, in respect of the microphone point, very  
15 quickly, the reference is page 112 of the hearing  
16 bundle 1. It's sub-paragraph 4(g), which says:  
17 "Enquiries are being made to set up an annex for the  
18 media at the Midland Hotel."  
19 And it goes on to say:  
20 "A microphone will be set up so that the media can  
21 raise queries directly if they wish to do so, although  
22 it is anticipated that this facility would rarely be  
23 required."  
24 That was an addition which I understood my learned  
25 friends for the inquiry to place particular weight on

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1 because it demonstrated the benefit of actually  
2 attending the annex as opposed to simply watching the  
3 live stream by YouTube as the case may be. If my  
4 learned friend is saying that that proposition in the  
5 hearing room is actually incorrect then it sort of  
6 undermines the benefits of attending the media annex at  
7 all.  
8 SIR JOHN SAUNDERS: I think a member of the inquiry team  
9 will be there and no doubt the member of the inquiry  
10 team will be able to contact someone in the hearing  
11 room.  
12 MR GREANEY: Yes, sir, that's correct.  
13 MR BUNTING: That's also said in addition in the next  
14 sentence. It says a AV technician will be also based to  
15 help with any technical queries that may arise, but that  
16 doesn't explain how any legal issues may be raised  
17 between the annex and the hearing room, particularly  
18 where the media want to make particular submissions  
19 about, for example, this type of issue.  
20 MR GREANEY: Can I be clear, sir, it is not proposed that  
21 there will be a microphone in the external annex which  
22 permits members of the media to make submissions  
23 directly into the hearing room. What is anticipated  
24 is that there will be a set-up which enables ready  
25 communication between the external annex and the hearing

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1 room so that submissions can be raised as quickly as is  
2 reasonably practicable.  
3 MR BUNTING: I'm very grateful for that. It's a change to  
4 the note, but I don't place any weight on that.  
5 Just very quickly then to summarise. Precedent and  
6 the pandemic. Mr O'Connor seemed to say delays of this  
7 nature -- and he gave some, it appeared to be, evidence  
8 of his personal experience of delays of this nature in  
9 other proceedings. But the reality is that delays of  
10 this nature are unprecedented and there aren't any  
11 examples of inquiries or inquests in which 10-minute  
12 delays have been imposed. The distinction which  
13 purportedly is being made by Mr Horwell between the UCPI  
14 and delay on the basis that that wasn't, for example,  
15 a pandemic delay is incorrect. The UCPI suggested the  
16 5-minute delay right in the middle of the pandemic  
17 because they had to put their hearings back from an  
18 earlier start date in June to a start date later in the  
19 autumn. Of course, the issues in the UCPI aren't merely  
20 limited to anonymity, but they're related to other  
21 national security issues as well.  
22 So effectively, this remains an unprecedented  
23 request and the suggestion or the justification for it,  
24 which Mr O'Connor gave, was that because of the pandemic  
25 10 minutes is needed in order to seek instructions.

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1 That's not the reality in any other proceedings because  
2 we know that you can have access instantaneously to your  
3 lay clients through other electronic forms of  
4 communication, be it WhatsApp, be it email, be it  
5 whatever else, and experience will tend to show that if  
6 someone gives a 10-minute delay, someone will take a  
7 10-minute delay. If one gives someone a shorter delay,  
8 they will make that shorter delay work. So is there  
9 really a justification for the longer delay? In my  
10 respectful submission, there isn't.  
11 Then just to answer Mr Greaney's submission --  
12 sorry, sir, can you actually hear me?  
13 SIR JOHN SAUNDERS: Can I hear you?  
14 MR BUNTING: Yes. Sorry, I just realised that my screen  
15 seemed to be frozen. A sudden terror that I was just  
16 talking into the void.  
17 SIR JOHN SAUNDERS: We would have told you, had you been.  
18 MR BUNTING: I'm very grateful.  
19 Finally, just to finish off on Mr Greaney's  
20 submission, which was, you asked me a question: is it  
21 practical for members of the press to know when they're  
22 able to report things in the hearing room? His answer  
23 purported to be that my answer was dependent on someone  
24 raising something instantaneously. My answer wasn't  
25 dependent on that, it was dependent on the fact that

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1 members of the press are experienced and expert and will  
 2 realise when time has passed that no issues have been  
 3 raised. It doesn't depend on someone raising something  
 4 instantaneously or non-instantaneously, it depends on  
 5 them being sensible and reflecting what they know people  
 6 can report elsewhere.  
 7 So just to finish off on that, I am in the hearing  
 8 room as a member of the press. My colleague is in the  
 9 annex. My colleague tweets "Sensational development  
 10 in the inquiry, X evidence has just been given", and  
 11 I have to sit on my hands, seeing that tweet, because  
 12 I'm not permitted to report it until further on that  
 13 afternoon or later on, and that inconsistency is just  
 14 not explicable.  
 15 Can I assist you any further on this point, sir?  
 16 SIR JOHN SAUNDERS: No, thank you very much, Mr Bunting.  
 17 I'm grateful.  
 18 Mr Greaney, the one further matter.  
 19 MR GREANEY: I'll deal with the correction, first of all,  
 20 and then I'll address the issue of reporting today's  
 21 hearing. You'll recall that a short time ago  
 22 I purported to correct something that Mr Horwell had  
 23 said. In fact, I'm now going to correct myself because  
 24 I've been provided with some incorrect or at least  
 25 incomplete information. The position on examination

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1 appears to be that the last survivor was evacuated from  
 2 the City Room at 23.43, so Mr Horwell's submission about  
 3 F1 is well-founded in that sense. But the last survivor  
 4 was evacuated from the station at about 2.30 am on  
 5 23 May.  
 6 Sir, the position in relation to reporting is that  
 7 your legal team has not identified any matter in respect  
 8 of which a reporting restriction ought to be imposed,  
 9 but we would invite any CP who has a different view to  
 10 express that view at this stage, please.  
 11 SIR JOHN SAUNDERS: No? Right, thank you very much.  
 12 Apparently, there is no need for any reporting  
 13 restrictions and everything that's been said today may  
 14 now be reported in the press.  
 15 Thank you very much indeed to everyone for their  
 16 patience. When you have long hearings by Zoom, they do,  
 17 I think, become rather more tiring than actually being  
 18 in a courtroom, so thank you very much for all of your  
 19 help and for sticking with it. Thank you. That's the  
 20 end of the hearing.  
 21 (4.30 pm)  
 22 (The hearing adjourned)

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