Manchester Arena Inquiry

Day 2

July 23, 2020

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(11.00 am)

SIR JOHN SAUNDERS: Good morning. There are far more people on this hearing that we've had in the past, so I hope everything will work smoothly. This hearing is not being live streamed and it's not being live streamed because the subject matter of what we are discussing may result in things being disclosed which shouldn't be disclosed. Therefore, also, please, there should be no live reporting by the press of what is being said. What has been said will be reviewed in any gap which we may have, and then clearance will be given to report what has been said, assuming nothing's been said which shouldn't have been said.

Thank you for all coming. Mr Greaney.

Introduction by MR GREANEY

MR GREANEY: Sir, thank you.

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

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

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

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

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

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

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

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

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

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

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

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

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

a process well-known to all CPs, to any further proposed OS redactions and the family CPs can raise any issues they have with the ILT directly in the normal way.

If strictly necessary, the family CPs can set out any submissions in writing objecting to the identification of content as OS and they may invite a ruling from you, sir, on the papers unless a hearing is necessary. However, CTI consider that this situation is very unlikely to arise in practice given the effective process that has been adopted to date and the desirability of progressing the inquiry without diverting significant inquiry and CP resources into submissions on individual OS redactions.

From the submissions, sir, that we have received, and the discussions we've had, we do not consider that it is necessary to be likely for you to make any ruling on this issue today.

Next, a very significant majority of the redactions that have been applied to the inquiry's disclosure on grounds of operational sensitivity, all of which have been made available to CPs through the Magnum sensitive folder, are not disputed by any CP. The family CPs in their written submissions suggest that a small number of OS redactions should be removed. We have addressed those in detail in our written submissions of 20 July.

Discussion has taken place since then and we believe that no ruling will be required by you today on any of those documents and the restriction orders of 19 February will apply.

Finally, in summary on this first issue, the media submit that the principle of open justice and fairness requires that they be given access to the Magnum sensitive folder in order to make submissions on whetter individual OS redactions should be applied to the inquiry's disclosure to CPs. Sir, we disagree and do so strongly, and we are not aware that any CP positively supports the position of the media. A ruling on this issue will, we expect, be required.

The second issue is the use and handling of OS content during the course of the oral evidence hearings due to commence on 7 September. The simple point is that there is no disagreement from any CP with the proposed approach set out in the ILT note dated 12 June. That approach is positively supported by the families, HMG, GMP, ShowSec, and SMG.

In summary, the proposed approach will involve the following: so far as is possible, the inquiry's evidence hearings will be conducted in open, with all CPs, RLRs, members of the media, and the public able to attend, limited only by issues of capacity and the health of

those attending given the current health crisis.

The default position should be that evidence, including evidence that's capable of touching on OS content, is heard in open. A range of mechanisms should be employed to allow this to take place without OS content being made publicly available, and those mechanisms are set out in the ILT note to which we've referred.

Hearings that are not fully open will be described as "restricted hearings", but they should be used only where that is absolutely necessary. Sir, if you were to determine that a restricted hearing was absolutely necessary so that OS content could be considered in full, there should be no interference with the ability of CPs to attend and participate.

A restricted hearing should involve the minimum restrictions necessary to prevent public disclosure of the OS content. Those restrictions, the proposed restrictions, are set out in the ILT note.

Importantly, we can confirm that representatives of the media will be entitled to be present at a restricted hearing in accordance with the practical venue arrangements dealt with in the inquiry's documents on the venue and hearing arrangements.

Sir, we will invite you to adopt the approach that

we've just described in summary to the use and handling of OS content during the inquiry's oral evidence hearings, but no ruling is required to that effect at this stage. Should a restricted hearing be necessary, a restriction order can be made at that stage. CTI consider it would be sensible and preferable to adopt that course rather than making a restriction order now (a) in order to avoid making an order in the abstract before the inquiry has commenced its hearings, (b) so that there is no inadvertent drift towards restricted hearings where they can be avoided, and (c) so any restriction order that is required may be tailored to the particular circumstances as they've arisen, informed by the inquiry's experience of how its evidential earings operate in practice.

The third issue, as we have indicated, is the live stream of the inquiry's oral evidence hearings. This does give rise to a number of complications. The starting point is that the inquiry's proceedings will be live streamed in accordance with section 18.1(a) of the Inquiries Act 2005. It is, as we understand it, agreed by all that there should be a delay to the live stream, given the sensitive nature of the evidence that may be considered by the inquiry. That will allow any concerns to be identified and addressed without publication,

including enabling you, sir, to make a decision about a restriction order if necessary.

There is, sir, as you'll have read, a degree of disagreement as to the appropriate length of the delay to the live stream. We initially suggested 3 minutes and the families agreed; conversely, HMG sought a 10-minute delay, supported by SMG, ShowSec and SMG (sic). The media, insofar as any delay relates to them, suggests that it should be kept to the minimum possible and they submit certainly should not be as long as 10 minutes.

Having reflected closely on the submissions we have received and for reasons we'll turn to, we, as CTI, now support a 10-minute delay across the live stream. Furthermore, the media take issue with the administration of the delayed live stream as it relates to them. In summary they submit that all members of the media in the main hearing room, the hearing venue annex, the external annex or other annex should have access to the non-delayed live stream. They also submit that members of the media should be provided with secure links to the non-delayed live stream so that they can view a non-delayed live stream from their homes or offices. Sir, we disagree, and again on this issue it will be necessary, we submit, for you to make a ruling.

So before I turn to deal with the fourth issue in summary, could I just indicate to Henry that I'm being routinely asked to admit people to this meeting, which I'm finding distracting, so it would be helpful if that responsibility could be removed from me and taken up by someone else.

The fourth and final issue is anonymity and special measures. There is an application on behalf of Witness J, the MI5 corporate witness, for anonymity and prescribed measures that would apply when Witness J gives evidence, including screening, that there be no live audio or video streaming of Witness J's evidence, and a prohibition on the use of electronic devices during Witness J's evidence, save for limited exceptions.

Assuming that you determine that the Article 2 and 3 real and immediate risk thresholds are met, as we suggest you should determine, the families do not object to the proposed restriction orders, save that they contend that Witness J should not be screened from CTI, from the families or from their legal representatives, and they oppose the breadth of the application for a prohibition on the use of electronic devices during Witness J's evidence.

The media do not oppose the anonymity application

made on behalf of Witness J, but they do object to the proposed prohibition on the use of electronic devices by journalists when Witness J gives evidence. Again, sir, we suggest that you will need to rule upon those issues today.

There is also an application on behalf of Police Constable Richardson that he be screened from the public and the media but not core participants when giving evidence, and that he be permitted secure entry and exit to the hearing venue.

The families do not oppose the application, nor do the media, and so you may find that application simple to resolve. On balance we submit that it should be granted.

Finally, there is an application on behalf of a witness we'll describe as F1 for anonymity and screening from the public and the media but not from core participants. The families do not oppose the application. They note that it is not clear that the Article 2 or 3 thresholds are met, but submit that given that F1's evidence is not central to the inquiry's terms of reference, the Article 8 and/or common law balancing exercise favours the measures that have been sought on the witness's behalf by GMP.

The media submit that the application contains very

limited open information and should be scrutinised with care by you, sir, given the lack of objective evidence of a real and immediate risk to F1's life, and given that the process of giving evidence in public is part and parcel of the office of constable.

Sir, we agree with the media that you should scrutinise that application in common with all applications, but on balance we suggest that the application should be granted.

Sir, along the way of that quite long introduction, we have identified the issues upon which a ruling will, we suggest, be required by you. But they are identified in any event at paragraph 4 of our submissions of 20 July. Sir, we won't invite submissions from any core participant or the media at this stage, but instead we'll turn to deal with issue 1, the identification of operationally sensitive content, in further detail.

Application re operationally sensitive content

Submissions by MR GREANEY

MR GREANEY: First, the families invite the inquiry to keep its restriction order determinations under review. CTI agree. It may be necessary, both to remove but also add OS redactions as the inquiry progresses. There are a number of reasons for this, including that the section 19 balance may shift in light of the evidence

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

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

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

(Pause)

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

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

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

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

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

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

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

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

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

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

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

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

Ultimately, the inquiry will consider all requests

for OS redactions irrespective of their source and apply its own independent assessment, and that approach should continue. Again, sir, no ruling is required.

Next, the families have indicated that it is unclear:

"... whether the material included in SMG's appendix B and GMCA's schedules 1, 2 and 3 have already been considered and agreed or rejected by the ILT."

We are grateful to the families for raising this issue. We've addressed it at paragraphs 13 to 16 of our written submissions. In short, we believe that all concerns have been dealt with and that no ruling is required.

The families have also indicated in their submissions that:

"It has not been possible for the families to review all the material in the sensitive folder by the deadline for these submissions and in any event the sensitive folder is not up to date."

We have addressed this at paragraphs 20 to 25 of our recent submissions. In short, as far as the inquiry is aware, all OS content which was capable of disclosure to CPs was available to CPs as at 10 July when the submissions of the families were due and were provided. However, we well understand the concern and we're keen

to ensure a system is in place to address any concerns.

CTI suggest the following approach. Following today's hearing, should the families wish to raise any issues concerning those OS redactions, they should do so in accordance with the approach we've set out already. They can be assured that they will be given the closest attention. Sir, we know that the representatives of the families will be careful to raise issues only when important, indeed that's the approach that they have certainly adopted to date, because we have no doubt that they have recognised it is important not to divert your legal team from its work of drilling into the truth.

In their written submissions for this hearing, the families sought amendments to a small number of OS redactions that are currently in place within the inquiry's disclosure. We considered those closely and responded in detail at paragraph 26 of our submissions of 20 July, accepting that many of the families' observations had a sound foundation.

Sir, at that stage it seemed likely that it would be necessary for you to rule on a number of outstanding issues, but since then we've had discussions with those representing the families, in particular Mr Atkinson, HMG, SMG and ShowSec. We would wish to say that we do not doubt that HMG, GMP, SMG and ShowSec have sought

restrictions where they have done so on the basis of genuine concerns that revelation of OS material would make terrorist attacks more likely and/or more lethal. But furthermore, they have listened to CTI and to the families and they have been realistic in the approach they've adopted.

Sir, no one should doubt that HMG, GMP, SMG and ShowSec have engaged in a constructive way in the process of dealing with OS redactions.

Sir, the upshot of what has happened over the course of the last 24 hours is as follows. The proposals of CTI at paragraph 26 have been accepted by those affected with two exceptions, or at least initially with two exceptions. The first exception was that set out at paragraph 26(j) of our written submissions. It relates to a document that we'll give the INQ reference to, 001678, and which is in bundle 2, hearing bundle 2, at divider 10.

Sir, it's not necessary for you to look at that document because there is now agreement that that redaction will not be applied, so no issue remains.

The second exception related to a document described at paragraph 26(k) of CTI's written submissions. Again, we'll give the INQ reference: 001673. It's the document at divider 11 of the bundle. I have given the wrong

reference, I'm told by Mr Nicholls. It should be INQ001471.

SIR JOHN SAUNDERS: Thank you.

MR GREANEY: Sir, having reflected on that document and the submissions made by the families and discussed it with Mr O'Connor and Mr Laidlaw, we agree that that document should be the subject of further consideration, which consideration will take into account the families' views. In due course a further version of the document with the OS redactions that in light of that discussion we consider necessary will be circulated for consideration by all, in particular the bereaved families, but we do not consider that any ruling is required by you at the moment; it would, in short, be premature.

Sir, may we make plain that we're grateful to Mr Atkinson on behalf of the families, Mr Laidlaw on behalf of ShowSec and Mr O'Connor on behalf of SMG for discussing those issues with me yesterday evening and enabling a constructive way forward to be identified.

Next, type 2 material, as it has been described by the parties in their submissions. There is a very small quantity of OS material that is so sensitive that it cannot be included in the sensitive folder on Magnum but can be made available for inspection. That material is

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

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

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

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

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

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

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

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

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

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

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

SIR JOHN SAUNDERS: Thank you.

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

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

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

SIR JOHN SAUNDERS: Thank you. Mr Atkinson.

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

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

Submissions by MR ATKINSON

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

to be being applied to them.

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

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

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

note. It remains our contention that many of the matters there identified as relevant to security are matters of common sense and indeed in some instances geography.

We would invite again further consultation with Mr O'Connor, Mr Greaney and any others concerned to work out a way through that that won't reveal anything either geographic or otherwise that is, in fact, sensitive.

I have already made my submissions on type 2, so unless I can assist you further, sir, those are my submissions at this stage and I am grateful for the chance to make them.

SIR JOHN SAUNDERS: And I'm grateful for all the hard work that's obviously gone into that and the amount of discussions that have been made. So thank you very much for that.

Mr Cooper?

Submissions by MR COOPER

MR COOPER: Thank you, sir, for that, and indeed, as you've noted, work has gone on behind the scenes between all family CPs on the issue so that we can identify the matters and have it easily identified to the inquiry.

J and K were a particular concern of ours. It's on the issue of what we consider to be care to be taken against overzealous applications. Obviously, in the

context of this hearing, I am not going to repeat what it was that in J and K were sought to be deleted or redacted. But I would invite you, sir, when you have a moment, to look at exactly what was being proposed in J and K, and if I had the opportunity, and I don't because obviously no ruling has been made yet, I would be submitting to this tribunal now how spurious those suggestions were.

I can't and I won't, but I do invite you, sir, to look at exactly what it was that was sought to be placed into the OS category in J and precisely what it was that was sought to be placed into the category in K, which we submit were overzealous in the extreme and spurious given that some of them can even be found on Google. It's as spurious as that.

We would, sir, on the basis of the low threshold seemingly being taken as an example in J and K ask the inquiry, as I know they will do, to carefully assess submissions and applications that may be made in the future that may fall into what we're calling this overzealous category. Obviously, through agreement between ourselves and CTI, much agreement, as it were, has been reached, and you can see that in paragraph 26. I'm not commenting now on paragraph 26 as such.

My submissions really go to any future submissions

that may be made on restriction orders and for you, sir, to guide yourself, if we may, on the very low and overzealous thresholds applied to J and K, and I would be surprised if in due course you're not told in the future that J and K are no longer persisted with.

We hope we don't see such overzealousness again. On that point, we have no further submissions.

SIR JOHN SAUNDERS: Thank you very much. I may say, I have actually looked at all the redactions which have been made, but obviously I won't comment at the moment.

Mr Weatherby.

Submissions by MR WEATHERBY

MR WEATHERBY: Very briefly, I adopt the submissions Mr Atkinson made earlier. The principles here are relatively straightforward, but the task is huge and is more difficult to apply than the principles might suggest. It has so far generally been dealt with effectively and efficiently and we're happy with the proposal of Mr Greaney that the way forward is to deal with matters as informally as possible and only seek rulings where absolutely necessary.

SIR JOHN SAUNDERS: That's obviously very helpful to me.

MR WEATHERBY: Yes. A mention was made about the media submissions and the families' position on them at the start. I don't know whether it's appropriate, I only

have a small number of things to say on that, I don't know whether it's appropriate to say that now.

We made submissions in January that the media should be fully involved in the discussions around restriction orders. No doubt you would have had that in mind anyway.

We're pleased to see that the media have been fully involved. We've consistently made submissions in support of open justice from the vantage point of the families. Obviously, the media come at it from a different perspective and we would make it clear that we are adopting a neutral position on their submission in terms of the restriction orders and the discussions today.

SIR JOHN SAUNDERS: Thank you, Mr Weatherby.

Mr Payter.

MR PAYTER: Nothing further from me, thank you, sir.

SIR JOHN SAUNDERS: Thank you very much.

Ms McGahey?

Submissions by MS McGAHEY

MS McGAHEY: Sir, on behalf of the Secretary of State, I would just like to say that the team has tried as hard as it can to keep redactions to an absolute minimum and to make those redactions conscientiously. Occasionally we will make mistakes and there will be inconsistencies,

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

SIR JOHN SAUNDERS: Thank you very much.

Mr O'Connor?

Submissions by MR O'CONNOR

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

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

overzealous claims that have been made.

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

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

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

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

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

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

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

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

Mr Laidlaw?

Submissions by MR LAIDLAW

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

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

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

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

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

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

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

Mr Bunting.

MR BUNTING: Sir, I listened carefully to Mr Greaney QC's warning about when I should make my submissions. I won't make any submissions now, I will wait and respond at the appropriate stage.

SIR JOHN SAUNDERS: Thank you, Mr Bunting.

Mr Greaney.

Reply by MR GREANEY

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

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

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

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

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

SIR JOHN SAUNDERS: Thank you.

Application re access to sensitive folder

Submissions by MR GREANEY

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

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

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

The media can view the live stream of the inquiry's proceedings on YouTube or on the inquiry's website. Members of the media will be permitted to attend any restricted hearings, as we've made plain, at which OS content is considered. Transcripts of the inquiry's evidence will be made available on the inquiry's website, as will material that has been adduced in evidence.

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

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

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

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

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

Mr Greaney.

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

been and will be complied with and that the open justice principle has been and will continue to be fully respected.

In respect of the inquiry's restriction order process, this has been conducted as openly as possible and on notice to the media. The media have been informed since late January that the inquiry is conducting a restriction order process, including in relation to OS material. The inquiry's restriction order process has been mentioned by your legal team in the public inquiry hearings during the course of this year. The media have been offered access to the inquiry's and CPs' documents on the RO process. They've been given such documents prior to and for the purposes of this hearing and they've been provided with the detailed thematic bases for the OS redactions that have been applied by the inquiry.

While of course the media have not provided submissions on individual OS redactions, the media have not been prejudiced, as they've made detailed written submissions on, among other matters, the OS process, the inquiry's live stream, and applications that have been made for anonymity and special measures.

It is against that background that the media apply to be granted access to the inquiry's sensitive folder.

The effect of the media's application is this: they seek access, prior to the inquiry's hearings and before any evidence has been adduced, to all material identified by the inquiry as operationally sensitive and which meets the inquiry's broad approach to relevance. That includes substantial material that is most unlikely ever to be adduced in evidence.

The media's application would also necessarily require access to the entirety of the inquiry's disclosure database, principally for two reasons. First, because operational sensitivity cannot be assessed without reference to the totality of the disclosure in order to consider what we have already described today as the mosaic effect. And second, because the practical way in which the sensitive folder works with disclosure of OS content through reverse redactions means that in order to assess the OS content within a document, access is needed to the wider disclosure database.

The media's application to be granted access appears to be based on two principal submissions. First, that the media has been treated unfairly in the inquiry's OS redaction process and so should now be granted access to the sensitive folder, and second, that open justice requires that such access should be granted. Those

submissions are not accepted by CTI. We will respond under three broad headings, a first, a second and a third.

First, the media has not been treated unfairly. To the contrary, for the reasons we've set out, the inquiry is facilitating extensive media involvement in this inquiry, including in the restriction order process. We've already explained why. In short, there has been extensive engagement with the media over this issue.

Second, there is no legal requirement, as a matter of open justice or otherwise, to grant the media the access they seek to the sensitive folder and beyond.

(1). Section 18 of the Act of 2005 gives effect to the open justice principle within inquiries. Section 18.1 requires a chairman of an inquiry, subject to any restriction orders made under section 19, to take such steps as he considers reasonable -- and we emphasise that word -- to ensure that members of the public, including reporters, are able to attend the inquiry or to see and hear a simultaneous transmission of its proceedings and to obtain or to view a record of evidence and documents given, produced or provided to the inquiry.

Section 18.1 applies to the media. A chairman, it is obvious, is not required to take all possible

steps to provide the media with access to the material provided to the inquiry. He is required to take only those steps that he considers reasonable. So, sir, it comes to this, that what you are required to do by section 18.1 is to do what you consider reasonable.

(2). Section 18 has been applied in numerous inquiries under the 2005 Act. As far as CTI is aware, in no previous or current statutory inquiry has section 18.1 operated to give the media the blanket advance disclosure of sensitive material that is sought here. The media cite no inquiry where this approach has been adopted. It follows that it has not been considered reasonable by numerous other inquiry chairs to provide the media with the access being sought here.

Whilst, sir, of course that doesn't bind you, it does provide a clear signpost to the answer to the media's application.

(3). Numerous steps are being taken to provide the public, including the media, with access to the inquiry's proceedings and evidence. We've set some of those out already today and others are set out in our written submissions.

(4). There is no support for the media's position in the main practitioner text on inquiries. In the book of Mr Beer QC, Public Inquiries, there is no suggestion

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

understandably seeks to guard against. We emphasise that this is not a question of whether the inquiry trusts the media to act responsibly, there is no such mistrust on the part of the inquiry, and we underline that, but rather, the concern is in increasing the number of people with access to the OS content because that poses an increased risk of inadvertent disclosure.

(2). Were the media granted access to the inquiry's disclosure database, they would have access to material similar but not identical to that which may subsequently be adduced in evidence and/or posted on the inquiry's website. The risk of inadvertent breach and inadequate reporting in those circumstances is self-evident and should be avoided unless there is some compelling reason to adopt such an approach.

(3). The inquiry's restriction order process is, as will be apparent to all watching or listening to this hearing today, well advanced, and the inquiry's start date is imminent. Receiving extensive submissions from a range of media organisations, or even from the media as a whole, on individual OS redactions at this stage simply will not assist in the efficient management and progress of the inquiry.

(4). Were the media granted full access to the inquiry's disclosure, consideration would need to be

given as to whether other non-CPs, including witnesses, should be given such access, including as a matter of fairness, and the inquiry is dealing with hundreds of witnesses. The implications of this course are obvious and would significantly interfere with the inquiry's preparations and indeed progress.

(5). There would be no meaningful benefits to the inquiry and the wider public of providing complete advance disclosure to the media of sensitive material. The media are not expert in assessing what is and is not operationally sensitive. A number of the inquiry's CPs have such expertise and have provided it. The family CPs who have a stated interest in ensuring the inquiry is open and public have had access to all the OS content and have made detailed submissions. They have been integral to the process.

The inquiry, sir, has in you a highly experienced chairman who is under a duty to take reasonable steps to ensure public access to the inquiry's proceedings. The inquiry's independent legal team are committed to ensuring as much openness as possible -- again, we emphasise that -- and it's clear, we suggest, from these submissions from previous CTI documents on the restriction order process and from the ILT documents.

(6) and finally under this third broad heading, CTI

does accept that the media have expertise in assessing what is and is not of editorial interest and therefore potentially of interest to the wider public. However, that expertise is not engaged by advance disclosure; it's engaged when evidence is adduced. The media are entitled to be present when that occurs and can follow the evidence in numerous ways. At that stage they can, if they wish, raise with the chairman any issues that occur. That's the proportionate way for these issues to be dealt with as they occur during the inquiry's hearings when it's clear what evidence is in fact adduced, not through wholesale advance disclosure to the media followed by extensive written submissions on redactions to documents that may not be adduced in evidence.

Sir, that's as much as we wish to say on this issue at the moment, at any rate. We may have reached the point at which it's appropriate to take a break to assist the stenographer, following which, if a break is necessary, we'll call first from Mr Bunting, then from the family CPs, then from any other CPs who wish to make submissions, including Mr Horwell, but the final word, subject to CTI, should, we suggest, go to Mr Bunting.

SIR JOHN SAUNDERS: Thank you.

We will have a break then. Is 10 minutes

sufficient?

Can I just say this about people making submissions? All of us here, and me included, accept the need and the principle of open justice. The issue in this case is going to be how to apply it and what is required in the name of open justice, so I don't need to be reminded by anybody of the importance of the principle of open justice.

Thank you. Mr Weatherby, that's not meant to be a reference to you in any way, but I don't need to have it further remarked to me, but thank you very much. We'll meet together in again in 10 minutes' time, which is 12.30.

(12.20 pm)

(A short break)

(12.30 pm)

SIR JOHN SAUNDERS: Mr Greaney.

MR GREANEY: Sir, before we hear from Mr Bunting, I'm going to ask whether you would be prepared to sit on into and through lunch in order to finish this hearing. There is a good reason for that request. I can indicate that I have asked all of the participants in the hearing whether they have any problem with that and they've all indicated that they do not.

SIR JOHN SAUNDERS: Nor do I and I'm grateful for everyone's

cooperation about that. Thank you.
MR GREANEY: Thank you, sir.
SIR JOHN SAUNDERS: Mr Bunting.

Submissions by MR BUNTING

MR BUNTING: I act for seven media organisations which include newspapers and broadcast media and our submissions are set out in the hearing bundle at pages 336 to 340D.

Before I explain those submissions to the inquiry, can I make four short introductory points. The first is that the media recognises that many other people, and indeed all of the core participants, have a very significant interest in accessing in inquiry and in getting answers. But nevertheless, sir, as you've already indicated you're well aware, the media also has an important role in this inquiry and its takes its role in the open justice principle very seriously. It acts as the eyes and ears of the public and seeks to shine a light on the proceedings which are underway.

For those reasons, they do not advance the submissions that are in the hearing bundle lightly. They don't seek to cause inconvenience, they don't seek to add expense; rather, what they seek to ensure is fairness and that you decide this important issue in respect of the designation of OS material in a way which

is fair to all concerned, including the media.

You will also hopefully have noticed that the media seek to limit inconvenience and to act responsibly, hence the approach Mr Greaney QC has already introduced to the anonymity applications in which the media don't take any significant role in opposing. Therefore the submissions I'm going to make now will probably be the only relatively lengthy submissions I make today and after this I will be much quicker and much more to the point.

The second introductory point --
SIR JOHN SAUNDERS: I'm sure you'll be to the point whatever you're saying, Mr Bunting.
MR BUNTING: I'll do my best.

The second introductory submission is that we are grateful, we are very, very grateful in particular for the steps which have been taken by the inquiry team to ensure media access to this inquiry and we're particularly grateful for the confirmation yesterday that a new location has been found for the media annex, which is much closer to the inquiry hearing, has much more space for journalists, up to 25, and which will be available throughout the evidential hearings as media interest will continue beyond the opening statements.

That ensures, sir, that you don't have to resolve

that tricky issue of quite how far away the Midland Hotel was from the Magistrates' Court. I am personally grateful to Mr Greaney, Mr Suter and your team for the assistance and help they've given in that regard.

But that said, the issue today, and this point which you have to determine, is not the extent to which the inquiry has made provision for the media to access preliminary hearings or to attend future hearings, it's narrower than that. I make that point because it is said that the media has been treated fairly because, for example, a media annex may be created at some stage in the future. But that's not the question. The question is whether material has been correctly designated as officially sensitive, or OS, and how that material will be then used and handled.

The thirds introductory submission, sir, is that issue is a novel one. From the media organisations' research, it's the first time that a public inquiry of this kind has envisaged a third species of hearing in addition to open hearings and closed hearings. There is a helpful and illuminating summary of the various restriction orders that have been previously made in other inquiries in the note prepared by counsel to the inquiry on 22 January. Sir, for your reference, that's

at pages 21 to 23, paragraph 45 of the hearing bundle. None of those other examples envisaged this kind of approach where you have open hearings, closed hearings and also potentially restricted hearings, which the public cannot attend, the media can attend, but the media cannot report.

It's my respectful submission that that novel approach requires a particular justification. Indeed, one of the points put against me is that never has the media's application been granted in other inquiries, and that may be for the reason that never has this approach been taken in other inquiries.

Then the fourth introductory submission may be helpful to narrow the dispute still further, because a lot of submissions are made in writing and some have been made orally again today about what the media's position is. The media's submission is not that it should be entitled to all material now by reason of the open justice principle as suggested at page 421, paragraph 34 of the inquiry's submissions, or that there's a legal requirement under the Inquiries Act or under the open justice principle that such advance disclosure be provided in every inquiry or indeed in every set of proceedings.

The majority of counsel to the inquiry's submissions

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

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

So having set out those introductory submissions,

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

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

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

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

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

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

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

participants in their various written submissions.

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

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

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

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

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

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

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

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

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

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

The primary focus of the media is to ensure that the public can have access to the material and that the public's rights are properly respected. Whilst there may be some overlap there, they are not exactly analogous in terms of the interests. So that's stage 1.

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

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

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

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

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

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

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

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

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

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

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

SIR JOHN SAUNDERS: I'm not sure the Lord Chief Justice said that actually. He said that the delay would be 10 days in reporting and he said the reality of the local press is they can't afford to have resources to put into court to listen to everything, and therefore the reality is it may never be reported because they wouldn't have had a reporter there.
MR BUNTING: Yes.
SIR JOHN SAUNDERS: At the end of the 10 days, it could be reported; there's no suggestion it would never be reported (overspeaking) therefore to listen to.
MR BUNTING: Sorry, sir. I didn't mean to interrupt.
I think the two points were (1) no matter how long the delay, the journalists may not attend. (2), even if they do attend, they will only be permitted to report at the end of the proceedings, at which stage they would be reporting all of the proceedings, not the individual incident that happened on day 3 of the proceedings, for example, and as a result there would be less reporting of the proceedings than there otherwise would be.
So that's a section 4(2) and the consequences of it. And the consequences of a restriction order are more significant and more serious still. That's the second stage.
What we have here is a direct interference with

common law and Convention rights, which has a serious practical impact on the ability of the press to report these proceedings.
Stage 3 follows from that. That is because of the significance of that interference, this issue of designation of OS material must be treated and determined fairly. That's not just a proposition of logic, but it's a requirement of statute, sir, as you know, because section 17.3 of the Inquiries Act, which is in hearing bundle 1 at page 441, says that:
"In making any decision as to the procedure or conduct of an inquiry, the chairman must act with fairness."
Of course, issuing a restriction order is a decision as to the procedure or conduct of the inquiry.
Of course, when judging what fairness requires, it's what fairness requires in determining that issue, not what fairness requires in general, and there's authority to that extent set out in the bundle. The question here is: what does fairness require when you, sir, the chairman, are performing this question of designation of material and OS?
What does fairness involve here? We say, as a matter of law, it requires the ability to make effective representations to you about the designation

of material as OS material, and there is adequate authority for that proposition, indeed it's reflected in the inquiry's own restriction order protocol, which requires, for example, where a restriction order application is made for the relevant material to be provided to the press so that the press can make representations about it.
That also reflects rule 12 of the Inquiry Rules 2006, which Mr Greaney has helpfully brought us to already this morning, which is intended to permit the provision of material that may form part of a restriction order to non-parties. You've had the helpful reminder from Azelle Rodney's case about what "necessary" means in rule 12. Rule 12 is exactly the type of application that I am making, albeit rule 12 doesn't apply here because the material which has been designated as OS is already subject to restriction order. So all the media is asking you to do, sir, is what rule 12 envisages, which is the provision of material where it is necessary to ensure that a non-party can make effective representations or because we're in a context in which rule 12 doesn't narrowly apply.
So too, sir, the additional authorities which I sent through yesterday -- Mackay's case in Strasbourg, the

BBC case in the Supreme Court, and the Practice Direction on interim non-disclosure orders -- all of which say that where reporting restriction issues are being envisaged, the media must have an effective opportunity to make submissions about them, and effectiveness in the Practice Direction involves:
"... providing sensitive, private confidential information to the media in advance so that the media can make submissions about it, solely for that purpose, not for the purposes of publication."
So sir, that's the reasons of authority why effectiveness and fairness requires provision of material, but it's also a submission which is reflected in fact. The precedent on which I rely isn't what's happened in other inquiries, it's what happened in this inquiry because counsel to the inquiry recognises that without sight of the OS material, people cannot make informed submissions to you about its designation as OS.
So for Her Majesty's Government, page 12, paragraph 17 of the note of 22 January, counsel to the inquiry said:
"Without being cited on these redactions, HMG cannot make informed submissions to the chairman."
Equally core participants, the proposal note of 7 February, page 56, paragraph 6(c):

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

The high point, really, sir, is an email that was sent by the inquiry's consultancy team, Crest Consultants, to the media on 20 February, and that's set out at page 339, paragraph 14 of my chronology. It simply told the media that they would have the opportunity to make submissions at some stage in the future about the use and handling of OS material.

Where all of this brings us is the conclusion, really, at page 106, paragraph 14(d), counsel to the inquiry's note of 12 June, the very point of today's hearing, and I'll quote it in terms:

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

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

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

assisting terrorists.

So the themes are helpful, but they don't given us an effective opportunity to address you on the inclusion of documents within those themes.

Secondly, the media has been told the title of some of the material, so for example the type 2 material proposed by the Home Office, page 142, annex C to the Home Secretary's submissions on 5 February, page 159, around 223 documents. The title of the documents still don't give us any explanation of what the document actually is, nor does a schedule of proposed redactions by reference to line help the media in understanding what the proposed redaction actually involves or whether or not it's an appropriate or inappropriate designation as OS. The themes and the OS number columns are, in my respectful submission, impossible to cross-refer without access to the material itself.

The next thing that the media know is that some of these bodies have put forward witness statements about why material is OS but those witness statements are very general. I have already dealt with the Home Office statement, which simply refers to the sensitivities note which we don't have. The SMG witness statement provides no meaningful detail; see page 290, paragraph 11. I do not propose to provide a detailed analysis of the

sensitivity of any of the particular documents' redactions. See also the ShowSec restriction order application at page 309. That seems to include entire witness statements, such as Kyle Lawler's witness statement, that according to the last hearing is an important witness in relation to the stewarding of the event. The ShowSec witness statement goes no further than general concerns; page 319.

So the question that lingers, sir, is: how has the media been involved in this process to the extent necessary to protect its interests? And the answer is, with respect, they haven't been. And despite this being the submission which we make today, it's a submission which is, in my respectful submission, barely touched upon in counsel to the inquiry's submissions in today's hearing, the extent of the fairness, page 418, paragraph 36, and that refers back to paragraph 31 of counsel to the inquiry's submissions, which have been read out to you again today. There are a number of problems with that analysis.

Firstly, it relies extensively on the extent to which the inquiry have taken steps to ensure open justice in these proceedings in general. That's not the question, sir. The question is whether the media have been given a fair opportunity of assisting you with

whether material has been properly designated as OS, not whether or not the inquiry has taken good or bad steps to ensure open justice. Much of that material therefore is legally irrelevant to the question that you have to determine.

Indeed, of course it may also be observed that those steps haven't been taken out of a desire to treat the media fairly, but because the inquiry rightly recognises the press and public questions to this inquiry is an aspect of the open justice principle.

Secondly, it's said that the media hasn't been prejudiced because they have been able to make submissions on the OS process. Presumably that refers to the written submissions which are in the bundle before you. But that's a circular submission. The fact that the media has been able to make submissions about how it's been treated unfairly doesn't mean it has been treated fairly. Overall, there is simply no detail in counsel to the inquiry's submissions of how the media has been treated fairly.

Can I turn then to my fifth and final submission, sir.

SIR JOHN SAUNDERS: Just before you move on, you mention the potential circularity of this. I understand your submission that it has not been fair to the press that

they have not been given the opportunity to make submissions about whether material should be properly designated as OS because it hasn't had the underlying material.

MR BUNTING: Yes.

SIR JOHN SAUNDERS: So you say you should have done. If that's right, then counsel to the inquiry were being unfair or the inquiry team were being unfair to you, so it actually comes down to one issue?

MR BUNTING: Yes.

SIR JOHN SAUNDERS: Thank you. The delays in you getting things, for which you may well have a justified complaint, is something which can be compensated by giving you time to make your submissions, which you obviously have done today. But the unfairness and your complaint really rolls into one: we should have the underlying material?

MR BUNTING: Yes, which is of course counsel to the inquiry's position in respect of everyone else but the media. I think that is really the submission, much more quickly than I've been making it. I'll make my final submission then much more quickly.

SIR JOHN SAUNDERS: I wasn't doing that to get you to move on; I was just actually clarifying in my own mind by asking the question, so please don't think I was

criticising you by saying that.

MR BUNTING: I am very grateful.

The submissions against me, sir, and I'll take these very quickly because they've been set out in writing.

Page 418, paragraph 37(b). No previous or current inquiry has provided blanket advance disclosure of the kind sought by the media. That may be correct, it may not be correct, but the media doesn't seek advance blanket disclosure for its own purposes, it doesn't seek it for the purposes of publication, it seeks it solely for the assistance of you on this question of designation as OS material.

Next, it's said that Jason Beer QC in his helpful practitioner's text has not suggested this approach and, again, that's addressing a submission which I haven't made. The reason why Mr Beer may not have recommended this approach is because this is a novel application and a novel approach by counsel to the inquiry and Mr Beer won't have envisaged the requirements of fairness in every possible point.

Then it's said that the media aren't given access to complete advance pre-trial disclosure in other proceedings. Again, that's not what the media is seeking. Then there's a lengthy passage on whether the open justice principle requires the application to be

granted. Of course, as I've already said in my introduction, that's not a submission that the media has made. It's a doubly irrelevant submission in circumstances because it addresses when it's necessary for the media to have access to court material for the purpose of publication, not for the purpose of fairly assisting you on this important question.

Sir, I note simply for the purposes of clarity that there are one or two legal errors in the summary of what open justice is and how it works in that stage of counsel to the inquiry's submissions. I am not going to address them because it is my submission that those points simply don't take us anywhere because they address a submission which I'm not actually making.

Then we come to risk and indeed the suggestion that provision of this material increases the risk of inadvertent disclosure, which was repeated in the next sub-paragraph to suggest the risk of inadvertent breach or inaccurate reporting. With respect to counsel to the inquiry, that's not an obvious risk. It's not an obvious risk given that all core participants accept that accredited journalists can attend the restricted hearings. So the risks in the media accessing the OS media is tolerable, certainly at that stage.

Next it's said that they trust the media, but this

isn't a question of trust. Of course, I don't make submissions about trust in some sort of gentlemanly etiquette way, I make that submission as a question of law because Sarker says, as we know, at paragraph 32.3 that:

"When considering reporting restriction questions, a court must work on the basis that the media will act responsibly and lawfully."

And of course that was a point made in the context of contempts of court, which are important, but the possibility of breaching a restriction order with a penal notice in circumstances in which the risk of inadvertent publication may pose a risk of terrorism is something that the media will unquestionably avoid. And of course it's a risk that could be managed in any event by limiting the kind of disclosure which I suggested to a number of accredited journalists, by limiting that disclosure to the provision of undertakings, by limiting that disclosure even to location-specific disclosure, ie disclosure that couldn't be taken away and moved around and inadvertently misplaced.

The other point in respect of risk is that a large number of people plainly can be trusted with this OS material, including laypeople amongst the core participants who do not have the media's expertise and

experience in managing material, including national security material.

Then we come to the suggestion that the start date for the hearings is imminent, and that of course is correct. But the media's application is for a targeted form of disclosure and a targeted form of submissions. It can be addressed by setting deadlines in the same way, sir, as you have done in the type 2 restriction order applications this morning, and it may be, of course, that the media make very little submissions at all once they actually see this material.

We've noted the very helpful, short and focused submissions that have been made by family CPs. All that matters is that the media has a fair opportunity to do so, they're realistic, they're responsible and they won't make submissions to you unless it's strictly necessary.

Finally, just a few very short points to finish off. If the media application were granted then it's said that consideration will need to be given to witnesses being given access to the material. That, sir, is a non sequitur. There's absolutely no reason why witnesses would need to be offered access to the material that the media seek access to. This is a question of fairness in resolving an open justice

application and there's no logical reason why witnesses have the same or even a similar interest in achieving this kind of advance disclosure in this way.

Then there's the surprising submission, if I can respectfully observe, that there are no meaningful benefits to granting the media access to this material. The media accepts that they don't have the Home Office's expertise in judging what is or is not likely to pose a risk to terrorists, but nor indeed are many of the CPs who have been given an opportunity to make informed decisions based on that very material, and the media does, as counsel to the inquiry accepts, have a proper interest in ensuring that material is not wrongly designated as being operationally sensitive. They are experts in the other side of the section 19 balance, namely the extent to which a restriction order will inhibit the allaying of public concern, and there is therefore an obvious benefit to ensuring that the media can assist you and can assist you in an effective way with whether or not material ought to be OS.

Finally in terms of impracticalities, it's said that the disclosure of the sensitive folder will mean disclosure of all material to the media. Respectfully, that's something which is a question of practicalities rather than a question of inevitability. There are 464

documents, it seems, that have been designated as in whole or in part OS. They're in a file, the sensitive file, in Magnum. The redacted parts are in Magnum and the non-redacted parts are in another file. It may be that it is possible to simply put together a file including all of those documents, the redacted and the non-redacted parts. It may be that that is something that would involve some small expense but, of course, as Azelle Rodney makes clear, expense in ensuring that this type of decision is taken lawfully and fairly is expense which is correctly incurred.

Sir, just in conclusion, material has been designated so far as OS on the basis of very broad themes and what appears to be a very low threshold. I have noted with concern the eloquent submissions made by family CPs, that some of the applications have been, to quote, overzealous and spurious. The media have not yet been provided with a fair or effective opportunity to address those issues. Their proposal is limited, it's realistic, and it's practical, and if there is another proposal that would ensure fairness, then the media would reflect carefully on that and ensure that they provide you with submissions on that basis, but none has yet been identified. For those reasons, sir, I respectfully invite the inquiry to grant this limited

application.

Can I assist you any further on those points, sir?

SIR JOHN SAUNDERS: Just one issue which I would like you to help me with. You will be aware that in this case, there has been a PII application which has been granted.

MR BUNTING: Yes.

SIR JOHN SAUNDERS: Before that application was made, the families made what submissions they could possibly and properly make, limited as they could be, because of course they did not know the underlying material which went for the application, they couldn't be told it, so they were obviously restricted in the submissions they could make.

The OS material, I am told, has been decided on the basis of material which was capable of assisting those who could carry out attacks, terrorist attacks, or to make those attacks more effective. It is possible that an argument could be made that that came within the context of national security and that a PII application could have been made in relation to that.

The inquiry team have decided, or the inquiry has decided, that because of the importance to CPs, and particularly family CPs, of knowing as much as can safely and properly be done, that has not been the subject of a PII application but a more limited

application, which you have been made aware of.

Because that limitation has been relaxed in the case of CPs, does that actually mean that it should go further and include the press, who couldn't clearly make submissions on a PII application? So where is the distinction?

MR BUNTING: Sir, I make two points in response to that. Obviously, I wasn't present during the PII proceedings in the inquest and I haven't read back in to understand quite how that process works. My understanding of PII in other contexts, be they civil or crime, is that very often it's encouraged that everything that can possibly be said in open about the PII material is, but the material is, for example, gisted or there's some sort of explanation given as to the closed material, so as to ensure that fairness applies to those who have an interest in fighting against the PII application.

The same here goes. If there is an alternative proposition, for example, that this OS material can be properly gisted so we can understand what it is, then we could potentially address you on that. So we know, for example: here is the title of a document, this document includes the following types of things. That may be some way in which an aspect of fairness could be achieved, but it hasn't yet been done.

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

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

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

SIR JOHN SAUNDERS: I understand that.

MR BUNTING: Those are my submissions, sir.

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

Ms McGahey?

Submissions by MS McGAHEY

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

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

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

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

made.

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

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

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

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

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

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

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

SIR JOHN SAUNDERS: Thank you very much.

Mr Horwell.

Submissions by MR HORWELL

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

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

SIR JOHN SAUNDERS: Thank you.

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

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

Mr Greaney?

Submissions by MR GREANEY

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

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

Secondly, Mr Bunting submitted that what the media

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

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

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

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

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

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

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

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

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

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

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

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

not all core participants get all relevant material.

Sir, in dealing with the application made on behalf of Kyle Lawler, you ruled that he should not get access to material save for the access that bears directly upon the chapter that he is concerned with.

Seventh and finally, the submission made on behalf of the media is that fairness requires that the media must have access to OS content now because that is what CPs have been given. In other words, they stand, it's submitted, in exactly the same position as the CPs. Our response is that fairness does not require the media to have the same access as core participants. Core participants have status in the inquiry, they are given access to disclosure for that reason so that they can inform the inquiry's process and prepare for the inquiry's oral evidence hearing. The media, self-evidently, does not have the same status. Fairness for the media is achieved by allowing them access to the inquiry and to allow them to make submissions once evidence is adduced and, at the risk of repeating ourselves, the requirements of fairness are reflected in rule 12. Rule 12 does not require disclosure to allow effective submissions; it may allow disclosure is if that is necessary to determine the application and it is not necessary here.

So sir, when considering what's fair, we submit that you should take account of all the circumstances, including the consequences of adopting the approach that is sought by the media. And once that is done it's quite clear, we submit, that the application should be refused.

SIR JOHN SAUNDERS: Mr Greaney, just help me on this, please. Paragraph 17 of the submissions on behalf of the media, which is at page 339 of the bundle, sets out the inquiry team's note on restriction orders dated 12 June. Not helpful? How can the media comply with that without the underlying material?

MR GREANEY: Sir, would you just give me a moment to read back through? This is sub-paragraphs (c) and (d) of paragraph 7?

SIR JOHN SAUNDERS: No, paragraph 17 on page 339 of the bundle.

MR GREANEY: Sir, I'm looking at page 339 and that's paragraph 7. Bear with me, sir.

(Pause)

I think on reflection, that paragraph could have been better expressed.

SIR JOHN SAUNDERS: Okay, thank you very much.

Mr Bunting, you have the last word.

Reply by MR BUNTING

MR BUNTING: Taking six points. Mr Greaney says that the media doesn't have a right of access to materials and I just want to be clear that where I make that submission, I'm quoting the authority of Mr Greaney in his submissions, which are in the bundle at pages 48 to 49, paragraphs 112 to 116, which helpfully cross-refer to the authority, including Supreme Court authority, to that effect, and at page 92, paragraph 47.

On any sensible view, this decision infringe's the media's ability to report on these proceedings because it means that they aren't allowed to report OS material. Their rights both at common law and in the Convention are infringed. That's what His Honour Judge Teague said in any event.

Second point, practicalities: how could it work? Mr Greaney says that the media haven't set out sufficiently practically how this could work. All the media says is, all we want is a rule 12 type approach, where we have access to the material that's necessary for you to fairly determine this question. That can be a truncated timetable, that can be material which is limited to a small number of journalists, so for example one or two accredited journalists from each of the organisations. That could be disclosure which is

location-specific, ie a journalist must come to X location to access this material. Then a short period of time to make submissions and then, sir, you could either determine those submissions at the hearing on 17 August or at an early stage of the proceedings in September. That's practically how the media's approach would work.

I want you to compare that to the practicalities of how Mr Greaney's approach would work. He says material that's revealed in the hearings, the media will be able to apply for access to that at the hearings.

I have already set out some of the problems with that. The first problem is an obvious one, which is that the inquiry team is positively urging people not to refer to OS material in the hearings. So it may be that the media never becomes aware of that OS material, notwithstanding the fact that it is relevant.

The second problem with that is that any submission which is advanced at that stage would have all the same problems that Mr Greaney says now. So for example, say on day 14 of the evidential hearings a reference is made to a document and the media pops up and said, "I would like to have access to that document", Mr Greaney will then say, "How are you able to do that because we're judging that as part of a mosaic including all of the

disclosure which has already been provided?"

The third problem with that is how could the media make informed legal submissions about it when they're not even allowed to tell people about what's said, for example, in restricted hearings?

The fourth problem with that is that you, sir, will then have every day, or frequently during the evidential hearings, media applications interrupting and interfering with your ability to get to the truth.

The fifth problem with that is even if it were possible, it would mean that the media wouldn't have a practical way of getting that material quickly because they would have to make an application, you would have to hear submissions about it, then you'd have to go away and take a decision as to whether or not to provide that material. And all of that would mean that material which is put out in evidence on a Tuesday may not be provided, if it is all, until the following week at which stage the news agenda has moved on.

Practically, what the media are suggesting is a very focused and tailored approach and what counsel to the inquiry is suggesting is an approach which actually doesn't achieve any practical results and would achieve considerable disruption.

The third point is the media have a different status

to witnesses; that's correct. The media also have a different status to core participants; that's correct. But when we come to this issue, mainly the designation of material as OS, and thereby the ability not to report that material, the media has a direct interest and indeed a direct right and they have every right to make fair, effective submissions about that.

Fourth point, Ms McGahey. She says the media knows what's sought because the media has access to the sensitivities document. Well, again, with respect, that's not correct. We don't have the sensitivities note. That's the submission that I'm making.

Then she says, fifth point, that any increase in the number of individuals with access to the OS material automatically increases the risks and would lead the Home Secretary to going back and revising everything that the Home Secretary has ever decided in relation to this case. That can't be the case either because in the 5 February submissions the Home Secretary envisaged the media being able to access restricted hearings at which OS material would be revealed. So it's accepted by all CPs that revelation of OS material to the media is a risk that can be tolerated. It's all the more risk that can be tolerated where fairness requires it.

That deals with the submission which is made by the

Greater Manchester Police, that evidence which is marked sensitive is sensitive for a reason. Well, with respect, that doesn't take us very far when what we are deciding is whether or not material actually is sensitive in the first place.

The final point to address the submission made by Greater Manchester Police. It's said, sir, that you are not short of opinions and submissions about whether or not this material ought to be designated as OS, and that may be correct. What that shows, sir, is that everyone else has had a fair opportunity to make effective submissions, by which I mean everyone else with a direct interest in this question, except the media, and the fact that others have been provided with a fair opportunity doesn't mean that the media has been, and that's all I ask.

SIR JOHN SAUNDERS: Thank you very much, Mr Bunting. I'm grateful to everyone for their submissions --

MS McGAHEY: Sir, I'm sorry, may I just correct an error? Mr Bunting is absolutely right that the media do no have the sensitivities document; what I should have said is that they are aware of the sensitivities because they are summarised in the restriction order application.

MR BUNTING: I'm very grateful.

MS McGAHEY: That's my error for which I apologise.

SIR JOHN SAUNDERS: Mr Greaney.

Application re WITNESS J

Submissions by MR GREANEY

MR GREANEY: Sir, for good reason, that is not necessary to go into, we're going to turn next to issue 4, anonymity and special measures applications. The relevant principles are set out at paragraphs 12 to 57 of CTI's note, dated 3 March, and in particular paragraphs 21 to 46, which identify the applicable tests that apply under section 19 in respect of applications such as those made; that's pages 77 to 92 of the hearing bundle 1.

As we've understood it, sir, no one disagrees with CTI's analysis of the law and therefore we won't go into that in any further detail.

The application of those principles to the three applications before you, sir, can be dealt with relatively briefly.

First, Witness J, the MI5 corporate witness. CTI have considered both the open and closed documents carefully, as we know, sir, you will have done. In light of that material, CTI consider that the Article 2 and 3 thresholds are met in respect of Witness J and CTI, moreover, do not consider that a closed hearing is required to deal with this issue.

On the basis that the Article 2 and Article 3

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

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

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

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

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

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

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

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

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

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

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

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

approach to the one that CTI have proposed.

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

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

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

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

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

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

The families submit as follows:

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

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

questioning, and (c) communicate with their clients.

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

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

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

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

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

SIR JOHN SAUNDERS: Absolutely. Thank you.

Yes.

Submissions by MS McGAHEY

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

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

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

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

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

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

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

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

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

However, it was recognised at the London inquests

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

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

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

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

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

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

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

permitted feeds taking handwritten notes. None at all.

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

MS McGAHEY: Yes, sir, thank you.

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

MS McGAHEY: Yes, sir.

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

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

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

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

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

SIR JOHN SAUNDERS: Okay, thank you.

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

paragraphs are paragraphs 69 and 70.

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

Mr Atkinson.

Submissions by MR ATKINSON

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

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

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

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

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

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

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

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

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

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

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

Mrs Justice Jefford.

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

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

SIR JOHN SAUNDERS: Mr Atkinson, I have obviously read it. There is a distinction to be made in that case in that the policemen who were going to be screened, as I understand it, were people who hadn't actually participated in what led to the death of the person about whom the inquest was being held rather than a corporate witness, as I understand it, that we have in this case. As you've said yourself, I think at the beginning of your written submissions, this is not a class action and each case has to be taken on its own facts.

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

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

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

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

A matter that has been addressed by Ms McGahey today:

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

Mr Weatherby.

Submissions by MR WEATHERBY

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

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

simply to a class claim, and by that I mean that it's really a claim that any MI5 witness should be given anonymity by virtue of their position as an MI5 officer, then you ought to reject it on that basis.

We know a little bit about Witness J. Gender. We know that he is a director general and therefore we know that he is a senior manager rather than an operational officer. Given that MI5 put the identity, as a matter of policy, of the actual head Director General in the public domain, we say that the proximity of Witness J to the Director General should be something which you should take account of in the close scrutiny that you ought to give to the anonymity claim.

As we understand it, his position is one of a number of, if I can put it this way, number twos to the Director General. If he were to step up when the Director General retires the question should be asked: would he be named once he is named Director General? And if the answer to that is yes, then it's difficult in our submission to see how any Article 2 or Article 3 claim could be properly maintained here. Therefore that's an issue that should be addressed. We make it clear in our submission that MI5 witnesses have no special status on anonymity by virtue of the fact that they are MI5 officers; they are subject to the same law

as police officers or indeed anybody else.

The point that Mr Atkinson made that Witness J has been chosen by MI5 is an important one here. It's recognised that it's asserted that he has no personal knowledge of the facts, that is he is what has been termed a corporate witness. In fact, he's a replacement for the original corporate witness, Witness X, who himself or herself was also subject to an anonymity claim.

We raise the question that if there is a choice involved here, which there is, with a corporate witness, then MI5 ought to be asked to nominate a corporate witness for whom no Article 2 issue arises or no anonymity issue arises, and Mr Atkinson has already referred to the Director General himself. Therefore we say that in considering an anonymity application in respect of Witness J, that issue should be borne in mind, that it's actually a choice, and where the real underlying consideration is a minimum interference with the normal process, MI5 ought to be asked to reconsider that position before anonymity is in fact considered.

With respect to screens, we simply adopt what Mr Atkinson has said.

With respect to the electronic devices submissions, our basic submission is that the restrictions that are

sought at 9 and 10 of the draft order, which prohibit the recording in the sense of an audio recording of the evidence and to prohibit broadcasting of any reference to it until you raise an embargo on it, we say they're unobjectionable but they're also sufficient, and therefore the measures that are suggested in terms of electronic devices are not necessary and should not be allowed.

We say it's a disappointing submission from HMG because this is a corporate witness. This is a witness who will be prepared, the advocates that know about the closed evidence will be prepared. The risk of anything being said that is closed is extremely small, it is likely to be rectified immediately, and if any kind of record is made either handwritten or electronically, a request can be made to delete it. The fact that it may be subject to an automatic recording to the Cloud is nothing to the point. It can be deleted then in any event.

In essence, this is such a tiny risk that, in our submission, it's not one which should interfere with the normal methodology.

Similarly, in respect to mobile phones and the ability to communicate with clients or other members of the team outside of the hearing room, which of course is

particularly important where the special arrangements have been made, this is a lesser point, in our submission. Personally, it's not my practice to communicate via my mobile device; I know it is for other people. It is certainly possible for us to use practical methods to get around that issue. But this really misses the point in our submission that an insufficient reason has been given to raise the substantive interference with what is the normal way that we conduct business.

Underlying this is a theme, in our submission, that the MI5 position is more one of security than of openness. I say that with the caveat that I fully support the submission made earlier by Mr Atkinson about the position of the families and how nobody in the room has a greater wish to safeguard national security than they do. But unless there is an approach of transparency and openness and a realistic approach taken to these matters, then we risk putting an overriding approach towards the security aspect rather than the openness.

Those are my submissions.

SIR JOHN SAUNDERS: Thank you very much.

Mr Seddon, we have been going for a very long time without giving you a break. Would you like to have a

break at the moment? I'm sorry, it was me not noticing the time.

(Pause)

Mr Cooper, would you mind waiting? Maybe we should have -- does that give everybody enough time? I will break off for half an hour. So people could be back at 2.55, I'd be grateful, thank you very much.

(2.28 pm)

(A short break)

(2.55 pm)

SIR JOHN SAUNDERS: Mr Cooper.

Submissions by MR COOPER

MR COOPER: Sir, as is I think apparent from all the applications made under this tranche, the essence is proportionality: are the requests being made proportionate to the problem or the risks that are faced? I have to submit at the top of this submission that it is, and it does seem to those we represent, an element of trust, and whatever my learned friend says, the perception, certainly for those we represent, is that they are not trusted, and certainly in terms of the constraints proposed to be put upon the lawyers, again I have to submit that there is a feeling here of lack of trust.

Whatever is said, the words are comforting, and

indeed well-received, but the actual essence of it seems a distinct lack of trust, not just to the families but also of their advocates, particularly when we have the scenario given that we may be on a bus, for instance, with Witness J and then, for some inadvertent reason, completely lose all link or association with our senses, common sense and experience, and suddenly declare, "Oh, are you the MI5 witness?" It certainly wouldn't be something any of the lawyers would do and certainly wouldn't be anything our clients would do.

It's that sort of submission, sir, we have to submit in the context that I will come on to in a minute, which does, in our submission, some disservice both towards both to how the families are perceived perhaps by my learned friend who makes this application and, more to the point, by my learned friend's clients, by the security services of how they perhaps perceive the families and indeed how they may perceive the lawyers, which does ill-service to the general tone and trend of this inquiry, which has been that of inclusion and that of a supportive attitude to the families.

At the start of my brief submissions, we would like to say we are disappointed in the tone of the submissions my learned friend makes, obviously on instructions, I totally accept that, and we say in

passing we are disappointed clearly with the instructions that she has been given.

May I deal first, if I can, briefly with screening because that's already been touched upon by those who represent other family members and I adopt, of course, their submissions.

The context I spoke of a moment ago, sir, is this: the families thoroughly understand and accept the need for closed session hearings with these witnesses on these topics and on issues of preventability, preventability being a very important matter, of course, for them. But they thoroughly accept, being responsible individuals, that certain issues just have to be behind closed doors or that certainly redactions have to take place for perfectly proper reasons.

But it's on the back of all that that it is difficult for those we represent to understand, and rightly difficult for them to understand, because we don't understand it, that we have these rather draconian submissions on the subject of screening.

Why can't, sir, we ask rhetorically, at the very least counsel representing the families see the witness? It goes back to our primary submission at the start of this address: trust. What is my learned friend suggesting in, on her instructions, depriving us, the

legal representatives, base 1, of seeing and appreciating the witness they may be asking questions of?

We're not going to in any way, and let me reassure her, if her clients think we might, suddenly commit an indiscretion on the local tram back to the Midland Hotel. That's just not going to happen. And if that is the only concern, it comes down to trust and we simply submit this: we can be trusted, base 1, as advocates to see this witness, to properly question this witness, in the context that we're not seeing much when it comes to security, for proper reasons. At the very least, we submit, our families should be able to say, "My advocate, a member of my legal team, at least, has seen this witness who they are questioning", given that we're seeing very little of anything of this corporate sector.

So sir, so far as the screening is concerned, we submit that MI5 have chosen this witness ...

(Pause)

Sir, forgive me, I'll recalibrate. As far as the screening is concerned, those are our submissions, that we should at the very least be entitled, as advocates of the families, to say we have seen this witness. MI5 have chosen the witness they wish to put in this position. It's not a matter for us putting them in

a difficult position or, for instance, in a criminal matter requiring the calling of a witness upon which MI5, for instance, have no control over the calling of that witness. They've chosen this witness, and in our submission, the consequences of that choice should indeed follow through.

(Pause)

I'll start again. As I have indicated, those that we represent feel it appropriate, and we support that approach, that this witness should be seen at least by the advocate. In fact, we take the submission further, that there is no reason whatsoever that the families too can be trusted as far as their sensibilities, sensitivities and common sense is concerned when seeing this witness.

But as a compromise, if the court feels proportionately the witness should be protected from some element of public or family gaze, then at the very least we see no reason whatsoever why the advocates should not see this witness and conduct their examination, if there is any, appropriately.

Can I move on now to electronic devices, if I may. We are concerned about the application, again, as far as that is concerned. We are particularly concerned, firstly, about the far-reaching nature of it. It's all

electronic devices. One of the problems, of course, as you know, sir, we have, because of the present health crisis, is that not only will we not be in the same room as our clients, or indeed the same room as our own legal teams, we could be some geographical distance away from them. So although we hear from my learned friend there may be short adjournments whereby we may be able to communicate, that communication will be far from straightforward.

But again, sir, in our submission, there is no reason why we should not be able to communicate, if we felt it appropriate, and with discretion with either our lay clients or our professional clients and colleagues during the course of the examination of this witness. Again it falls as a matter of trust.

The suggestion has been made by my learned friend about some form of inadvertent dissemination is, in our submission, highly unlikely, in fact virtually impossible, and the proportionate response to deprive us of all electronic communication, we submit, is completely out of kilter, in our respectful submission, for the risk or the evil faced.

Of course my learned friend accepts, and of course she does, that we're talking about inadvertent dissemination. But the chances, we submit, much

inadvertent dissemination are very minor indeed.

In terms of us being able to communicate with our professional clients and our lay clients in the context of this aspect of the evidence, we submit it is appropriate we have some form of electronic communication.

Sir, those are effectively our submissions on both points. It comes down to: we are told it is not a matter of trust, but so far as those we represent, it really comes over as that, particularly when one considers the screening, when one considers the reasons being given for screening, and indeed for the non-use of electronic devices. The fact of the matter is we are responsible, our clients are responsible, and there should be an element of trust here, particularly when it comes to the fact that, as far as this evidence is concerned, there's also a very severe restriction, perfectly properly placed, but a severe restriction upon our clients seeing witnesses, hearing what they say, and being present when they say it.

Preventability, as you'll understand, sir, as we conclude, is one of the most important aspects and certainly of interest and importance for our clients. So the least dilution of that, the better. There is dilution, there is understandable dilution of

participation, there is no need for any further.

Unless my learned friend comes up with something better than meeting someone on a bus on the way from court, those are our submissions.

SIR JOHN SAUNDERS: Thank you, Mr Cooper.

Mr Bunting.

Submissions by MR BUNTING

MR BUNTING: Sir, the media's submissions on this point address solely the electronic devices prohibition. It will be immediately apparent that the use of electronic devices, in particular laptops, is part and parcel of responsible journalism. Journalists take notes on them, them, they communicate with their editorial colleagues and their legal advisers to ensure that any reporting that they carry out is responsible, properly cross-referred, properly informed, properly accurate --

SIR JOHN SAUNDERS: Mr Bunting, I'm sorry to interrupt you for a moment. It does occur to me that at least an investigation should be made into the -- I'm not sure all laptops do automatically record to the cloud, certainly if they are not connected to the internet in any way. It may be that something like that could be done that could be investigated.

MR BUNTING: Sir, I lost you briefly there.

SIR JOHN SAUNDERS: I'm thinking aloud really as to what the

options are.
MR BUNTING: I think I got the point, which is that it's not clear that every laptop will not back up automatically to the Cloud particularly when not connected to the internet. I think that must be correct. Cloud connectivity depends on you being connected to the internet in the first place and if you are not then things won't be backed up.
But can I just echo the submissions that have already been made on this point and make, I think, three further points.
The first is that the precedent for this which is set out is in the London Bridge and Westminster Bridge inquests, in which this point wasn't realistically argued in any focused way, such as the way things are happening today. The arrangements were announced at the first of those inquests, a lay member of the press sought to oppose them, and the learned Chief Coroner, who was in charge of those inquests, indicated that he himself had left his iPad outside of the hearing room for that occasion, and he expected everyone else to do the same. That was realistically the extent of the analysis of these issues in those proceedings and they don't really stand with any real precedent value as a result.

Equally, when one looks back at other sensitive inquests, right back to 7/7, but also more recently in Al-Suwaidi, in Litvinenko, in and other cases, and this type of approach isn't an approach which is commonplace and there's a creep in the MI5 cases of this type of approach now being advocated.
The second point is that it seems to be accepted, sir, and this may be the point that you were getting at, that laptops can be used for some things by some people, but not for others. That from the media perspective is problematic. Of course, lawyers will want to have access to their computers for, for example, cross-referring documents that are available on Magnum and elsewhere. So too will journalists want access to their laptops for very good reason and so too can journalists be trusted for the same reason that lawyers can be trusted.
This comes back to the submission that everyone is making on trust, which I have made by reference to authority that you, sir, should approach reporting restrictions involving the media on the basis that they will act lawfully, they will act responsibly, they will not breach restrictions.
The final point in respect of the creep and the level of risk is that it's not -- every time this

submission is advanced, first of all in writing and now orally, it seems to get ever so slightly worse from a journalistic perspective and now there's a spectre of security service agents approaching journalists and asking to remove bits of their journalistic notebooks in circumstances in which those journalistic notebooks, for example, may contain confidential journalistic material.
The risk here is a manageable risk. This is a corporate witness who's well experienced in managing the anonymity he or she has asked for. It's simply unrealistic to suggest that this stringent prohibition on all electronic devices is needed. Can I assist you any further on those points?
SIR JOHN SAUNDERS: Well, you can't. Just again on a practical issue. The reason for asking for written notes is that anything which is referred inadvertently, which may risk identification of the MI5 officer, can be removed with the consent of the journalist, no doubt. Would there be any difficulty about doing that or deleting things on a laptop, and would the journalist consent to that, or is that going to be a problem if I made that a condition, say?
MR BUNTING: The further you go down this line, things become problematic, if I can put it that simply, because journalistic notes are gathered together in one place,

they will relate to this case and they may relate to other cases, they may relate to confidential sources they may not.
SIR JOHN SAUNDERS: Quite.
MR BUNTING: Providing access to the security services to journalistic notes is inherently problematic both from a common law perspective and an Article 10 perspective.
But more realistically, sir, what do we gain from that type of condition in circumstances in which a journalist could equally remember what's said, go outside the hearing room and write it down somewhere else? That's when it comes back to trust because removing something physically when you may very well remember it and write it down elsewhere is a pretty pointless task. I think that really addresses the reality of the risk that's being posited here.
SIR JOHN SAUNDERS: Okay, thank you.
Before I return to Mr Greaney, does anyone else have submissions they would like to make?
Thank you. Mr Greaney.
Reply by MR GREANEY
MR GREANEY: Sir, thank you. We have three short submissions to make.
First of all, as we've submitted already, the Article 2 and 3 thresholds are met in relation to

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

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

Sir, that is our first submission.

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

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

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

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

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

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

13 August.

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

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

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

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

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

Application re PC RICHARDSON and WITNESS F1

Submissions by MR GREANEY

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

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

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

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

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

The inquiry will involve a high degree of openness

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

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

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

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

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

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

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

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

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

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

SIR JOHN SAUNDERS: Mr Bunting.

Submissions by MR BUNTING

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

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

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

SIR JOHN SAUNDERS: Thank you.

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

Mr Horwell.

Submissions by MR HORWELL

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

SIR JOHN SAUNDERS: It looks as if he does.

MR HORWELL: Thank you.

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

These two applications amount in reality to one application for anonymity. That cautious approach is obviously the right one.

Sir, in view of the fact that PC Edward Richardson, his application is of a very limited nature and, we would submit, plainly proportionate. I hope it is a better use of your time today if I address you on F1 and then some very basic legal principles, and if there is anything that I can then assist you with in relation to Edward Richardson, I will of course do so. But plainly, from what Mr Greaney has helpfully said, more is wanted in respect of F1 than it is in respect of Edward Richardson.

The reason why Mr Bunting has taken the view that he has in his written submission is that on the very limited evidence that he has, he was concerned that F1 played a central or at least an important role in the events of that night. So can I deal first with that? Because although Mr Greaney has again helpfully said that F1's role was not central, it may be desirable to expand upon that a little.

F1 was the tactical adviser to Superintendent Thompson in the Silver Control Room, and there are two very significant features to the evidence which F1 will give. The first is that he did not arrive

inside Silver Control under about 23.41 that evening. That is the time of the first note that he made once he had arrived in Silver Control. Sir, it is obvious from that that that is some 17 minutes after the detonation. By that time, or certainly by about that time, all of the survivors had been evacuated from the City Room.

Secondly, F1 makes very clear in his witness -- sir, this is from paragraph 25 -- that he did not make any command decisions. It is clear not only from those two features but from his witness statement in general that the role that he played that night cannot in any sense be described as central.

Let me then turn to the application itself. Full anonymity and screening is requested on F1's behalf, though importantly not from the core participants. At the centre of this application is the fact that F1 is a particular type of firearms officer. I am not going to state the role that he has in case this application is refused, but it is clear from the application itself and the evidence that is attached to it that the role that he has at times involves covert work. Police officers of his experience and training are, without question, a precious and limited resource, and in my submission, his operational effectiveness should only be compromised if it is necessary to do so.

Here, in our submission, it is not necessary to compromise his operational effectiveness by refusing this application. The two can stand together in my submission.

In addition to his operational effectiveness, there are also strong personal reasons behind this application. If identified, he believes, on sound grounds, that he and his family would be at risk of reprisal. We submit, sir, for all of the reasons that are set out in the application and the evidence that accompanies it, this request is justified and it is proportionate.

In his analysis of these applications, Mr Greaney has correctly identified their key elements: a public interest ground in respect of Police Constable Richardson, though I do not abandon Article 8, and also Article 8 in respect of F1. The legal principles are very clear, they are not in dispute and they can perhaps be summarised as containing four principal issues.

The first is that if these applications are granted, there will be no lack of public confidence in this inquiry, and indeed I would submit quite the contrary. The public interest is in favour of these applications being allowed.

Secondly, there will be no lack of confidence by the

bereaved families; they support these applications.

Thirdly, there will be minimal, if any, impact on the ability of the media to report their evidence.

Finally, not only will the inquiry not be impeded if these applications are allowed, we would submit the inquiry will benefit from these applications. Both witnesses will be able to give their best evidence if these restrictions are permitted so that they can at least feel at ease that their concerns have been tempered by the applications that we seek.

Sir, it's set out in detail in writing. There's no point in my repeating any of those submissions here unless there's anything that I can assist you on.

SIR JOHN SAUNDERS: There isn't, Mr Horwell. I just wonder whether I should just seek to clarify that the families don't object to the applications. I think it may be an overstatement to say they support the applications, but they can speak for themselves. These things can be misinterpreted as and when reported.

MR HORWELL: If I have misinterpreted their position then I apologise but I thought that I was doing justice --

SIR JOHN SAUNDERS: Absolutely. Would one of you like to speak for yourselves?

MR COOPER: Can I simply confirm, I think I probably speak for all of us, but famous last words, that's exactly

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

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

in particular because we do not invite any ruling from you at this stage. But for the sake of transparency and fairness we suggest that you should invite any submissions that any CP, and indeed Mr Bunting, wish to make about our proposal for the use and handling of OS content.
SIR JOHN SAUNDERS: Mr Bunting?
MR BUNTING: I think I've got somewhat confused as to where we've got to.
SIR JOHN SAUNDERS: We've gone to handling of the OS material.
Submissions by MR BUNTING
MR BUNTING: The media's approach is really dependent on the primary submission which I made this morning, which us that we haven't yet had a fair input into the designation of OS material. Our primary goal is to limit the OS material as best we can, which will then bring about a limiting of the need for any restricted hearings and everything else. So my submissions here are really a repetition of the submissions which I've already made.
SIR JOHN SAUNDERS: Okay, thank you.
Any other CP have any submissions to make on the use of handling of OS material? Right. Thank you.

Application re LIVE STREAM OF EVIDENCE
Submissions by MR GREANEY
MR GREANEY: Sir, we'll turn to what is the final issue for the day then. Issue 3, the live stream of the inquiry's oral evidence hearings.
CTI's position is as follows. There should be a delay to the live stream of the inquiry's proceedings given the sensitive nature of the evidence that may be considered by your inquiry. That will allow any concerns to be identified and addressed without immediate publication through the live stream. As we understand it, no one disagrees, whether CP or media.
Having considered the submissions that have been received from a number of CPs on this issue, CTI now consider that a 10-minute delay is appropriate where there is a risk that OS content may be referred to, given the unusual circumstances in which the inquiry's hearings are due to take place and the additional practical difficulties they pose in ensuring that the purpose of the live stream delay is upheld.
But we add that the 10-minute delay should be kept under review. If it becomes clear once the oral evidence hearings have started that 10 minutes is more than sufficient to address any concerns, the point can be reconsidered and consideration should also be given

to reducing the time period if revised working conditions were to make that feasible.

Furthermore, CTI have considered whether a 10-minute delay to the live stream is required for all 14 chapters of evidence or whether a shorter delay would be feasible for some chapters where the risk of OS content being referred to is minimal or even non-existent. While we recognise that there may be practical advantages in adopting a consistent approach across all chapters, including the avoidance of confusion from applying a variable delay and the risks that may give rise to, CTI provisionally considers that the following approach would be appropriate were you persuaded that a variable delay should be adopted.

Chapter 1, the reading of the names of the deceased and the minute's silence. No delay is necessary.

Chapter 2, your introductory remarks. Again, sir, no delay.

Equally, no delay for chapter 3, CTI's opening statement, chapter 4, the commemorative hearings, and chapter 5, the CPs' opening statements.

So far as chapter 6 is concerned, we suggest that the evidence doesn't justify a 10-minute delay but instead a 5-minute delay. That's overview evidence.

Chapter 7., arena complex and security arrangements.

There is a risk, so 10-minute delay.

A 10-minute delay also for chapter 8, planning and preparation for the attack.

Chapter 9, the events of 22 May do not justify delay as long as 10 or even 5 minutes, but do justify a delay of 3 minutes.

Chapter 10, emergency response, 10 minutes.

Chapter 11, detonation and its effect, 3 minutes.

Chapter 12, the experience of each deceased victim, 3 minutes.

Chapter 13, background and radicalisation, a 10-minute delay.

Chapter 14, preventability, a 10-minute delay for the open hearing.

Recommendations, chapter 15, provisionally we suggest a 10-minute delay.

Chapters 16 and 17, closing statements of CPs and CTI, provisionally a 3-minute delay.

Achieving this, sir, that's to say a variable delay, we're told presents no particular technical difficulties.

Could I add that Ms McGahey has had to leave the hearing for entirely sound reasons, but I've canvassed her position in relation to this particular issue. HMG is content with either a blanket 10-minute delay or

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

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

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

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

was adopted at some of the earlier preliminary hearings.

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

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

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

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

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

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

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

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

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

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

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

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

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

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

SIR JOHN SAUNDERS: Mr Bunting.

Submissions by MR BUNTING

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

Realistically, this comes to a risk, which is said

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

avoidance of any doubt, the media don't see a problem with varying delays if that is made clear. This ultimate submission is to keep the delay to the minimum that's possible.

SIR JOHN SAUNDERS: Right. Thank you, Mr Bunting.

Have you finished?

MR BUNTING: Yes, sir.

SIR JOHN SAUNDERS: Thank you.

Have any of the family advocates anything to say on this issue?

Submissions by MR ATKINSON

MR ATKINSON: Sir, I think our only concern, going back to a point I made earlier in relation to live feeds, is if the situation arises that we have family members who are relying on delayed live feeds to view the proceeds, we may on occasion need to ask for time before a witness is completed to check if anything has arisen that we need to take instructions on from any such person. But that isn't a reason not to adopt what Mr Greaney has suggested, it's just a nuance, potentially, in certain situations.

SIR JOHN SAUNDERS: Thank you, Mr Atkinson.

Anyone else?

Submissions by MR WEATHERBY

MR WEATHERBY: I wasn't going to say anything, but following

on from that, and very briefly. We have of course made submissions on behalf of the families that they will either be in the hearing room, on a realtime live link near the hearing room, or, if they can make a sufficient case out, they should have a realtime live link to their home or some other place. As I understand it, that's still being looked into.

If it proves that the inquiry doesn't do that, then it would concern me, a 10-minute delay, because there's quite a significant difference, obviously, between 3 minutes and 10 minutes. Otherwise, there's no principle involved here, it's a matter of practicalities, but it does seem to me that the inquiry team took a proportionate view and no doubt one from looking around at previous processes of 3 minutes, and it's now suddenly jumped to more than three times that. I note the points that are made at page 243 of the bundle by HMG, but they are rather vague and looking at the other inquiries where there have been delays, there is, to pinch a word used earlier by Mr Bunting, some creep going on here and the delay that's being asked for is getting longer and that does create problems.

SIR JOHN SAUNDERS: Thank you.

MR COOPER: I will simply say as long as it doesn't affect the families, then I have no submissions.

SIR JOHN SAUNDERS: Thank you, Mr Cooper.

Has anyone else got any submissions? Mr O'Connor and then Mr Horwell.

Submissions by MR O'CONNOR

MR O'CONNOR: Sir, I'm grateful. As you'll have seen from our written submissions, SMG did endorse and support the proposal for a 10-minute delay. I wonder if I may simply expand slightly on the reasons why we support that delay, which are, I hasten to add, extremely practical in their nature.

Sir, as you've heard, the purpose of a delay is simply to allow proceedings to be stopped in the event of some form of inadvertent disclosure of sensitive material to allow you to hear argument as to what should happen as a result of that inadvertent disclosure, possibly including a restriction order being made and the evidence which has been given inadvertently not being put on the feed which goes out beyond the hearing room. That is the purpose of it and, if I may say so, it is certainly something which experience in other inquiries and indeed inquests has shown does happen from time to time. With the best will in the world, people say things that they don't intend to.

SIR JOHN SAUNDERS: I don't know whether it's just me, but something rather disturbing has happened to your sound

and I'm afraid you got very distorted. Try again. Something's happened to your ... Can I turn to Mr Horwell now and then come back to you and see whether you've improved with a little gap in time?

MR O'CONNOR: Can you hear me now, sir?

SIR JOHN SAUNDERS: That's better.

MR O'CONNOR: Experience has shown this does happen, the need for some form of delay is common ground before you. The question is how long the delay should be. Sir, the significance of the length of the delay doesn't in fact lie in the sensitivity of the material that might be disclosed, nor indeed in the likelihood that an inadvertent disclosure might be made, but it is in fact all to do with the ease with which the parties involved -- and obviously we are really focusing here on the parties who may wish you to make a restriction order in those circumstances, the ease with which those parties can take instructions if that disclosure does take place.

If there is a very short delay, what that means is that those in the courtroom who have heard the inadvertent disclosure have a very short period of time to react and, understandably, therefore, simply have to raise an objection, invite you to stop the proceedings, and there is then a debate about what will happen.

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

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

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

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

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

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

Mr Horwell.

Submissions by MR HORWELL

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

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

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

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

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

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

SIR JOHN SAUNDERS: Thank you, Mr Horwell.

Mr Greaney -- sorry, Mr Cooper.

Submissions by MR COOPER

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

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

themselves time to take relatively over 10 minutes' detailed instructions upon whether certain evidence that's been given can be objected to. In terms of a perception, in our submission, as far as our families are concerned, that's not a perception we're particularly comfortable with. There is no need for it, there is no need for that delay for instructions to be taken, which may result then in the expunging of evidence which has already been given.

SIR JOHN SAUNDERS: Mr Cooper, I don't think there's any question of expunging evidence, it's a question whether it can be reported without breaking one of the orders which has already been made. I don't think those submissions were made with a view to trying to suppress the evidence.

MR COOPER: In that case, I just heard those submissions as they -- perhaps I should have had a 10-minute delay on the live link.

SIR JOHN SAUNDERS: It may be my misunderstanding.

MR COOPER: It may well be that I've misunderstood my learned friends' submissions. In that case perhaps my concerns are not so acute and maybe we can be reassured on that because that was my concern, but I'll stop there for reassurance.

SIR JOHN SAUNDERS: Mr O'Connor, are you trying to suppress

the evidence?

MR O'CONNOR: No, sir.

SIR JOHN SAUNDERS: Mr Horwell?

MR HORWELL: I'm certainly not, sir, although I would like to suppress the suggestion that if I am silent on an issue I agree with it. That is not my approach and it should not be that of Mr Cooper either. But nothing to add, sir.

SIR JOHN SAUNDERS: Okay, thank you.

Mr Greaney.

Reply by MR GREANEY

MR GREANEY: Sir, we have just four very short submissions to make.

First of all, you posed of Mr Bunting the perfectly understandable question of whether it was practical or practicable to expect members of the press who are in the hearing room to make their own decisions about whether sufficient time had passed for there to be reporting. As we understood his reply, it was that it was practical because the core participants could be expected to identify a problem instantaneously or at any rate nearly instantaneously.

But as others have submitted, that is not necessarily so. At page 243 of the hearing bundle, paragraphs 24 and following, HMG have set out cogent

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

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

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

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

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

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

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

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

SIR JOHN SAUNDERS: Mr Bunting is going to have the last word, I think, isn't he, on this issue?
MR GREANEY: Fine, sir, but if I forget, would you please remind me that there is one correction that I need to make on a different topic before we finish for the day?
SIR JOHN SAUNDERS: Also -- and this is my fault as well -- we haven't yet said to the press what they can report of today if there's anything that shouldn't be reported. I was relying on Mr Bunting as the representative of the press to tell me about that at a convenient time, but we can all forget everything.
Right, Mr Bunting.

Reply by MR BUNTING

MR BUNTING: Sir, in respect of the microphone point, very quickly, the reference is page 112 of the hearing bundle 1. It's sub-paragraph 4(g), which says:
"Enquiries are being made to set up an annex for the media at the Midland Hotel."
And it goes on to say:
"A microphone will be set up so that the media can raise queries directly if they wish to do so, although it is anticipated that this facility would rarely be required."
That was an addition which I understood my learned friends for the inquiry to place particular weight on

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

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

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

members of the press are experienced and expert and will realise when time has passed that no issues have been raised. It doesn't depend on someone raising something instantaneously or non-instantaneously, it depends on them being sensible and reflecting what they know people can report elsewhere.

So just to finish off on that, I am in the hearing room as a member of the press. My colleague is in the annex. My colleague tweets "Sensational development in the inquiry, X evidence has just been given", and I have to sit on my hands, seeing that tweet, because I'm not permitted to report it until further on that afternoon or later on, and that inconsistency is just not explicable.

Can I assist you any further on this point, sir?

SIR JOHN SAUNDERS: No, thank you very much, Mr Bunting. I'm grateful.

Mr Greaney, the one further matter.

MR GREANEY: I'll deal with the correction, first of all, and then I'll address the issue of reporting today's hearing. You'll recall that a short time ago I purported to correct something that Mr Horwell had said. In fact, I'm now going to correct myself because I've been provided with some incorrect or at least incomplete information. The position on examination

appears to be that the last survivor was evacuated from the City Room at 23.43, so Mr Horwell's submission about F1 is well-founded in that sense. But the last survivor was evacuated from the station at about 2.30 am on 23 May.

Sir, the position in relation to reporting is that your legal team has not identified any matter in respect of which a reporting restriction ought to be imposed, but we would invite any CP who has a different view to express that view at this stage, please.

SIR JOHN SAUNDERS: No? Right, thank you very much.

Apparently, there is no need for any reporting restrictions and everything that's been said today may now be reported in the press.

Thank you very much indeed to everyone for their patience. When you have long hearings by Zoom, they do, I think, become rather more tiring than actually being in a courtroom, so thank you very much for all of your help and for sticking with it. Thank you. That's the end of the hearing.

(4.30 pm)

(The hearing adjourned)

I N D E X