

OPUS2

Manchester Arena Inquiry

Day 157

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1 Friday, 1 October 2021
 2 (9.30 am)
 3 SIR JOHN SAUNDERS: Mr Greaney.
 4 MR GREANEY: Sir, good morning. I think it would be fair to
 5 say that I do not seem to have the draw that
 6 Ms Cartwright has, bearing in mind that in the courtroom
 7 is just you, me and Mr Suter, but nonetheless there are
 8 important issues to address.
 9 Sir, on 20 September, so not last Monday but the
 10 Monday before, you heard submissions from all core
 11 participants who wished to make submissions on the
 12 nature of the restriction order process and on whether
 13 special advocates should be appointed to represent the
 14 interests of the bereaved families.
 15 SIR JOHN SAUNDERS: Mr Greaney, I did. At some stage,
 16 before we start into the submissions we are hearing
 17 today, I would like to say something about the context
 18 of them.
 19 MR GREANEY: I did know that. I'm sorry I jumped the gun.
 20 It's sensible, subject to your view, that you make those
 21 remarks at this stage.
 22 SIR JOHN SAUNDERS: If that's all right, thank you.
 23 Before we begin today's hearing, I wish to make some
 24 comments to explain, in what I hope is plain, non-legal
 25 language, the reason why it is necessary in certain

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1 cases to have closed hearings from which the public and
 2 many of those involved in an inquiry are excluded.
 3 I stress that this is not a judgment, but I hope it
 4 will provide context to today's submissions. It follows
 5 that if any core participant or the press wish to
 6 disagree on a legal basis with what I am saying, they
 7 are free to do so.
 8 Let me emphasise from the outset that no judge wants
 9 to exclude the public from any hearing. Open justice is
 10 a central pillar of our system. It is important that
 11 the public is aware of what goes on in our courts and
 12 our inquiries. It is important that our press are
 13 permitted to see and report on what goes on in our
 14 courts. They are effectively the eyes and ears of the
 15 public and they provide a useful check on our judicial
 16 system.
 17 The participation of parties in an inquiry as core
 18 participants is also a vital part of the process. The
 19 submissions they make, the questions they ask, are
 20 important. I do not anticipate that any of this is
 21 disputed or remotely controversial.
 22 So why then have a closed hearing at all? They are
 23 used infrequently, but they are sometimes required as
 24 a matter of law. Investigations may use material which
 25 has to remain secret. Law enforcement agencies have

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1 methods of obtaining evidence which are not known and
 2 publicly disclosing material obtained in those ways
 3 might result in the method by which it was obtained
 4 becoming generally known, which would reduce our ability
 5 to solve crimes.
 6 In some cases, it is not lawful to disclose evidence
 7 obtained in a particular way. This issue often arises
 8 in criminal trials, but there the solution is normally
 9 straightforward: as a defendant cannot know what the
 10 material is, it would not be fair to rely on it and
 11 the evidence is excluded from the trial. In that
 12 situation, a judge has to balance the right to a fair
 13 trial from disclosure and the substantial harm or real
 14 damage to the public interest if the sensitive material
 15 was made known.
 16 This may reduce the ability of the prosecution to
 17 achieve a conviction, but keeping secure the methods
 18 used to obtain evidence so they can continue to be used
 19 may be more important than proving an individual case
 20 against an individual defendant.
 21 If the secret information favours the defendant then
 22 steps are taken to ensure that there is a fair trial
 23 and, if this cannot happen, then the prosecution may not
 24 take place.
 25 Where inquests are concerned, the situation is more

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1 complicated. No one is on trial. It is an
 2 investigation into the causes of death. It is a search
 3 for the truth, which must be detailed and thorough. An
 4 inquest cannot be stopped like a criminal trial if there
 5 is sensitive evidence which is relevant to the
 6 investigation. There is no prosecution or defence.
 7 There is not a case to be put or to stop if a fair trial
 8 cannot be achieved. An alternative way must be found to
 9 ensure the investigation can continue, which is what
 10 leads us to closed hearings.
 11 In an inquest, if an application is granted to stop
 12 disclosure of relevant sensitive material, and that
 13 evidence is important to answering questions within the
 14 scope of the inquest, it may be impossible to continue
 15 with the inquest.
 16 As I explained in my letter to the Home Secretary
 17 in September 2019, seeking a public inquiry, I said:
 18 "It is a matter of vital public importance that an
 19 Article 2 compliant investigation that is full, fair and
 20 fearless is conducted into the terrible events that
 21 resulted in the deaths of the 22 people killed at the
 22 arena. I have reached the view that in light of my
 23 ruling on the PII applications that such an
 24 investigation cannot now be achieved through the
 25 inquests and must be done by establishing a public

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1 inquiry."

2 I would encourage anyone who hasn't done so to

3 consider the full terms of the letter to understand how

4 we have arrived at this position. Closed evidence

5 cannot be given as a matter of law as part of an

6 inquest. Interested persons have a right to be present

7 and cannot be excluded from the hearings.

8 An inquest therefore simply could not consider

9 relevant sensitive evidence that is subject to public

10 interest immunity. The consequence is either to have

11 closed hearings by converting to an inquiry or to

12 conduct an inquest that is not Article 2 compliant.

13 An investigation which excludes relevant material

14 would not be full and would certainly not be fearless.

15 It would be less forensic and would not be the sort of

16 search for the truth that is required by the terrible

17 events which occurred at the arena. The only way this

18 can be done is in a statutory public inquiry.

19 In an inquiry, it is permissible to conduct closed

20 hearings where evidence that cannot otherwise be

21 disclosed can be examined by me, the chairman. This

22 allows the evidence to be scrutinised by the chairman in

23 a closed session so that national security is not

24 undermined but ensures that relevant witnesses are

25 questioned in the usual manner by counsel for the

1 inquiry and there is proper searching examination of the

2 relevant sensitive evidence.

3 The making of a restriction order contrasts with

4 upholding a claim to public interest immunity in an

5 inquest, as has been pointed out by Mr Weatherby. The

6 effect of upholding a claim to public interest immunity

7 in an inquest is that evidence is excluded and is not

8 considered by the coroner, whereas the effect of

9 a restriction order is that it provides a gateway for

10 very sensitive evidence to be heard by the inquiry.

11 Careful consideration must and will be given to

12 what, if any, of that evidence can be gisted or made

13 public. As I have said, openness is a central pillar of

14 any judicial system and keeping evidence closed must

15 only occur when it is absolutely necessary.

16 Consideration of the evidence in closed allows the

17 chairman of an inquiry to be informed of all the

18 available relevant evidence, either in open or closed.

19 Nothing is excluded and the chairman may make factual

20 findings which they would otherwise be prohibited from

21 doing in an inquest.

22 It was accepted by everyone, including the Home

23 Secretary, that it would not be possible to have an

24 Article 2 compliant inquest in this case without

25 consideration of the public interest immunity evidence.

1 Consequently, I invited the Home Secretary, and she

2 agreed, to establish an inquiry so that I could hear and

3 take into account the evidence covered by public

4 interest immunity, which would otherwise have to have

5 been excluded from consideration.

6 I am about to consider the making of restriction

7 orders, which will determine what evidence needs to be

8 heard in a closed hearing for reasons of national

9 security. I will reconsider the question of a closed

10 hearing as part of that process. In reality, because of

11 the nature of some of the material which I already know

12 about, it is likely that at least some of the material

13 will have to be heard in a closed session.

14 So why closed hearings at all? The courts have

15 decided, and Parliament has agreed with this, that there

16 will be occasions when revealing evidence in public

17 which could affect national security would be contrary

18 to the public interest in that it will risk loss of

19 further life, either directly or indirectly, by putting

20 obstacles in the way of those whose job is to protect

21 life.

22 Where that applies, the public interest in

23 maintaining national security and preserving life may

24 outweigh the interests of public justice, depending on

25 the individual facts. If that is the case, then the

1 evidence will not be made public.

2 In the introduction to its report into the 2017

3 terrorist attacks, including the Manchester attack, the

4 Intelligence and Security Committee of the Houses of

5 Parliament said as follows:

6 "Prior to the committee publishing its report,

7 sensitive material that would damage national security

8 is blanked out. The security and intelligence agencies

9 may request the redaction of material in a report if its

10 publication would damage their work, for example by

11 revealing their targets, methods, sources or operational

12 capabilities. The committee considers these requests

13 for redaction carefully. The agencies have to

14 demonstrate clearly how publication of the material in

15 question will be damaging before the committee agrees to

16 redact it. The committee aims to ensure that only the

17 minimum of text is redacted from a report."

18 Anyone looking at the report will be able to see the

19 extent of those redactions. At page 6, the committee

20 further said:

21 "This committee has always sought to place in the

22 public domain as much information as possible about the

23 ways in which the intelligence community work. However,

24 in some instances to do so would either be illegal or

25 would severely damage the agencies' ability to protect

1 the United Kingdom.
 2 "In our report on the intelligence relating to the
 3 murder of Fusilier Lee Rigby, we gave the following
 4 example:
 5 "'Any material that relates to a member of the
 6 public who is providing the agencies with intelligence
 7 cannot be published since to do so may endanger that
 8 individual's life . It would also make it less likely
 9 that other members of the public will come forward to
 10 act as agents if they do not trust that the intelligence
 11 they provide will be treated in confidence or if they
 12 fear that they or their families will end up in danger.
 13 Other examples include sensitive intelligence collection
 14 capabilities or intelligence gained from intercepted
 15 communications. There are other categories of
 16 information that the agencies might seek to protect on
 17 the basis that disclosure would damage their
 18 capabilities .'
 19 "The committee has considered these on
 20 a case-by-case basis, taking into account the public
 21 interest in revealing the information and the public
 22 interest in protecting the country before reaching
 23 a decision as to where the balance lies .
 24 "For example, material that relates to how the
 25 agencies conduct operations could reveal their

1 techniques to those who seek to harm the United Kingdom.
 2 They could then change their behaviour to avoid
 3 detection. Secondly, intelligence that has been
 4 provided by an overseas agency is owned by that agency
 5 and it is not the United Kingdom's to disclose without
 6 their permission. Were we to do so, that would be
 7 a clear breach of the terms of the contract under which
 8 it was provided and the United Kingdom would not be
 9 a trusted partner in future. Given the global nature of
 10 the threat we face and the importance of every piece of
 11 intelligence , that could place the United Kingdom in
 12 even greater danger. In each individual case, it has
 13 been a difficult decision to reach.
 14 "The committee is conscious that it is the only body
 15 that can investigate intelligence matters on behalf of
 16 Parliament and the public. The responsibility is
 17 considerable and we have therefore sought in every
 18 instance to ensure that we are able to disclose as many
 19 of the facts as possible.
 20 "Whilst we have not been able to publish every piece
 21 of information we have considered during our inquiry,
 22 there are two points worth noting: (1) No material has
 23 been redacted to avoid embarrassment to individuals or
 24 organisations and (2) none of the material redacted
 25 affects the substance of this report in any way."

1 I thought it was of relevance to indicate and repeat
 2 how the committee approached their task.
 3 I make it clear that whilst some of the principles
 4 that I apply will be the same as those applied by the
 5 committee, their decision will not affect my decision on
 6 what to consider in closed and what to consider in open,
 7 as I have not heard the arguments that they heard.
 8 Further, as has been made clear in argument, time
 9 has elapsed since their report was published and
 10 therefore the committee itself might have reached
 11 different conclusions in relation to some of the
 12 material.
 13 I will consider all the relevant closed material
 14 wherever held. Everything will be examined with the
 15 same degree of care and scrutiny that has been applied
 16 to the open hearings. Every effort will be made to
 17 ensure that answers are obtained, organisations are held
 18 to account where failings are identified and
 19 recommendations are made to prevent repetition.
 20 A closed hearing will enable me to achieve all those
 21 goals, but I readily acknowledge it is a far from
 22 perfect solution for others, particularly the families .
 23 While I am not bound by the decisions of the
 24 Intelligence and Security Committee, I am bound to act
 25 on the principles set out by the courts in the many

1 cases which have considered public interest immunity and
 2 the approach to be taken by judges when considering
 3 public interest immunity material.
 4 All the lawyers in this case know what those
 5 principles are and know that I have to apply them,
 6 although there will be arguments about how they should
 7 be applied in this particular case.
 8 Comparisons with other inquests and inquiries are
 9 not of great assistance to me as every case is
 10 fact-specific and in none of the terrorist -related
 11 inquests are all the circumstances publicly known.
 12 There are some who suspect that the security service
 13 use the cloak of national security to cover up their
 14 mistakes. I am and will be alert to that possibility .
 15 It may also be that because the security service depend
 16 on secrecy in order to carry out their job properly,
 17 that they place a higher emphasis on keeping material
 18 secret than is, on proper analysis, justified .
 19 All of these matters I will have had very much in
 20 mind and will continue to have in mind when considering
 21 the evidence. I shall then consider, on the evidence,
 22 whether the security service and Counter-terrorism
 23 Police could and should have prevented this attack and
 24 the ways in which they could have done so.
 25 If I find any of those things to be made out, then

1 I shall make that clear in my report.
 2 We are alone in the hearing room, but I'm sure
 3 we are being followed. We have had 2 weeks of intensely
 4 emotional and difficult evidence to hear and I am not
 5 the least bit surprised that only you and I and Mr Suter
 6 are here in the hearing room today.

7 Sorry that's taken a little time, but hopefully it
 8 does explain to some extent the context in which
 9 I approach these matters.

10 Application re restriction orders
 11 Submissions by MR GREANEY

12 MR GREANEY: I hope so too, sir.

13 As you indicated, today is the open administrative
 14 hearing to consider a series of applications for
 15 restriction orders. Those applications are listed at
 16 paragraph 1 of our written submissions for this hearing.
 17 Those submissions have been circulated so it is not
 18 necessary for me to set out orally what those
 19 applications are.

20 In addition to our submissions for this hearing
 21 you have received written submissions and/or written
 22 applications from a number of core participants. We'll
 23 identify those in the order in which we'll invite them
 24 to make any oral submissions they wish to make at this
 25 stage.

1 The submissions or applications you have received
 2 have come from the following: HMG, GMP, NCTPHQ, the
 3 families represented by Slater & Gordon, Broudie Jackson
 4 Canter and Huggells Solicitors, the families represented
 5 by Hogan Lovells, and the media.

6 Sir, the structure of our brief oral submissions
 7 this morning will be as follows. First, we'll address,
 8 or at least seek to do so, some general points made by
 9 the families, particularly in their latest submissions
 10 dated 27 September.

11 Second, we will set out in summary form the inquiry
 12 legal's team position in relation to each of the
 13 outstanding applications for a restriction order.

14 Thirdly and finally, we'll outline a proposed
 15 protocol for the review and gisting or summarising into
 16 open, where possible, of closed evidence once it is
 17 heard in the closed hearing.

18 First then, sir, the general points that have been
 19 made and understandably, may we say, made on behalf of
 20 the families.

21 It has been suggested in the most recent BJC,
 22 Huggells and Slater & Gordon submissions, building on
 23 similar points made by Mr Weatherby on 20 September,
 24 that there are a variety of measures short of closed
 25 hearings which can be taken in relation to evidence in

1 which public interest restrictions apply.

2 As a matter of principle, the inquiry legal team
 3 agrees with this proposition where public interest
 4 concerns about disclosure have been raised, which do not
 5 reach the level of a full PII claim. We wish to
 6 reassure the families that this has been borne in mind
 7 at all times, as we have engaged with HMG, GMP and CTP
 8 North-west about the material over which restriction
 9 orders are sought.

10 However, for the reasons set out in our submissions
 11 of 9 September, at paragraphs 25 to 27, where PII has
 12 been claimed and upheld, a restriction order cannot, we
 13 suggest, reasonably be made in relation to that material
 14 which adopts lesser restrictions than a fully closed
 15 hearing.

16 Sir, it is worth, we suggest, pausing for a moment
 17 to remind ourselves of one aspect of your PII ruling
 18 in the inquests on 13 September 2019, so now more than
 19 2 years ago. That is to be found behind divider 20 of
 20 the bundle for today's hearing. We are just going to
 21 draw attention to two short paragraphs.

22 First of all, paragraph 17. At paragraph 17, sir,
 23 you identify the four questions that you were, in
 24 accordance with the judgment of Lord Justice Thomas in
 25 Mohammed, required to ask and answer in order to

1 determine a claim for PII.

2 A, is there a public interest in bringing the
 3 material for which PII has been or is to be claimed into
 4 the public domain?

5 B, will disclosure bring about a real risk of
 6 serious harm to an important public interest and, if so,
 7 which interest?

8 C, can the real risk of serious harm to the
 9 important public interest be protected against by other
 10 methods or more limited disclosure?

11 D, if the alternatives are insufficient, where does
 12 the balance of the public interest lie?

13 The final balancing exercise involves asking whether
 14 the public interest in refusing disclosure is outweighed
 15 by the public interest of doing justice in the
 16 proceedings.

17 At paragraph 21 you considered C, the third
 18 question:

19 "Can the real risk of serious harm to the important
 20 public interest be protected against by other methods or
 21 more limited disclosure?"

22 You said as follows at paragraph 21:

23 "As to C, I have to decide whether there would be
 24 some way of putting information relevant to the inquests
 25 into the public domain which would protect the public

1 interest such as gisting, disclosing limited information
 2 or providing it only to a limited number of people.
 3 Although I cannot give further detail in this ruling,
 4 I am satisfied that there are no alternatives to full
 5 disclosure and I must therefore go on to consider
 6 question D, that is deciding where the balance of the
 7 public interest lies.”

8 So, sir, no one should think that hitherto you have
 9 approached the applications, first of all PII, now
 10 restriction orders, on what Mr Weatherby called the
 11 binary basis, namely a stark choice between either an
 12 open hearing or a closed hearing. Sir, we know that
 13 that is the approach that you will continue to adopt in
 14 considering the applications for restriction orders that
 15 are now before you.

16 Next, and still dealing with the general points made
 17 by the families —

18 SIR JOHN SAUNDERS: Just before you leave that, I think in
 19 fairness to Mr Weatherby’s point, although it is right
 20 to say that even in an inquest it’s not an entirely
 21 binary process as indicated by that quotation, there is
 22 much more room for a non—binary process when dealing
 23 with restriction orders than there is in an inquest.

24 MR GREANEY: Sir, I’m sure that’s an entirely reasonable
 25 point to make. Section 19 on its face does give you

1 a broader range of options and the only point I’m
 2 seeking to make at the moment is that everyone should be
 3 clear that you have, even hitherto, not adopted a binary
 4 approach, but have considered closely whether measures
 5 short of closed hearings are possible.

6 SIR JOHN SAUNDERS: Thank you.

7 MR GREANEY: Sir, next, questions have been posed by the
 8 families as to the scope of the closed evidence. Again,
 9 we entirely understand why that question is raised.

10 At paragraph 8 of the BJC Hudgells and
 11 Slater & Gordon submissions for this hearing, it is
 12 noted that the open evidence proposals for Witness J,
 13 the MI5 witness, and DCS Scally have now been provided
 14 and indeed Rule 10 applications have been made in
 15 response. A request is made in those submissions for
 16 clarification of the scope of the issues to be
 17 considered within the closed hearing so far as is
 18 possible. A similar request is made at paragraph 20 of
 19 the Hogan Lovells submissions.

20 Sir, we are able to confirm that all of the matters
 21 set out in the proposed areas of questioning in the open
 22 evidence proposal are also being considered in the
 23 closed hearing. It is not, and we emphasise not, only
 24 the two pieces of information referred to at
 25 paragraphs 111 and 124 in Witness X’s statement which

1 will be explored.

2 We can also confirm that there will, during the
 3 closed hearing, be a particular focus on (a) whether
 4 Salman Abedi should have been re—opened as a subject of
 5 interest in 2016 in light of what was known or could
 6 reasonably have been known by MI5 and CTP North—west at
 7 the time, (b) whether Salman Abedi should have been
 8 re—opened as a subject of interest in the first few
 9 months of 2017 in response to the information received
 10 on two occasions, either taken together or individually,
 11 (c) whether Salman Abedi should have been put on a ports
 12 action in 2017, and (d), if any of those steps had been
 13 taken, whether this could have led to any action being
 14 taken to prevent the murderous attack.

15 Pausing for one moment, in their submissions, the
 16 media submit that they should be permitted to report
 17 that these matters are ones that will be explored in the
 18 closed hearing. We agree and if anyone disagrees we
 19 invite them to say so in their submissions, but we don’t
 20 anticipate that they will.

21 Sir, next, in addressing the families’ general
 22 points, you have instructed an expert to provide an
 23 opinion on issues connected with preventability, so this
 24 is chapter 14 of the inquiry’s oral evidence hearings.

25 That witness, Expert Witness Z, is a former officer

1 of MI5. The inquiry legal team acknowledges that the
 2 fact Expert Witness Z is a former officer of MI5 could
 3 raise concerns about their independence, but the
 4 difficulty with which the inquiry is faced is that there
 5 is a very small pool of people with the relevant
 6 experience and expertise to be able to provide genuine
 7 assistance to you in considering and analysing the
 8 relevant evidence. Essentially, all potential experts
 9 of value to the inquiry will need to have worked within
 10 the UK intelligence community, UKIC.

11 By way of reassurance, the inquiry legal team has
 12 taken all practicable steps to ensure that Expert
 13 Witness Z is not conflicted and that they have
 14 undertaken their role with independence, conscious of
 15 their duty to you, sir, as an expert. Expert Witness Z
 16 retired from MI5 several years before the arena attack
 17 and had no involvement with any of the relevant
 18 officers, intelligence or decisions. We, sir, as the
 19 inquiry legal team are confident, indeed highly
 20 confident, that Expert Witness Z has approached their
 21 task with a high degree of impartiality and, moreover,
 22 a willingness to question and test MI5’s processes,
 23 systems, decisions and reasoning.

24 In terms of their instructions, Expert Witness Z was
 25 asked to give their expert opinion on the issues set out

1 in the open evidence proposal for Witness J and in
 2 particular issues 10 to 15.
 3 The inquiry legal team, furthermore, has initiated
 4 a discussion with HMG about disclosing the executive
 5 summary of Expert Witness Z's report to core
 6 participants with minimal redactions and we consider
 7 that the executive summary is capable of disclosure to
 8 core participants and confirmation of this will be
 9 provided as soon as possible.
 10 Sir, finally on this issue relating to Expert
 11 Witness Z, the media submit that they should be
 12 permitted to report that an expert report has been
 13 commissioned from Expert Witness Z, a former senior
 14 officer in MI5, who retired from that organisation
 15 several years before the arena attack and had no
 16 involvement with any of the relevant officers,
 17 intelligence or decisions.
 18 Sir, again, we agree that they should be permitted
 19 to report those matters, but if anyone disagrees they
 20 should say so when they make their own submissions.
 21 Next, the Hogan Lovells submissions of 27 September
 22 at paragraphs 8 to 12 seek as much open disclosure as
 23 possible, including gists, before the closed hearing
 24 commences. Understandably, the point is made that this
 25 will allow the families to raise issues which are of

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1 concern to them on an informed basis with counsel to the
 2 inquiry or a special advocate if appointed.
 3 We as the inquiry legal team agree that gists should
 4 be provided in advance of the closed hearings insofar as
 5 that is possible. However, it is important to
 6 recognise, we suggest, that this has already been done
 7 through the open evidence of Witness X and Witness J and
 8 DCS Scally, which was prepared with the inquiry legal
 9 team's involvement to maximise the information which
 10 could be disclosed into open.
 11 GMP has also now provided an open statement from
 12 Detective Inspector Frank Morris, which will be
 13 disclosed to core participants via Magnum imminently and
 14 we are also confident that an additional open statement
 15 from Detective Sergeant Paul Costello will also be
 16 disclosed soon.
 17 We agree that if there is other presently closed
 18 material which, upon further review at this stage, could
 19 be disclosed or gisted into open, this should be done
 20 before the closed hearing and we are confident that that
 21 will be considered by you at the closed preliminary
 22 hearing on 18 October.
 23 However, it is important in our submission to note
 24 that if further gisting is possible, but only after the
 25 closed hearing, that would not necessarily be an

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1 indication that the preparation for the closed hearing
 2 was carried out in an overly restrictive manner. But
 3 instead, it would suggest that the closed hearing had
 4 worked as intended to identify the most relevant
 5 evidence in the course of questioning witnesses and to
 6 clarify or narrow the national security risks following
 7 testing of the evidence.
 8 Sir, can I indicate that I have just been told that
 9 the statement of Detective Inspector Morris is now on
 10 Magnum and the INQ reference is {INQ042102/1}.
 11 SIR JOHN SAUNDERS: Before you go on, Mr Greaney, and as
 12 we've had that interruption, you mentioned the question
 13 of the application for special advocates. I had
 14 originally hoped that I would have been able to give
 15 a judgment on that before we had this discussion.
 16 MR GREANEY: Indeed.
 17 SIR JOHN SAUNDERS: On further, and I hope more mature
 18 reflection, it did seem to me that it may be that
 19 matters would occur or come up during this particular —
 20 I'm not inviting further submissions, but matters may
 21 arise in this hearing which may affect that decision,
 22 therefore it seemed to me that it was best for me to
 23 give my ruling on all these matters together. I'm sorry
 24 if I gave that anticipation and I have not been able to
 25 satisfy it.

23

1 MR GREANEY: I should add that Mr Cooper made contact with
 2 me yesterday and, in a very courteous request, asked
 3 whether that ruling would be available before today and,
 4 having consulted with you and taken instructions, I was
 5 able to confirm with him — I am sorry I didn't do it to
 6 others — there would be a global ruling in due course
 7 following this hearing.
 8 SIR JOHN SAUNDERS: I apologise for any difficulty that may
 9 have caused.
 10 MR GREANEY: Sir, I'm very grateful to Mr Horwell as well
 11 for providing me with that INQ reference.
 12 SIR JOHN SAUNDERS: Thank you.
 13 MR GREANEY: Sir, next, and I'm still dealing with the
 14 general points raised by the families.
 15 At paragraph 16 of the Hogan Lovells submissions,
 16 the point is made that it is of more interest to the
 17 families to know whether anyone acting in a managerial
 18 or supervisory capacity is giving closed evidence. And
 19 by "of more interest", I mean to know that is of more
 20 interest than formal job titles or descriptions.
 21 We are able to confirm that the officers who made
 22 the relevant decisions not to re-open Salman Abedi as
 23 a subject of interest and the judgements about how to
 24 respond to the information received on two occasions in
 25 the months prior to the attack are giving evidence in

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1 closed, as is the relevant supervisor or manager.
 2 Again, the media wish to report that fact. Once
 3 more we agree, with the same invitation to anyone that
 4 disagrees to make their submissions in due course.
 5 As requested in the Hogan Lovells submissions at
 6 paragraphs 18 to 22 and 29, we are also able to confirm
 7 the following.
 8 (1) The witness list set out in our submissions of
 9 9 September comprises all the evidence which, sir,
 10 you will receive in closed, that is to say both
 11 witnesses who will give oral evidence and statements
 12 which will be adduced as read.
 13 (2) There are no MI5 witnesses to whom requests for
 14 evidence were made who have not provided evidence nor
 15 any documents which have been requested which have not
 16 been provided. One GMP witness has been unable to
 17 provide a statement because of ill health, but the
 18 inquiry was entirely satisfied that this was reasonable
 19 and the evidence has been addressed as far as possible
 20 through other witness evidence and, ultimately, we do
 21 not believe our investigation has been handicapped by
 22 the receipt of no statement from that witness. In any
 23 event, that is a matter that will be kept under review.
 24 So it is, in our judgment, important to emphasise
 25 that there has, in our view, been full and complete

1 cooperation with the inquiry legal team, both by GMP and
 2 Counter—terrorism Police and MI5.
 3 (3) The scope of the closed evidence is wider than
 4 the decision—making referred to at paragraph 124 of
 5 Witness X’s statement, as we explained earlier. That is
 6 to say, it covers the same range of issues set out
 7 in the open evidence proposal.
 8 (4) Sir, this again is an important matter for us to
 9 emphasise. The inquiry has not relied solely on
 10 Lord Anderson’s conclusions or the underlying
 11 post—attack reviews carried out by MI5 and
 12 Counter—terrorism Policing themselves which
 13 Lord Anderson considered nor, as you indicated earlier
 14 and for the avoidance of all doubt, has the inquiry only
 15 relied on the report of the ISC.
 16 The inquiry legal team has obviously, and for good
 17 reason, considered these previous reviews and reports
 18 carefully, but it has conducted its own investigations,
 19 has identified some issues which were not fully known to
 20 either the ISC or Lord Anderson, has obtained primary
 21 evidence from officers who were directly involved in the
 22 relevant decisions, and ensured that the evidence is
 23 scrutinised by experts with experience of these issues.
 24 So, sir, and we suggest this is one of the most
 25 important things that we would wish the families to take

1 away from this hearing today: it should be publicly
 2 understood that the inquiry has gone significantly
 3 further than Lord Anderson and the ISC.
 4 (5) MI5 has at no point sought to rely upon
 5 section 22 of the Inquiries Act (2005), save on an
 6 occasion when legal professional privilege was relied
 7 upon on entirely conventional grounds in relation to
 8 a very small amount of material and that issue was,
 9 we were satisfied, addressed in a different way. So,
 10 sir, again, we wish to emphasise that we, the inquiry
 11 legal team, have not been prevented by MI5 or
 12 Counter—terrorism Policing or GMP from seeing anything
 13 that we wished to see. Again, that is an important
 14 thing that everyone should understand.
 15 (6) At paragraphs 17 and 26 of the Hogan Lovells
 16 submissions, a request is made for information about the
 17 level of experience and number of years of service of
 18 the closed witnesses from both MI5 and Counter—terrorism
 19 Policing. GMP responded to that request yesterday, so
 20 see their note of 30 September 2021, and we are
 21 confident that MI5 will have that under close
 22 consideration and we expect to respond soon.
 23 So sir, that is all that we intend to say about the
 24 general points raised on behalf of the families. We
 25 entirely understand the concerns that exist. As we set

1 out at the hearing on 20 September, we hope that we have
 2 been able to give some degree of comfort at least
 3 in relation to the process that we intend to embark upon
 4 in November and have had underway now for a number of
 5 years.
 6 SIR JOHN SAUNDERS: Thank you.
 7 MR GREANEY: So we turn next to the outstanding restriction
 8 order applications and will make, as we indicated
 9 earlier, some brief submissions about those.
 10 In short, the inquiry legal team supports each of
 11 the applications made for a restriction order by HMG,
 12 NCTPHQ, CTP North—west and GMP for the reasons that have
 13 been given by each of those organisations in open, but
 14 for the reasons set out in closed.
 15 Furthermore, we also submit that our own application
 16 in relation to Expert Witness Z should be granted,
 17 subject to confirmation as to whether part of their
 18 report can be disclosed to core participants in open,
 19 which, as we indicated earlier, is an issue which is
 20 under urgent review.
 21 In that regard, so in regard to Expert Witness Z,
 22 there are a number of points mentioned — two, I think.
 23 One, it has been suggested by BJC, Hudgells and
 24 Slater & Gordon in their submissions of 27 September at
 25 paragraphs 11 to 12 that the application in relation to

1 Expert Witness Z amounts to, as they put it, a class
 2 claim.
 3 We need to be clear that this is not the case. The
 4 open threat assessment relating to Expert Witness Z
 5 notes that there are specific threats — we emphasise
 6 specific threats — to Expert Witness Z as a result of
 7 their past roles, which are dealt with in detail in the
 8 closed threat assessment.
 9 In the restriction order application at
 10 paragraphs 10 to 11, the inquiry legal team indicates
 11 that there are particular activities and areas with
 12 which Expert Witness Z was involved that give rise to
 13 serious risk, as well as their seniority within MI5
 14 creating risks in and of itself .
 15 So we regret, but I hope that everyone will
 16 understand, that it is not possible to give further
 17 detail in open, but the families can be reassured, we
 18 hope, that this is not merely a class claim but a claim
 19 based upon the specific circumstances of Expert
 20 Witness Z.
 21 SIR JOHN SAUNDERS: Mr Greaney, I'm sure it's obvious to
 22 everybody, but there is only one Expert Witness Z and
 23 the use of "their" and "them" is simply using
 24 gender-neutral terminology.
 25 MR GREANEY: It is, sir.

1 SIR JOHN SAUNDERS: So I hope no one misunderstands that and
 2 thinks there's more than one.
 3 MR GREANEY: That is a very helpful clarification. You are
 4 quite right in what you have said.
 5 SIR JOHN SAUNDERS: It often confuses me.
 6 MR GREANEY: This too I know, sir.
 7 The second point that needs to be made about Expert
 8 Witness Z is this: the Hogan Lovells submissions at
 9 paragraphs 30 to 34 raise a concern about all of Expert
 10 Witness Z's evidence being heard in closed. We
 11 therefore need to clarify that the restriction order
 12 application was intended to refer to Expert Witness Z's
 13 oral evidence only and that, as we've explained, it is
 14 envisaged that some parts of their report can be
 15 disclosed.
 16 Expert Witness Z will follow the open and closed
 17 chapter 14 evidence and we, as the inquiry legal team,
 18 have not ruled out the possibility of Expert Witness Z
 19 giving any evidence in open. Given that Expert
 20 Witness Z's evidence all concerns material which has
 21 previously been ruled by you, sir, to be subject to
 22 public interest immunity, it may be difficult to see how
 23 this will be possible, hence the wording of the draft
 24 restriction order, but we can assure everyone that this
 25 will be kept under review and a final decision taken

1 after all the factual evidence on this topic has been
 2 heard.
 3 We'll turn next to the restriction order applied for
 4 in relation to Witness J. Sir, as we indicated,
 5 Witness J is, as that witness has been described, the
 6 MI5 corporate witness who has replaced Witness X, a
 7 witness to whom we've also referred earlier in these
 8 submissions.
 9 Sir, many of the issues relating to Witness J were
 10 dealt with in your ruling of 11 February of this year,
 11 but the following details do remain outstanding.
 12 (A), limiting the live feed to certain specified
 13 locations during the evidence of this witness.
 14 (B), non-public entry and exit for Witness J as well
 15 as clearing the hearing room and switching off the
 16 secure live feed when the witness enters and exits.
 17 (C), requiring all electronic devices, with some
 18 limited exceptions, to be turned off while Witness J
 19 gives evidence.
 20 (D), a prohibition on the recording of Witness J's
 21 evidence.
 22 And (E), a prohibition on public disclosure,
 23 including media reporting, of the evidence of Witness J
 24 until counsel to the inquiry has confirmed that it can
 25 be disclosed.

1 Sir, we'll take each of those in turn. First,
 2 limiting the live feed to certain specified locations
 3 during the evidence. The submissions of Hogan Lovells
 4 at paragraph 14 indicate that none of their families
 5 seek to be present in a location other than the inquiry
 6 hearing room or the family centre at Spinningfields for
 7 the relevant hearings. Thus there is no issue for them
 8 if the live feed is limited to those two sites.
 9 However, the BJC, Hudgells and Slater & Gordon
 10 submissions raise a concern that some of their families
 11 are unable to attend in Manchester for various reasons
 12 and have been viewing the proceedings via BlueJeans or
 13 YouTube. The solution proposed by those teams is that
 14 the BlueJeans feed could be subject to a short delay.
 15 Sir, we have explored that sensibly proposed option
 16 with the inquiry's IT team and unfortunately it does not
 17 appear to be possible via BlueJeans or any other video
 18 platform. It is possible, as we know from our own
 19 experience on indeed a daily basis, with YouTube, as
 20 of course the YouTube feed has had a few minutes' delay
 21 throughout the inquiry, but doing it via YouTube would
 22 mean Witness J's voice being broadcast on the open
 23 internet which presents, we accept, an unacceptable
 24 risk.
 25 HMG has indicated that a live feed could be provided

1 to other locations so long as certain criteria are met.
 2 The BJC, Huggells and Slater & Gordon submissions state
 3 at paragraph 14 that these criteria are:
 4 "... excessive and likely to unnecessarily restrict
 5 the families' access."
 6 However, those submissions do not indicate which of
 7 the criteria are impractical or unachievable for the
 8 locations they have in mind. We invite those legal
 9 teams to engage, as they have engaged with us
 10 cooperatively throughout, in a discussion about which of
 11 their families wish to listen to the hearing remotely
 12 and explore whether it is possible to set up a live feed
 13 location near to the homes of those families with
 14 someone from the inquiry or another trusted independent
 15 individual present to monitor attendance in the manner
 16 described by HMG. So we hope that's clear. We think
 17 a dialogue on this issue would help and we hope that
 18 a solution, a practical solution, can be achieved which
 19 satisfies everyone.
 20 SIR JOHN SAUNDERS: That is certainly a much more convenient
 21 and practical manner of dealing with it than me hearing
 22 submissions from everybody and coming back and forth on
 23 submissions. It's much easier to talk about it and
 24 discuss it. If, of course, there is an eventual impasse
 25 and it cannot be agreed and I have to make a ruling,

1 then of course I will. But I would like all discussions
 2 to have been carried out before that to see -- and
 3 everyone is entirely cooperative about this, everybody
 4 sees the importance of the families having the ability
 5 to hear what's going on. It's just a matter of actually
 6 making it happen.
 7 MR GREANEY: It is, sir, and as I have said, we are hopeful
 8 that a practical solution that satisfies everyone can be
 9 found. That is certainly our determination and, we
 10 know, the determination of other core participants as
 11 well.
 12 SIR JOHN SAUNDERS: I know the IT departments, and I think
 13 everyone will appreciate, have doing everything they can
 14 to make sure these things can happen and work.
 15 MR GREANEY: Indeed, sir.
 16 On this topic, a further option may be to make
 17 a secure recording of Witness J's open evidence and
 18 provide any families with an opportunity to view it at
 19 a time convenient to them following the hearing in
 20 a suitably secure environment.
 21 So whether or not --
 22 SIR JOHN SAUNDERS: Just help me about that: if the
 23 recording is looked at beforehand and there is nothing
 24 in it -- we are concerned about inadvertent disclosure?
 25 MR GREANEY: We are.

1 SIR JOHN SAUNDERS: If there's a recording then that can be
 2 avoided and so the recording could surely just be
 3 provided then to the families.
 4 MR GREANEY: No, sir. I think, having regard to other
 5 submissions of HMG that we have accepted, it would be
 6 necessary still for the recording to be shown in what
 7 might be described as controlled circumstances.
 8 SIR JOHN SAUNDERS: Okay. Well, discussions can be carried
 9 out on that.
 10 MR GREANEY: None of this is to do with trust: it is to do
 11 with the experience the courts have had with things
 12 going wrong in the past.
 13 SIR JOHN SAUNDERS: Okay, thank you.
 14 MR GREANEY: We would wish to emphasise that.
 15 So whether or not either of the options we've just
 16 proposed are achievable will, of course, be dependent
 17 upon how many families want either option and the
 18 resource the inquiry has available. But as we've said,
 19 in I think the written submissions, this should be
 20 a matter for discussion, not for ruling at this stage.
 21 (2), non-public entry and exit for Witness J as well
 22 as clearing the hearing room and switching off the
 23 secure live feed when the witness enters and exits. As
 24 we understand it, there is no opposition to that
 25 proposal.

1 (3), requiring all electronic devices, with some
 2 limited exceptions, to be turned off whilst Witness J
 3 gives evidence. HMG has requested that all electronic
 4 devices are switched off and that those listening to
 5 Witness J's evidence take manuscript notes only. The
 6 exception is that legal representatives can use
 7 electronic devices to access Magnum in order to view
 8 documents whilst Witness J gives evidence.
 9 As explained in their careful and balanced
 10 submissions, that will cause practical problems for the
 11 media. We do understand those, but on balance, we agree
 12 that the restriction proposed by HMG is proportionate
 13 bearing in mind the risks of inadvertent disclosure.
 14 However, we consider that some measures do need to be
 15 taken to assist the families and the media.
 16 So there should be a break of 1 hour, or indeed
 17 whatever period is reasonably necessary, following CTI's
 18 questions to Witness J in order to allow the families'
 19 legal representatives to communicate and take
 20 instructions, bearing in mind that communication can
 21 take place via telephone.
 22 And moreover, there should be regular breaks during
 23 Witness J's evidence, so mid-morning, lunchtime,
 24 mid-afternoon, to enable the inquiry legal team to
 25 confirm that reporting can take place and to enable the

1 media to carry out their work.
 2 We genuinely understand that having to take
 3 manuscript notes is not generally how the media operate
 4 these days, that it does present a complication, but we
 5 hope that they will be assisted by that assurance that
 6 there will be breaks to enable them to carry out their
 7 work and during which the confirmation of reporting can
 8 be given.
 9 SIR JOHN SAUNDERS: Is this a matter on which further
 10 discussion can take place?
 11 MR GREANEY: Sir, I believe it is. I've been in contact
 12 with Mr Gardham, who, along with a number of others, is
 13 at the forefront in relation to this issue and I have
 14 assured him that your team will work with the media to
 15 seek to achieve a practical solution to the difficulties
 16 they have identified.
 17 SIR JOHN SAUNDERS: Thank you.
 18 MR GREANEY: (4), a prohibition on the recording of the
 19 evidence of Witness J. Again, there does not appear to
 20 be any opposition to that proposal.
 21 (5), a prohibition on public disclosure, including
 22 media reporting of Witness J's evidence until we have
 23 confirmed that it can be disclosed. Sir, that is an
 24 approach that we adopted at some of our earlier
 25 preliminary hearings without objection. It was the

1 approach that was adopted during the MI5 corporate
 2 witness evidence in London Bridge and Westminster, those
 3 inquests, and there does not appear to be any opposition
 4 to that proposal in relation to Witness J.
 5 SIR JOHN SAUNDERS: Normally, that approval comes through
 6 pretty quickly.
 7 MR GREANEY: Sir, it normally comes through within 5 or
 8 10 minutes, yes. So that's, as we have made plain, the
 9 approach we'll take during Witness J's evidence: regular
 10 breaks, so regular confirmation to the media that they
 11 can or cannot report, although we very much expect it
 12 will be the former not the latter.
 13 The third issue we indicated we'd deal with, the
 14 protocol for reviewing and gisting or summarising closed
 15 evidence. We propose the following procedure for your
 16 consideration, sir, for reviewing and, where possible,
 17 providing a gist or summary of any closed evidence, as
 18 it emerges during the course of the closed hearing.
 19 The closed hearing is scheduled for the weeks
 20 commencing 1, 8 and 15 November. By 5 pm on the second
 21 day after the end of the closed hearing, we will provide
 22 to HMG and GMP a proposed summary or gist of any
 23 evidence that has been heard in the previous week's
 24 closed hearing which we consider could be disclosed to
 25 core participants. And if so, whether it can be

1 disclosed in open or should be subject to similar
 2 restrictions as used for operationally sensitive
 3 material in previous chapters or some other form of
 4 restriction.
 5 The fact that the proposed summary or gist has been
 6 served on HMG and GMP will be confirmed with core
 7 participants.
 8 By 5 pm, 4 days after the end of the closed hearing,
 9 HMG and GMP will make any submissions in response.
 10 Confirmation will be provided to core participants when
 11 these responses are provided.
 12 In the event of dispute, sir, we would invite you to
 13 rule on whether a summary or gist can occur by 5 days
 14 after the end of the closed hearing and, if so, whether
 15 it should be disclosed in open, subject to the
 16 operationally sensitive restrictions, or some other form
 17 of restriction.
 18 As much of such a ruling as possible will be
 19 disclosed to core participants so that they can be made
 20 aware of the issues or types of issue in dispute.
 21 The procedure we invite you to adopt is: all
 22 summaries or gists that can be disclosed will be
 23 provided to core participants by Friday, 26 November.
 24 SIR JOHN SAUNDERS: Presumably, that will inevitably be
 25 subject to any appeal that might be made against any

1 ruling I make?
 2 MR GREANEY: That undoubtedly is correct, yes. But that is
 3 how we propose this issue should be approached and, as
 4 we have made clear throughout, throughout the course of
 5 the closed hearing you, sir, we know will have firmly in
 6 mind whether what you are hearing can be, as it's often
 7 described, pushed out from closed into open.
 8 SIR JOHN SAUNDERS: Thank you.
 9 MR GREANEY: So, sir, for the reasons we've given, we
 10 support each of the applications for a restriction order
 11 and we will inevitably address you further on these
 12 issues in the closed hearing.
 13 Following today's hearing, there are two further
 14 steps to be taken before all of these issues are
 15 resolved.
 16 First, any amended or updated closed versions of the
 17 existing applications and any further closed
 18 applications for restriction orders should be filed by
 19 10 am on 4 October, 10 am on Monday. Second, we
 20 understand you will consider those application, and
 21 submissions at a closed hearing on 18 October.
 22 So that is all we wish to say at this stage, and
 23 subject to anything that you want to say in this moment,
 24 we're going to invite submissions in the order that we
 25 indicated, so first of all Ms McGahey on behalf of HMG.

1 SIR JOHN SAUNDERS: Can I indicate to everyone who is making
 2 submissions that I have read the written submissions,
 3 I have also reviewed to some extent the original
 4 submissions made in relation to PII applications when
 5 the matter was still an inquest, which is in the bundle,
 6 which are relevant to some matters. That's not to stop
 7 anyone saying whatever they wish to say publicly. This
 8 is a public hearing — despite the lack of any public
 9 actually in the room, it is a public hearing — and
 10 therefore no one must feel restricted, but I do indicate
 11 that I have read the material.

12 MR GREANEY: That's most helpful, sir, thank you.

13 SIR JOHN SAUNDERS: Ms McGahey.

14 Submissions by MS McGAHEY

15 MS McGAHEY: Sir, the Secretary of State relies on the
 16 written submissions that she has already made and there
 17 are only four matters that I would seek to address
 18 briefly.

19 The first is that regarding Expert Witness Z, and in
 20 paragraph 11 of counsel to the inquiry's written
 21 submissions it is stated that the Home Secretary is
 22 asked to confirm whether an executive summary of Expert
 23 Witness Z's evidence can be made public.

24 The Secretary of State will give a response — is
 25 considering the matter now and will give a response next

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1 week about Witness Z and the content of Witness Z's
 2 evidence and how much the Home Secretary's submission
 3 can be made public.

4 Secondly, on the question of the experience and
 5 background, the number of years' service of MI5
 6 witnesses, we were asked whether it would be possible to
 7 give a response today and I'm afraid that hasn't been
 8 possible, but again we will return with an answer next
 9 week if that's acceptable to the inquiry.

10 Thirdly, on the question of the protocol and moving
 11 evidence from closed into open, the Home Secretary is
 12 content in principle with the protocol that has been
 13 suggested on the basis that the timetable given in
 14 respect of the number of days is that of working days,
 15 it doesn't take into account weekends. Some matters
 16 we are concerned may take longer than 2 days, depending
 17 on the complexity and sensitivity of the issues
 18 involved, and for that reason we'd be very grateful if,
 19 wherever possible, counsel to the inquiry could give
 20 advance notice as the closed evidence is going along as
 21 to whether it is likely that a request may be made for
 22 material to be made open.

23 SIR JOHN SAUNDERS: I have no doubt that can be done,
 24 Ms McGahey.

25 MS McGAHEY: I'm very grateful.

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1 Lastly, on the question of media access. Firstly,
 2 the Home Secretary agrees entirely that the matters
 3 outlined by counsel to the inquiry this morning can be
 4 reported by the media. We saw this morning some written
 5 submissions made on behalf of the media about access.
 6 One submission made was that it was the understanding of
 7 the journalists that there would be no request for
 8 destruction of their manuscript notes if those notes
 9 included information that had been inadvertently
 10 disclosed. That is a misunderstanding. If there is
 11 inadvertent disclosure, all those who have heard it will
 12 be asked to submit their written notes to the inquiry
 13 legal team for redaction or destruction.

14 There is no question, of course, of the media being
 15 deprived of their notes of other material. We will look
 16 for practical ways round it. One obvious one would be
 17 to take an original document, redact the inadvertently
 18 disclosed material, photocopy it and return the rest of
 19 the material to its owner and exactly the same protocol,
 20 we would ask, should apply to the media as everybody
 21 else.

22 SIR JOHN SAUNDERS: Right. We obviously need to avoid that
 23 situation if at all possible and avoid inadvertent
 24 disclosure. I am well aware that is simply not the
 25 witness's responsibility but it can be and has been

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1 known for it to be counsel to inadvertently disclose
 2 something which they shouldn't. But I really do not
 3 want to get into a situation, if at all possible, of
 4 having an argument about removing any notes the media
 5 may have.

6 MS McGAHEY: Absolutely, sir, and it is to be hoped that
 7 that won't happen. This is a response of last resort,
 8 but obviously if inadvertent disclosure were to occur,
 9 the whole purpose of the protocol that's been suggested
 10 is there should not be manuscript or any other notes
 11 lying around containing that material that one day could
 12 find their way into the public domain. But it is
 13 absolutely to be hoped that this situation does not
 14 arise.

15 SIR JOHN SAUNDERS: Yes, thank you very much, Ms McGahey.

16 MS McGAHEY: Those are all my submissions, thank you, sir.

17 MR GREANEY: Sir, we quite agree with your response to
 18 Ms McGahey's third point and we will ensure that as much
 19 notice as possible is given as we go along during the
 20 closed hearings.

21 Next, we would invite Mr Horwell to make any oral
 22 submissions that he wishes to make.

23 MR HORWELL: Sir, I have nothing to add to the submissions
 24 we have made in writing unless there's anything I can
 25 assist you on.

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1 SIR JOHN SAUNDERS: No, I don't think there is, Mr Horwell,
 2 but if things occur during the hearing I hope you will
 3 intervene to make clear what GMP's view is.
 4 MR HORWELL: Yes, of course. I'm here throughout, sir, so
 5 of course I will.
 6 SIR JOHN SAUNDERS: I didn't suggest you were going to
 7 leave, Mr Horwell. That was not the purpose of what
 8 I said: I was just making it clear that I invite you to
 9 say anything in the future if it's necessary to do it.
 10 MR HORWELL: Thank you, sir.
 11 MR GREANEY: Next, as I indicated, I'm going to see whether
 12 Mr Butt has anything that he wishes to add to his
 13 materials in writing on behalf of NCTPHQ.
 14 (Pause)
 15 It would seem not.
 16 SIR JOHN SAUNDERS: He can come back if there's some
 17 difficulty on the line.
 18 MR GREANEY: Of course he can.
 19 Could I turn next, then, please, to the families
 20 represented by Slater & Gordon, Broudie Jackson Canter,
 21 and Hudgells Solicitors? There are joint teams from --
 22 I hope they won't made me describing them in this way --
 23 the Cooper and Weatherby or Weatherby and Cooper teams
 24 and I am told that I should call first upon
 25 Mr Weatherby.

1 Mr Weatherby.
 2 Submissions by MR WEATHERBY
 3 MR WEATHERBY: Good morning, sir. Can you see me?
 4 SIR JOHN SAUNDERS: I can and we can hear you.
 5 Mr Weatherby, I hope it is apparent from what I said
 6 in opening that a great deal of the submissions that you
 7 made on the last occasion are accepted by me and you
 8 start from that position.
 9 MR WEATHERBY: Yes. I'm very grateful indeed for the
 10 careful comments made earlier and the submissions also
 11 made by Mr Greaney. So I take that on board and I hope
 12 I'll be quite swift, partly as a result of that.
 13 We've made our submissions in writing and we've
 14 agreed them so far as possible with the other teams, who
 15 obviously will speak for themselves. Of course, we've
 16 addressed the PII material variously, given your careful
 17 approach to these matters.
 18 The central point that I know you have taken fully
 19 on board is our submission that public inquiry
 20 provisions address restriction as opposed to exclusion,
 21 which is the position that has to obtain or pertain
 22 within the inquest process. Therefore, what we have
 23 concentrated on is that the inquiry must look at the
 24 material through that lens.
 25 We have accepted, I hope fully, that with respect to

1 some of the material, conceivably all of the material,
 2 the result could be the same and we've set out our
 3 submissions in the latest tab 17 submissions at
 4 paragraphs 2 to 7, so I won't labour those points.
 5 I just want to pick up a couple of threads.
 6 Mr Greaney's submissions, again helpfully put into the
 7 public domain the level of agreement between his
 8 submissions and the families' submissions in principle.
 9 There's one detail that we're not completely clear about
 10 and that's his reference to disclosure of matters which
 11 reach the level of a full PII claim; that's his
 12 terminology.
 13 We are not quite clear what that submission means or
 14 indeed what it is based on.
 15 SIR JOHN SAUNDERS: Mr Weatherby, can I try and say what
 16 I understand by that? I may be entirely wrong and
 17 Mr Greaney will put me right. There are certain things,
 18 examples which you have used within your own arguments
 19 that you put before me where you said things like:
 20 that's clearly PII, clearly can't be made public.
 21 I think that is what Mr Greaney is referring to. So we
 22 all know, and you're all extremely experienced in this
 23 field, that there are certain things which would just
 24 never be put in the public domain in any way, and
 25 I think those are the sort of things which Mr Greaney is

1 talking about. That's how I've read it anyway.
 2 MR WEATHERBY: Absolutely, and if that is so then we are as
 3 one in terms of the principles. If it seeks to put
 4 national security as a kind of untouchable section of
 5 public immunity, we would respectfully disagree with
 6 that.
 7 SIR JOHN SAUNDERS: Do you mind if I intervene too? Because
 8 I've obviously been thinking about it quite a lot and
 9 looking back to what you and Sir James Eadie said at the
 10 initial PII hearings and I understand the differences.
 11 But it does seem to me that some of the authorities may
 12 put it too high and that it's simply not enough for
 13 someone to say, "This is a matter" -- sorry, for the
 14 Secretary of State to say, "This is a matter of national
 15 security", and that does have to be examined. And how
 16 I anticipate, and I hope it's proper to do it this way,
 17 is to say: I well understand that the
 18 Secretary of State, or the people working for her,
 19 understand much better than I could possibly understand
 20 or, with respect, you could understand how national
 21 security could be affected.
 22 But both I and you are capable of understanding it,
 23 so they will need to explain to me in any hearing
 24 exactly how national security is affected. And if at
 25 the end of the day I don't agree with what they say,

1 even if they still maintain that it would affect
 2 national security but on their explanation it just
 3 doesn't seem to to me, then my view will be the one
 4 I will maintain. In some authorities, the courts seem
 5 to go a bit further than that and seem to say really
 6 it would be highly unlikely for me to disagree with the
 7 Secretary of State and a very unusual and exceptional
 8 matter. Well, it may be, but only if I have -- if my
 9 understanding means that I believe that national
 10 security will be affected. I hope that is the right
 11 approach, particularly in a case like this.
 12 MR WEATHERBY: With respect, that's precisely the point that
 13 we make. We're entirely happy to accept that in some
 14 circumstances issues of national security are so serious
 15 that, of course, that material must be dealt with in
 16 a particular way, closed conditions, and we're also
 17 entirely content to accept, and it is the law, that you
 18 must show some deference to the view of the
 19 Secretary of State because of her position in respect of
 20 national security matters. But deference only, and as,
 21 with respect, you have helpfully just confirmed, it is
 22 ultimately your decision and not hers in terms of what
 23 is and how the restrictions are applied.
 24 SIR JOHN SAUNDERS: If I may say so, you made that entirely
 25 clear in the first hearing, which I have re-read.

1 MR WEATHERBY: I shan't labour the point, save just to refer
 2 to our paragraphs 5 and 6 in the latest submissions,
 3 because there I have tried to set out an example, with
 4 as much clarity as possible, where the approach of
 5 section 19 may well differ from the approach in an
 6 inquest proceeding.
 7 SIR JOHN SAUNDERS: I have read it and I understand the
 8 example you're making. It's just a very apt example and
 9 whether it can apply in individual cases of course
 10 I can't say.
 11 MR WEATHERBY: Absolutely, and of course I don't know the
 12 background material here so I have no submission to make
 13 on the particular material. But it is important to make
 14 a clear distinction, in our submission, between the fact
 15 that material which may have to be excluded in an
 16 inquest process doesn't necessarily have to be excluded
 17 or heard completely in closed conditions for the reasons
 18 that I have set out in 5 and 6.
 19 May I just refer to that very briefly, just because
 20 people listening won't be able to follow it otherwise?
 21 SIR JOHN SAUNDERS: Absolutely.
 22 MR WEATHERBY: But I have given an example, not this case,
 23 just a theoretical example, of where there is an
 24 informer and the putting into the public domain of
 25 details of that informer could lead to the discovery and

1 potentially the death of that informer. A ruling in an
 2 inquest process would, I put it highly, certainly find
 3 that subject to public interest immunity and would
 4 exclude it from that process.
 5 But within a subsequent public inquiry, it would be
 6 more complicated because we're talking about
 7 restrictions, so it may well be that the core of that
 8 evidence would be heard in a closed session. That would
 9 be mitigated by the gisting that we've already
 10 considered and considered this morning, but, moreover,
 11 there may be subsidiary issues or issues arising from
 12 that material, and I give the example of
 13 interoperability problems, which may be less sensitive
 14 but would have been excluded in the inquest PII process
 15 as a result of the core information being excluded that
 16 would lead to restriction rather than exclusion under
 17 section 19.
 18 That is just an example of what we've tried to argue
 19 throughout this, that the fact that material is excluded
 20 under PII in the inquest process does not automatically
 21 lead to the consequences that we perceive have been
 22 advanced by the security services in this process.
 23 That's really the argument that we raised about the
 24 binary approach, and from the earlier comments it's
 25 plain that our submissions have been heard and therefore

1 I don't think we need to take that further.
 2 Just on a clarification point, Mr Greaney's point
 3 from the earlier CTI submissions at tab 2 regarding
 4 confidentiality rings. I hope we have sufficiently
 5 clarified our position on that. We are not asking for
 6 arrangements that have been addressed in the case law
 7 that Mr Greaney has referred to. We are asking for
 8 restrictions in relation to some of the material, which
 9 can include the national security material, which in
 10 fact have already been applied within these proceedings.
 11 So picking back up the interoperability point, if
 12 one of the pieces of evidence that was excluded in the
 13 PII process raised issues of interoperability that
 14 weren't so sensitive, then we would argue that you could
 15 hear that evidence in either an open or potentially
 16 restricted but not closed process.
 17 We raise a further example from this process, that
 18 we have already heard evidence about the new JOPs and
 19 the New Plato plans in restricted process, both of which
 20 related to national security considerations. Those are
 21 the points we make on that.
 22 Beyond that, I don't think I have any further
 23 submission on the PII process.
 24 SIR JOHN SAUNDERS: Mr Weatherby, can I just raise one thing
 25 with you? We have seen from the hearings that we have

1 already had that matters do come out, they do become
 2 clearer during the hearings which take place, and
 3 although it is perfectly right, as submissions have been
 4 made on behalf of the families, that they would like to
 5 know anything that comes out into open or be gisted
 6 before the closed hearings, it may be that certain
 7 things are clarified within a hearing which mean that
 8 other things will be gisted after a hearing has taken
 9 place. I think that is probably an inevitable part of
 10 the process.
 11 MR WEATHERBY: Can I come on and deal with gisting a little
 12 later?
 13 SIR JOHN SAUNDERS: Yes, certainly, sorry.
 14 MR WEATHERBY: I absolutely concur with that view and I'll
 15 explain why in a moment if I may.
 16 Turning to scope, we are grateful to Mr Greaney for
 17 clarifying the scope of the closed material. Could we
 18 ask CTI to consider and perhaps further clarify whether
 19 the general evidence that is referred to is going to be
 20 dealt with by Witness J in closed hearing and only the
 21 two pieces of information that are referred to at
 22 paragraphs 111 and 124 of the Witness X statement are
 23 going to be dealt with by the other three witnesses?
 24 I hope I've made that tolerably clear. What we seek is
 25 some further clarification about the scope of who will

1 deal with that evidence and whether it will be dealt
 2 with by specific witnesses or the corporate witness.
 3 MR GREANEY: I entirely understand the question and I am
 4 sure Mr Weatherby will understand that I don't feel it's
 5 appropriate to answer it here and now without consulting
 6 further but I will --
 7 MR WEATHERBY: With respect, I put the point, could further
 8 consideration be given to that? I fully understand that
 9 that can't be done now.
 10 Can I move on to the preventability expert? I hope
 11 in our submissions we did sufficiently acknowledge the
 12 difficulty in obtaining expert evidence in niche areas
 13 and an area such as this and the small pool that there
 14 sometimes is with respect to expert evidence.
 15 That fact does explain to some extent but, in our
 16 submission, doesn't really mitigate the problem of
 17 independence raised by the instruction of a former MI5
 18 officer who remains anonymous.
 19 In the written submissions CTI have raised the fact
 20 that Scott Wilson's independence could similarly have
 21 been challenged and we again acknowledge that the
 22 inquiry was looking for the best possible expertise
 23 within a relatively small pool of relevant experts. But
 24 there is a clear difference, in our submission, between
 25 Mr Wilson in that his experience and expertise was

1 disclosed and we were able to consider that and raise
 2 the issues of independence if we thought appropriate, as
 3 indeed some other core participants did.
 4 The point here is that the families do not know
 5 anything about the expert, not his or her name, or even
 6 gender, although of course that's not relevant. We
 7 don't know their expertise or their experience, we don't
 8 know in any significant detail what the expert evidence
 9 is aimed at, the instructions. Therefore we are not
 10 able, as with other experts, to see whether there are,
 11 for example, articles or other work in the public domain
 12 that would support that expert's evidence or undermine
 13 it.
 14 We don't know whether he or she retains professional
 15 or personal relationships with MI5 or other intelligence
 16 agencies, although I acknowledge Mr Greaney's told us
 17 that he or she hasn't personally worked with the
 18 witnesses that are to be heard here.
 19 And we simply rhetorically pose the question: is it
 20 really the case that there are no experts in this area
 21 who need to be anonymous, and is there not the
 22 possibility of an expert that doesn't require anonymity?
 23 Further to that, we are pleased to see that there is
 24 ongoing consideration of disclosure of the report, and
 25 that is most welcome. Obviously, we have no objection

1 to HMG considering and making submissions on that, but
 2 ultimately, of course, it is a matter for you as the
 3 chair. And we say that, as ever, the presumption must
 4 be in favour of disclosure, redactions must be kept to
 5 the minimum necessary, rather than looking at it from
 6 the other end of the telescope.
 7 In terms of the anonymity and the class claim issue,
 8 we may not have made our submissions sufficiently clear.
 9 We do not suggest that this is simply a class claim: we
 10 understand that in the threat assessment from MI5 there
 11 is a paragraph 6, which refers to the closed assessment.
 12 Our point was that the paragraphs 2 to 5 on that threat
 13 assessment address in some detail what amounts to
 14 a class claim and we are concerned that that should not
 15 be given other than a context consideration. It's
 16 entirely appropriate, in our submission, that you should
 17 consider the context.
 18 But the fact that being a serving officer or former
 19 officer raises that context is not a determinative
 20 factor. If it was, then that would be a class factor
 21 that would apply to many others, for example
 22 politicians, judges, senior police officers and such.
 23 Therefore, we urge that the class element of the claim
 24 for anonymity is given a context role rather than
 25 a central role and that any determination of anonymity

1 must be made with respect particularly to Articles 2 and
 2 3 and potentially the weight(?) of the Convention.
 3 SIR JOHN SAUNDERS: Mr Weatherby, these sort of questions
 4 inevitably involve a balance, so in part of that
 5 balance, of course, is the significance of knowing the
 6 identity. Leaving aside what you've already said about
 7 the experience of the particular officer concerned and
 8 where he had worked, which I readily understand, what
 9 actually is the importance to you and the relevance of
 10 knowing his name?
 11 MR WEATHERBY: Well, the general relevance is in open
 12 justice, being able to look behind the expert so that
 13 one can find the relevant experience or for somebody to
 14 step forward and say that person isn't exactly as
 15 independent as being put forward. If the light is
 16 shone, then core participants and others, the media, can
 17 look behind that expert to see whether they are
 18 independent.
 19 The fact that this officer has left MI5 some years
 20 ago is an obviously relevant factor, but we don't know
 21 whether there are continuing relationships, as I say,
 22 both personal or professional. We don't know whether
 23 this expert has done other work which is relevant.
 24 Therefore what lawyers and judges do in terms of the
 25 instruction of experts and the consideration of experts,

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1 looking behind to see the expertise and the independence
 2 of the expert, simply is removed from us by not having
 3 any of those details. Therefore there's no scrutiny of
 4 the basis for the expert evidence, never mind the expert
 5 evidence itself.
 6 SIR JOHN SAUNDERS: Thank you.
 7 MR WEATHERBY: Very briefly in terms of gisting, we are
 8 grateful for the submissions of Mr Greaney. We have
 9 very little to add, save on the point that you raised
 10 with me earlier. We would go a little further and
 11 we would say it is vital that closed hearings are
 12 approached with gisting in mind.
 13 We state as clearly as we can that the process of
 14 gisting is not a reflection on the process that leads to
 15 closed hearings and that it is in no way a failing or an
 16 indication of a failing of the process leading to the
 17 closed hearings that there is gisting. There should
 18 always be, or almost always, be room for gists to be
 19 provided after closed hearings, and therefore we
 20 strongly support the submission that has been made on
 21 that and we would hope that there would be no break on
 22 gisting by a consideration by the inquiry that it will
 23 be seen to be a failure of the process leading to those
 24 closed hearings.
 25 SIR JOHN SAUNDERS: Thank you.

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1 MR WEATHERBY: We're also aware that there are members of
 2 your team who have been involved in gisting in other
 3 processes and no doubt that experience will be valuable
 4 in this area and in this process.
 5 And finally and briefly --
 6 SIR JOHN SAUNDERS: But it is an extremely difficult
 7 process, as you are well aware. Having been involved in
 8 it yourself, gisting is never easy, but of course it
 9 will be done.
 10 MR WEATHERBY: Never easy, indeed.
 11 Finally, and briefly, again because of the comments
 12 that have already been made, with respect to the
 13 provision of assistance in receiving Witness J's
 14 evidence, there are a small number of families who, for
 15 reasons that I don't need to go into publicly but I'm
 16 entirely happy to discuss with Mr Greaney or others --
 17 there are good reasons why a number of families, two in
 18 particular from those that I represent, are not able to
 19 be present when Witness J gives his or her -- it's his
 20 evidence.
 21 SIR JOHN SAUNDERS: That is entirely accepted and I'm sure
 22 that's entirely correct.
 23 MR WEATHERBY: Yes. So we hope that we can engage in
 24 meaningful discussions about how that can be approached.
 25 In terms of the measures that have been discussed in

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1 writing and this morning relating to the HMG submissions
 2 at paragraph 5.1 of tab 16, we can indicate that it is
 3 really the feed, the feed from the hearing room which is
 4 the issue that requires further discussion. We don't
 5 take issue with any of the other proposed restrictions
 6 that are raised, but we do think that in the same way as
 7 your ruling took a proportionate approach to the way
 8 that Witness J gives evidence in the hearing room, ie in
 9 public, to be heard by the families and members of the
 10 public and the press in the hearing room, we think
 11 a proportionate approach should be taken to how
 12 provision of the evidence can be provided, hopefully in
 13 real time or close to real time, with families who
 14 cannot make it to the hearing room.
 15 This is because of the importance of Witness J,
 16 a matter which has created some concern within those
 17 families. I'm not sure it would be helpful for me to go
 18 any further given the strong indication that you have
 19 given about the need for further discussion, but we will
 20 certainly engage in a meaningful way in that respect and
 21 hopefully not have to trouble you with further
 22 submissions on this.
 23 SIR JOHN SAUNDERS: Thank you, Mr Weatherby. I very, very
 24 much hope that that can be sorted out to everyone's
 25 satisfaction and I encourage everyone to help that

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1 happen.

2 MR WEATHERBY: Those are my submissions.

3 MR GREANEY: Sir, I've had indications from Mr Cooper and

4 Mr Atkinson about how long they expect to be. In

5 combination they don't expect to be much more than half

6 an hour and, bearing in mind that if the press have

7 submissions I don't expect that to take very long either

8 and indeed it may be that they have none. I'm told that

9 we can press on without a break and seek to finish at

10 some stage shortly before midday if that suits you.

11 SIR JOHN SAUNDERS: Absolutely.

12 MR GREANEY: Could I call on Mr Cooper next, please?

13 Submissions by MR COOPER

14 MR COOPER: Sir, you've seen the written submissions that

15 we've made jointly with Mr Weatherby and obviously we

16 endorse what Mr Weatherby has just said and indeed the

17 written submissions that we've jointly supplied to you.

18 There are effectively, though, eight headings that

19 I want to deal with this morning, which shouldn't take

20 longer than 20 minutes or so, because they will be

21 well-known to you, and let me just highlight them now

22 so, sir, you see where we're going on this.

23 The first heading is the need for specific scrutiny

24 of individual pieces of evidence and I would like to

25 examine with you, sir, if I may the so-called mosaic

1 arguments that have been posited by both Mr Greaney and

2 indeed Mr Weatherby in the documents that you have seen

3 and perhaps put a slightly different approach to that

4 for your consideration.

5 Secondly, I would like to cover, very briefly again,

6 the importance of the point that you made, sir, a little

7 earlier this morning. That is the apparent conflict to

8 some between national security and the covering-up of

9 embarrassments that may or may not lay at the hands of

10 the security services.

11 The third heading deals with the expert and just

12 a few nuances, if I may, on the subject of the expert.

13 The fourth heading will deal with disclosure and

14 witnesses to be called during the closed session, a very

15 brief submission on that.

16 Then we will deal with Rule 10s -- I don't mean

17 going into the detail of them but just to highlight the

18 extensive Rule 10s we have submitted and our respectful

19 expectations of the response to those Rule 10s in the

20 context that we are not going to be permitted into these

21 closed sessions.

22 We touch very briefly on the special advocate point

23 without repeating our submissions made previously, and

24 that will be a very short reference, given, sir, that

25 you have very helpfully indicated to us your timescale

1 as far as that's concerned.

2 Then some joint submissions to assist you and the

3 inquiry legal team on family participation, the

4 suggestions made for that participation. I will be able

5 to update the inquiry as to our submissions on how our

6 families can see and participate in proceedings related

7 to Witness J and hopefully helpful observations

8 concerning general arrangements for the presentation of

9 evidence when it comes.

10 That's broadly the plan, sir, which I have indicated

11 shouldn't take too long, but if it assists you to know

12 where I'm going on this.

13 Sir, our submissions again should be considered with

14 the background and context of what the families'

15 perspective of this position is now. That is the

16 position of closed hearings and their exclusion from

17 them. Our submissions are not based on the law. We've

18 listened very carefully and agree entirely with the

19 observations you have made, sir, at the start of this

20 morning. None of that, of course, is meant to -- not

21 that we would seek to do so, of course -- undermine or

22 to dilute anything that you have said. We entirely

23 agree with what you've said.

24 Nonetheless, we are in the position so far as

25 context is concerned where the families will be

1 excluded, their representatives will be excluded, there

2 will be limited disclosure of evidence and information

3 to the families and their legal teams, in addition to

4 the knowledge that within this chapter there will be

5 a number of witnesses presented outside the realms of

6 the security services, individuals who were known or

7 associated with the killer, who may or may not

8 participate in the process, despite no doubt being told

9 firmly by you, sir, that they should answer questions,

10 they may or may not answer those questions.

11 So the families see these submissions, if I may put

12 it this way, in the context of all that, that is of them

13 being excluded for perfectly -- for some perfectly

14 understandable reasons, others that we question -- not

15 getting the material for the same reasons, sometimes

16 good, sometimes they question it, and then the witnesses

17 they do have may come to your inquiry, sir, and simply

18 not answer any questions.

19 And so the context of the families' lack of

20 participation that they face -- again, this is not a

21 submission born of blame, it is born of a situation we

22 all find ourselves in, but the families' context of the

23 position they face when they come into these submissions

24 today is that of all that, not a very, very limited

25 involvement, let alone participation in the process that

1 is occurring and a limited ability for their
2 representatives, either because witnesses may or may not
3 answer questions or indeed because witnesses may or may
4 not be presented to the family CPs to be asked questions
5 by their teams.

6 Again, with all due respect to the inquiry legal
7 team, I'm sure everyone will accept that all three of
8 the family legal teams have at times asked questions or
9 gone down certain avenues and developed certain themes
10 which have significantly added to the wealth and the
11 knowledge that you have received, sir, in coming to the
12 conclusions and recommendations in volume 1 that
13 you have come to. We feel that should we ourselves or
14 through special counsel have an opportunity to do that
15 again within the closed session, there may be other
16 aspects of an inquiry that may or may not have been
17 revealed if we had not been there to, how shall I put
18 it, press that button.

19 Finally, sir, as far as context is concerned to our
20 submissions, we make the submission we made on the last
21 occasion when justifying the special counsel/exceptional
22 circumstance submission. That exceptional circumstance,
23 we have submitted and continue to submit, which is
24 another background to today, is that we start from
25 a basis of a flawed party. We start from a basis of the

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1 security services clearly and admittedly having made
2 mistakes, got it wrong, and so that's how we start as
3 far as that part is concerned, which adds even more
4 concern as far as those we represent that we need
5 maximum, so far as it may be achieved, exposure to the
6 security services, a flawed security service, a flawed
7 counter-terrorist service, which we already know, so
8 that we can delve into it deeper and that there should
9 not be a perception that these flawed services are being
10 protected further by closed session and indeed by them
11 crying national security.

12 That's the context, sir, as it were, of the
13 submissions made by us today.

14 Let me deal with the first reference we made to you,
15 sir, in our headings, which is perhaps challenging the
16 analogy of the mosaic effect. The reason that we
17 challenge that is that we do ask of you, sir, and we do
18 ask of the inquiry legal team, that when they consider
19 what may or may not go into closed session, in other
20 words what we may or may not see, a very careful and
21 specific analysis is made of each aspect of evidence.

22 As you said, sir, in your opening as far as the
23 counter-intelligence agencies are concerned or the
24 committee are concerned, agencies must demonstrate
25 clearly their concerns. Our submission is that it

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1 should be demonstrated clearly on each individual aspect
2 of evidence.

3 It is in our submission potentially misleading to
4 adopt the mosaic approach by saying, well, this evidence
5 may trickle into other evidence and therefore that
6 evidence may well also need to be protected. We submit
7 that is not enough. In fact, before my submissions this
8 morning, I took a moment to look up the opposite of the
9 word mosaic, and the opposite of the word mosaic is
10 hotchpotch.

11 It's an interesting opposite because in many
12 respects we're concerned that there is a hotchpotch of
13 evidence put together in one pot with the concern that
14 there is a mosaic that goes through it that means that
15 it would not be disclosed.

16 SIR JOHN SAUNDERS: Okay. It had never occurred to me to
17 look up the opposite, Mr Cooper, I'm bound to say, so
18 your researches are commendable. I assume it means that
19 mosaic fits together, hotchpotch does not fit together.
20 I assume that is why it is the opposite, but I may be
21 wrong.

22 MR COOPER: In many respects -- and I emphasise I haven't
23 taken exhaustive (inaudible: distorted) in many respects
24 it suggests that in this context all the evidence is put
25 effectively into one box, into one bucket, swilled

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1 around, and it's suggested that it's all, as it were,
2 interconnected, without individually looking at the
3 evidence to see whether it is affected.

4 We submit that the mosaic approach is potentially,
5 and this is no criticism of those who articulate it,
6 a potentially lazy approach, that it is in our
7 submission necessary for each aspect of evidence which
8 is considered to be too dangerous or too risky to be put
9 into the public domain to be looked at and analysed and
10 not simply put into the mosaic argument, which we have
11 submitted is more of a hotchpotch of evidence which can
12 be suggested to be all contaminated and all constrained
13 and restricted from the public gaze and, in our
14 submission, the families' gaze.

15 So in our submission, and this is our first
16 submission, the inquiry should very carefully look
17 at the mosaic argument and each aspect of evidence which
18 is being suggested to be contaminated within the mosaic
19 is looked at in its own right, not as simply a mosaic
20 contamination, but looked at in its own right to see
21 whether individually it is a matter of concern or
22 a matter of national security, and if it isn't, we say
23 the second process should be undertaken: is there a real
24 mosaic effect that causes it to be contaminated or
25 causes it to be of concern?

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1 So we do invite the process that's being undertaken
 2 as far as this evidence is concerned to consider all
 3 evidence individually and separately before putting it
 4 into a hotchpotch bucket and saying, "It's all
 5 contaminated".

6 SIR JOHN SAUNDERS: Mr Cooper, that will inevitably happen,
 7 I can assure you and indeed the families. One of the
 8 things I will be looking at is not just a single piece
 9 of evidence but a number of pieces of evidence and
 10 saying, "Did the security service and CT Police join up
 11 the dots properly?" to use a different analogy rather
 12 than the mosaic. So this is absolutely an essential
 13 part of what the process will be.

14 MR COOPER: Then I'm reassured by that and I'm sure the
 15 families are reassured by that. This is what I was
 16 suggesting at the start of our submission that we are
 17 not and neither could we challenge the legal basis on
 18 which you are required to operate. What we are arguing
 19 here is the process, the process by which this evidence
 20 is sifted and analysed and the consequences, without
 21 labouring the point, are very, very important for the
 22 families. The consequences are they either see it or
 23 they don't.

24 That's our first substantive submission. If I can
 25 just deal again, and I can deal with this in a sentence,

1 effectively, with national security and covering up
 2 embarrassment. It seems, and we are relieved to hear it
 3 of course and expected it from you, that you're very
 4 aware of that potentiality here. It's something that
 5 some of us have seen in other spheres, in inquests
 6 relating to deaths in the military, that sometimes
 7 something that's called national security, we argue
 8 against redaction, we succeed, and actually see the
 9 redaction and it's nothing more than potentially simply
 10 an embarrassing piece of material.

11 SIR JOHN SAUNDERS: Mr Cooper, you and I over the last
 12 2 weeks have listened to some of the most heart-rending
 13 evidence I have ever heard in any sort of tribunal and
 14 we've all been affected deeply by it. The idea that
 15 I would allow the security service to cover up mistakes
 16 in order to avoid embarrassment is something that I can
 17 assure you I would not have done even if I hadn't heard
 18 the heart-rending evidence, but I am even more
 19 determined.

20 Equally, I would also seek to do everything I could
 21 to not disclose things that would result in other people
 22 going through the sort of torment that the families in
 23 this case have gone through. So that's the balance on
 24 both sides. And I well understand their desire to know
 25 absolutely everything they can know and any mistake that

1 has been made, but I know that the last thing any of
 2 them want is for anything to happen in this inquiry
 3 which would make it easier for something like this to
 4 happen again. I know you agree with all of that.

5 MR COOPER: You do and you know that we have all been very
 6 conscious of that and let me make it very clear on
 7 behalf of those we all represent, it's paramount that
 8 nothing is revealed in this inquiry which gives succour
 9 or assistance to murders and terrorists and none of my
 10 submissions obviously go anywhere near that.

11 Should you be of the view after your analysis that
 12 the material does risk that, then the families would be
 13 entirely supportive, of course, of that being put into
 14 closed session.

15 As I've indicated, it's simply the rigour of the
 16 process and to hear you say that is important. We know
 17 that's how you operate, as it were, having been in this
 18 inquiry for over a year now. It's not in any way meant
 19 to challenge or undermine that, but it's important to
 20 hear it.

21 Moving on to disclosure and witnesses to be called,
 22 the submissions have been made to you already concerning
 23 the information that we would seek concerning witnesses
 24 to be called, material about them and disclosure
 25 concerning their evidence. So far, we have received

1 little or no disclosure on any matters relating to these
 2 witnesses from the inquiry legal team. Some material
 3 that we are aware of has been in their possession for
 4 over a year. We are concerned — I raised this concern
 5 during the submissions on the last occasion, that this
 6 material the inquiry legal team have had for
 7 a significant period of time, we can either assume that
 8 the material they've had from the security services,
 9 every single piece of it, they considered we should not
 10 have. If that is the case, well, there it is. If it
 11 isn't the case, we're somewhat concerned that a long
 12 period of time has gone by and we've had relatively
 13 little. So that does in terms of where we are now give
 14 some concern, again, as to the process.

15 All we can do really at this stage, sir, is
 16 reiterate what we said on the last occasion, that
 17 it would be reassuring if some disclosure could be made
 18 to us and it would be equally reassuring so that we
 19 could see the quality of the process and the quality of
 20 the position being taken by the security services if we
 21 could understand if any material disclosed to us was
 22 originally objected to by the security services.

23 That would give us some idea as to the judgement
 24 being made by the security services for matters not to
 25 be disclosed to us and that when they are, we can

1 actually see whether that element of judgement is
 2 national security or to avoid embarrassment. And again,
 3 that will assist us in coming to a conclusion as to
 4 exactly how cooperative the security services are being.
 5 Because we hear that they say they are, we don't know
 6 whether they are. That would go some way, maybe some
 7 disclosure in that way, for us to adjudge just how
 8 cooperative they are being.

9 You heard, sir, submissions on the expert. We are
 10 not going to repeat those either. We share those
 11 concerns, but perhaps other questions we would like to
 12 know, which we would consider reasonable to ask of the
 13 expert, for instance, is when we're told by my learned
 14 friend, and totally accept this from him, of course,
 15 that there are no qualified experts that haven't served
 16 at some stage with MI5, is it possible to see in any
 17 anonymous or redacted form a gist or whatever of the
 18 qualifications or otherwise of experts that were within
 19 that pool so that we can at least be assured that this
 20 anonymous expert is indeed the best choice available and
 21 that there was no other choice of non-MI5 operatives
 22 that could have been chosen?

23 A further question perhaps on the expert is we hear
 24 that this expert is retired or is no longer within MI5
 25 or the security services. It would be reassuring for

1 the families to know, though, does this expert still
 2 move in security service circles in any way whatsoever?
 3 Are they in any way associated, either by employment or
 4 indeed by social activities, with the security services?
 5 SIR JOHN SAUNDERS: Can we just stop for a moment and let me
 6 clarify the odd thing. We are obviously going to be
 7 considering whether within their own procedures the
 8 security service correctly carried out their operations,
 9 so did they do the right thing. And one of the things
 10 that we know from what the security committee saw, the
 11 Intelligence and Security Committee, is that there were
 12 experts within MI5 who looked at what had happened and
 13 anything which may have gone wrong and were saying would
 14 it make any difference, which obviously is quite
 15 important for me.

16 So we are looking -- we would have to have a person
 17 who is familiar, closely familiar, with how MI5 operates
 18 and works and his or her procedures and also not only
 19 that, but what they could have done with the
 20 information, whatever it was, had they had it.

21 So it may be, and we'll perhaps hear from counsel to
 22 the inquiry, that we will get some information as to
 23 whether there are people outside who never had any
 24 connection with MI5 who have that sort of knowledge.

25 Also this: it's almost inevitable that all of the

1 experts in this case have had some connections with the
 2 organisations, in general terms, that they have been
 3 investigating. And there are possibilities of bias,
 4 let's put it in that, I hope, not too pejorative way, in
 5 two directions. There are those who have reached a high
 6 level within certain institutions who think that no one
 7 does it very well since they've left, so are unduly and
 8 unrealistically critical, and that is a risk with any
 9 expert in this sort of situation. Also there is
 10 obviously a risk that you have people who have been so
 11 involved in it all that they feel naturally supportive
 12 to the people they are actually looking into.

13 My job, lawyers' jobs, is to try and account for
 14 that. So you'll never get anyone who hasn't got the
 15 potential for having some -- bias is the wrong word, but
 16 some bias one way or the other and that's what we need
 17 to exclude. So I understand the point about using
 18 someone from MI5. We can also try and find out, and if
 19 we can disclose to you whether he or she has any
 20 connection with the security services now if that would
 21 reassure people. But there is no way with any expert
 22 before they give their evidence, before they are asked
 23 questions, that you can actually be sure they are coming
 24 from a completely unbiased position. Does that make
 25 sense to you?

1 MR COOPER: It makes complete sense, sir. The only extra
 2 I'd add to that is the problem we have here is that
 3 whilst of course we have full faith in the ability and
 4 integrity of counsel, we are not there to do the
 5 challenge either, so having some form of reassurance in
 6 advance might fill that gap to some degree. But
 7 you have the point and I'll move on from it, save for
 8 this request, that if there was any opportunity to have
 9 some redacted copy of the executive summary of what the
 10 expert is going to say, it would go some way, again if
 11 I can use the expression, to filling that gap.

12 SIR JOHN SAUNDERS: That is being looked at, as I understand
 13 it, and being considered and I hope that can happen.

14 MR COOPER: Thank you.

15 I will move on to towards the end of our list now,
 16 which is touching upon the significant and detailed
 17 Rule 10s that we've submitted to STI in relation to
 18 Witness J. I'm not going to make submissions on them
 19 yet, now is certainly not the time, and I am aware that
 20 STI/CTI will be considering them very, very carefully
 21 indeed.

22 The Rule 10s we've submitted on Witness J to ask of
 23 him questions are extensive and I know that in the past,
 24 and quite rightly so, attention has been made rigorously
 25 to scope in this inquiry.

1 Within the context of today's submissions, sir --
 2 and any attempt that we can all put together to assist
 3 with ameliorating the effects of a closed session ,
 4 we would certainly ask that a generous approach be taken
 5 to our Rule 10 submissions, all Rule 10 submissions by
 6 the family teams, to ensure that when they can ask
 7 questions of Witness J, the widest possible reasonable
 8 and appropriate latitude is given to them to do so,
 9 which again may be some way of ameliorating the
 10 difficulty of not being able to ask questions in closed
 11 session .

12 So our submissions simply on our Rule 10s in due
 13 course which may or may not have to be made later
 14 is that, to ameliorate the constraints that we're all
 15 under as far as the closed session is concerned,
 16 a generous approach is taken to the Rule 10 approach
 17 that we proffered and obviously await a solution on.

18 SIR JOHN SAUNDERS: One of the advantages of having an
 19 earlier notification of the Rule 10 applications is that
 20 this will give more time for toing and froing between
 21 CTI and individuals to have that discussion .

22 MR GREANEY: Sir, Mr Henderson is looking at the Rule 10
 23 responses as this hearing is taking place. He is also
 24 listening to the hearing, and I'm sure he will have
 25 those remarks well in mind.

1 SIR JOHN SAUNDERS: I hope he manages to (overspeaking)
 2 successful (overspeaking).

3 At the end of the day, if you really have
 4 a complaint, you can of course come to me.

5 MR COOPER: I'm sure I won't, sir, and I'm reassured
 6 Mr Henderson is listening and we wish him well with the
 7 work.

8 Special advocates. Nothing to say, really , apart
 9 from reinforcing our submissions from the previous
 10 occasion that we made to you, sir, and we're grateful
 11 for the indication as to when we will get that
 12 adjudication. But we maintain our submissions in the
 13 strongest possible terms as far as special advocates are
 14 concerned.

15 Can I finally deal with family participation? I can
 16 assist the inquiry with an update as far as the families
 17 that Slater & Gordon represent are concerned in relation
 18 to them viewing the evidence of Witness J.

19 I am instructed that, as far as the families that we
 20 represent are concerned, those that choose to regularly
 21 attend will continue to regularly attend during
 22 Witness J's session or indeed attend at Spinningfields .

23 As far as the other families are concerned, we are
 24 content on their behalf, upon taking clear instructions ,
 25 that an answer would be the recorded product and them,

1 should they require it , being shown it at some secure
 2 location or via some secure procedure at a later stage.
 3 So if that helps Mr Greaney and his team, and indeed
 4 you, sir , as far as the Slater & Gordon families are
 5 concerned, that is our position .

6 SIR JOHN SAUNDERS: Mr Cooper, anything that can lead to
 7 agreement is a help to me. Thank you.

8 MR GREANEY: That was an extremely helpful indication
 9 in relation to the families that Mr Cooper represents.

10 MR COOPER: Finally this. In the important matters we've
 11 had to deal with this morning, this may be lost, but
 12 we are grateful that our opportunity at the end of
 13 witnesses being granted to us -- I shall explain within
 14 a few seconds why we ask for it. Often during the
 15 course of this inquiry we are communicating either with
 16 our solicitors or our juniors as leading counsel during
 17 the inquiry procedure and a lot of that communication
 18 has to take place, because of the process, either by
 19 email or by text. That is what we're often seen to be
 20 doing in front of you, sir , communicating with our legal
 21 team.

22 That, of course, would not be appropriate during the
 23 Witness J process, and so the opportunity of having
 24 a relatively substantive and uninterrupted period of
 25 time, such as an hour, to consult as a legal team on, no

1 doubt, important developments, matters that we might
 2 have consulted about during the hearing electronically ,
 3 and indeed speaking to our clients, is absolutely vital .
 4 So we're grateful , as always, to the inquiry legal team
 5 for granting us that period of time, which I hope in the
 6 circumstances you, sir , can see was a sensible request
 7 that we made.

8 SIR JOHN SAUNDERS: Absolutely. I understand.
 9 Thank you.

10 MR COOPER: Those are our submissions.

11 SIR JOHN SAUNDERS: Thank you very much, Mr Cooper.

12 MR GREANEY: Thank you very much, Mr Cooper.

13 Sir, can I say, I'm very grateful to the shorthand
 14 writers for being prepared to go on a little longer ,
 15 a lot longer, in fact, than would normally be the case.
 16 I know that Mr Atkinson isn't going to be long.
 17 That isn't an invitation to him to be shorter than he
 18 intends, but I will now call upon Mr Atkinson to make
 19 his submissions.

20 SIR JOHN SAUNDERS: Mr Atkinson, you feel free to say
 21 whatever you feel is necessary.

22 Submissions by MR ATKINSON

23 MR ATKINSON: Thank you very much, sir. I don't think
 24 I could get any shorter, as it is .

25 Sir, may I say the fact that I make submissions at

1 all is in no way to suggest at all that I disagree with
 2 anything that was been said so far on behalf of the
 3 families. On the contrary, I endorse that which has
 4 been said and commend it to you, particularly, if I may,
 5 Mr Weatherby's analysis of the minimum interference test
 6 which needs to be applied and which I know you fully
 7 have on board.
 8 So a short series of what I hope will not be
 9 a hotchpotch of supplementary points.
 10 SIR JOHN SAUNDERS: Do you mind if I stop you for a minute
 11 to make an observation for your comment? You are a very
 12 experienced counsel, I'm well aware of it, and you have
 13 dealt with many matters which may well involve national
 14 security.
 15 There are inevitably matters which interlink.
 16 I understand what Mr Cooper says about the mosaic effect
 17 and I well understand that. But everybody listening to
 18 this must understand that there are interlinkings which
 19 sometimes make it more difficult to disclose things than
 20 may otherwise be the case. It's going to be difficult
 21 for people not knowing what it is to understand, I well
 22 see that point, but you will know that that does happen,
 23 we have to keep it to a minimum, it mustn't be
 24 artificial, it must be a genuine interlinking with
 25 things that lead to each other, but that factor will,

1 I'm afraid, be there from time to time. I'm sorry to
 2 make that point to you.
 3 MR ATKINSON: What we would say in relation to that is,
 4 firstly, of course there will be situations where
 5 persons who are terrorists who are in possession of
 6 certain pieces of information get further pieces of
 7 information and that allows them to join the dots and
 8 that is to be avoided.
 9 Care has to be taken, however, that that is a real
 10 concern in relation to any particular piece of evidence
 11 and we would also say in relation to the mosaic effect,
 12 we consider it absolutely essential that you, sir, in
 13 chapter 14 are looking at the mosaic effect of whether
 14 the security services should have looked at various
 15 individual pieces of information that they had and put
 16 those together rather sooner than it appears that they
 17 did.
 18 So it's assessing whether they failed to apply
 19 a mosaic effect themselves that is one of the things
 20 that chapter 14 will need to consider.
 21 Dealing with expert evidence briefly, I don't say
 22 any more about the qualifications of the particular
 23 expert. What we do invite is the maximum of disclosure
 24 in relation to (inaudible: distorted) we welcome CTI's
 25 indication that they hope that the executive summary can

1 be disclosed.
 2 It is a shame that the Secretary of State is not yet
 3 in a position to agree to that, but we would invite you,
 4 sir, to consider whether the executive summary is but
 5 the tip of the necessary disclosure that should be made
 6 from this report.
 7 There is, we would submit, a difference between
 8 opinions being voiced by an expert and the material that
 9 underpins those opinions and you, sir, have very good
 10 exception of that from Lord Anderson on the one hand and
 11 the Intelligence and Security Committee of Parliament on
 12 the other, both of which were capable of putting into
 13 the public domain their conclusions and their
 14 assessments of the conduct of the security service
 15 in relation to the information they had leading up to
 16 Manchester.
 17 There is no reason, we submit, why that same
 18 approach cannot be adopted in relation to Expert Z and
 19 that can, as those reports demonstrate, go beyond an
 20 executive summary and go much further than that in
 21 certain areas, and we very much invite you, sir, to have
 22 that in mind and also to cross-reference what the expert
 23 is able to say openly and what Witness J and Mr Scally
 24 are able to say openly.
 25 We would submit it's no answer to that to say: well,

1 it's already been said by Witness J or by Mr Scally. If
 2 this is an expert who is considered capable of assisting
 3 you, sir, by giving you the benefit of their experience
 4 and the conclusions they have drawn based on that, then
 5 that is something the public have a right to know unless
 6 there is an overriding reason in national security
 7 terms, which we submit would more relate to underpinning
 8 material than the opinion itself. So we do ask you,
 9 sir, to have that in mind going forward.
 10 So far as the MI5 witnesses are concerned, we very
 11 much welcome the very constructive approach of CTI in
 12 their paragraph 17 to our series of questions
 13 in relation to the MI5 witnesses. The point we would
 14 make in relation to that, sir, first, is that we asked
 15 those questions, which they have helpfully answered,
 16 from our position of not knowing the detail. As
 17 Mr Weatherby said earlier this morning, we don't know
 18 what the material is and therefore we make our
 19 submissions to that extent in the dark.
 20 Making those submissions in the dark as we did,
 21 asking those questions in the dark as we did, we were
 22 able to get further material from CTI. How much more
 23 would a special advocate instructed in relation to this,
 24 who can see the underlying material, be able to ask
 25 focused questions that could result in more material

1 being put into open than we have been able to achieve
 2 from our position of not knowing what that material is.
 3 Further in relation to the MI5 witnesses, we do
 4 invite you, sir, to encourage the disclosure and direct
 5 the disclosure of more information as to the seniority
 6 and years of service of those witnesses, a matter that
 7 the Secretary of State doesn't feel able yet to commit
 8 to, but we would invite you, sir, to direct that that is
 9 disclosure provided to us. We submit it is relevant and
 10 it is not something that can, we would submit, undermine
 11 national security.

12 SIR JOHN SAUNDERS: Would you just explain to me the
 13 relevance of it?

14 MR ATKINSON: If it were to be the case, sir, for example,
 15 that the person who dealt with a particular piece of
 16 information was new to the job or if it were the case
 17 that the person supervising that process at that time
 18 was new to their job or inexperienced, that might have
 19 a bearing on the process. We don't submit that that
 20 could undermine national security, indeed it might allow
 21 you, sir, to make recommendations about the importance
 22 of supervision of training, all of which are things that
 23 ought to help in the future, and it's relevant, we
 24 submit, to all of that.

25 SIR JOHN SAUNDERS: Right.

1 MR ATKINSON: In the same way ---
 2 SIR JOHN SAUNDERS: It doesn't mean that those who have done
 3 the job for a long time don't get it wrong from time to
 4 time.

5 MR ATKINSON: Of course it doesn't, and in relation to such
 6 people you'll want to consider whether they've had
 7 sufficient refresher training. It's exactly the same
 8 process that we have spent the last many months going
 9 through in relation to chapter 10 and considering
 10 training, experience, refresher training, degrees of
 11 supervision, adequacy of supervision. All of those
 12 things have an element of how long have they been doing
 13 the job and what was their experience. There must be
 14 a middle point, we submit, that disclosure can be made
 15 to the families in relation to that, so they can
 16 understand who it is, not specifically, but in general
 17 terms is being --- has been involved in making these
 18 decisions, making these assessments and that goes beyond
 19 what has already been disclosed to us and, we don't
 20 submit, can itself undermine national security.

21 SIR JOHN SAUNDERS: I understand the point better and I hope
 22 the Secretary of State's team will now understand the
 23 point better as well. Thank you.

24 MR ATKINSON: In relation to gists, and I'm sure it's our
 25 fault, there may be a slight misunderstanding between

1 ourselves and CTI as to what we're asking for and
 2 whether it's called a scope of evidence to come or
 3 a gist of evidence to come. We are grateful that they
 4 recognise that we should have gists where possible
 5 before the closed evidence sessions. In fact, we're
 6 asking at our paragraph 11 to have them before the open
 7 sessions so far as chapter 14 is concerned because it
 8 may be that material that is to come, as revealed by
 9 a gist, will be relevant to the questioning of Witness J
 10 or Mr Scally, so we would ask for that where possible.

11 May I say that we entirely endorse and, certainly
 12 from my experience, entirely endorse that the gisting
 13 process is a process that necessarily will involve gists
 14 after, rather than just before, and that providing
 15 further material after is in no way a criticism of the
 16 process, indeed it's showing the process to have worked,
 17 that it has identified that there is more that can be
 18 revealed and so we would welcome that.

19 Again, from experience, I entirely understand how
 20 difficult that gisting process can be and those involved
 21 have my sympathies.

22 Finally, however, in relation to police witnesses,
 23 we would ask for the same degree of disclosure that
 24 we've now had in relation to the scope of evidence, the
 25 roles of the witnesses, their experience and years of

1 service that we've just touched on in relation to the
 2 MI5 witnesses in relation to the police witnesses, both
 3 those who we have had some information about and more
 4 particularly those who we are not going to get
 5 statements from.

6 That's a matter that CTI in their very helpful
 7 submissions indicated they would welcome any submissions
 8 from GMP about. Subject to that, we would ask that that
 9 kind of material is provided for those witnesses, as it
 10 has now been for MI5.

11 Those, sir, are our submissions.

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

13 MR GREANEY: May I just say in response that it is certainly
 14 correct that the focussed and intelligent questions
 15 posed by Mr Atkinson and his team in their submissions
 16 have enabled us today to give some further information
 17 about matters that are of interest to the families. But
 18 that does not mean that that information would not in
 19 any event at some stage, some relevant stage, have been
 20 provided to core participants. I hope that makes sense,
 21 sir.

22 SIR JOHN SAUNDERS: Yes.

23 MR GREANEY: So, sir, finally, Mr Gardham did indicate that
 24 he didn't anticipate making any oral submissions. As
 25 I said, he has made some written submissions, but I will

1 as a matter of courtesy give him an opportunity if he
 2 wishes.
 3 MR GARDHAM: I hope you can hear me okay --
 4 MR GREANEY: Not really.
 5 SIR JOHN SAUNDERS: We can't hear you at the moment. Either
 6 you can turn up your microphone -- you're so used to
 7 listening and not talking that you haven't put your
 8 microphone on sufficiently, Mr Gardham, I think.

9 (Pause)

10 Submissions by MR GARDHAM

11 MR GARDHAM: I will just briefly, if that's okay, just run
 12 through the issues. I know you have them in writing
 13 already.
 14 SIR JOHN SAUNDERS: By all means.
 15 MR GARDHAM: Firstly, I just wanted to reiterate what we say
 16 at the beginning of our written submissions, that we,
 17 perhaps more than most, understand the importance of the
 18 work that MI5 do because we sit through a lot of the
 19 product of that hard work that results in the plots that
 20 are foiled that were referred to in evidence yesterday.
 21 So we very much do appreciate the value of what they do
 22 and also the need for secrecy in what they do as well.
 23 But we would re-emphasise in some ways the comments
 24 that were made by counsel earlier that we don't in any
 25 way submit that MI5 may be involved in bad faith in

1 their disclosures here, but rather that they become
 2 over-reliant on a system of secrecy and, when probed
 3 a little further, we realise that there are other ways
 4 around.

5 Just to divert for a second, we appreciate the
 6 comments made by the chairman about his independence
 7 today and they're very much taken on board. In fact --
 8 and the quotes from the ISC are interesting as well --
 9 ultimately it is the government who decide whether to
 10 publish material from the ISC and in fact this tribunal
 11 is the only one that can truly be regarded as
 12 independent of everyone and that's not to take away from
 13 the hard work that the ISC have done.

14 But to get to the point, and I'm sorry for rambling
 15 slightly --

16 SIR JOHN SAUNDERS: It's very interesting, Mr Gardham, if
 17 I may say so, because you obviously have a different
 18 perspective on things like the ISC than I would
 19 necessarily have.

20 MR GARDHAM: To get to the point slightly, issue 1 on our
 21 list was the laptops. I know it has caused quite a lot
 22 of concern from colleagues who are not used to the
 23 proceedings and I know some inquests have used the
 24 restriction on laptops and some haven't.

25 My point in talking about this level of secrecy is

1 to really kind of dig down into the level of harm that
 2 might actually be caused by us having laptops there and
 3 essentially my understanding is that the concern is
 4 around an inadvertent recording, in other words that
 5 somebody might take over a laptop by nefarious means and
 6 start recording the proceedings and then leak that on to
 7 the internet.

8 That seems an incredibly unlikely scenario, and even
 9 if it did happen, the chances that somebody from the
 10 officer's past, some 20 years earlier, I would imagine,
 11 might suddenly recognise their voice and realise who
 12 they were in the same way that they'd seen a photograph
 13 or a fingerprint also seem incredibly unlikely.

14 So we would submit that the harm that is sought to
 15 be avoided is very unlikely, yet the restriction that is
 16 being placed on us in terms of our ability to fully
 17 report the proceedings is quite severe because, as
 18 I said in written, it really does limit us to writing
 19 a handful of paragraphs during breaks in order to
 20 summarise the evidence which is a lot more laborious
 21 than we would be used to, either before laptops existed
 22 or now they do.

23 We appreciate as well that -- sorry, there was
 24 a difficulty made by Ms McGahey in saying that she would
 25 seek to come round and remove the relevant sections from

1 our notes, which has not been our understanding in the
 2 past. How that would work in practice when we actually
 3 need those notes to write up on the day is very unclear.
 4 I think it illustrates, in a sense, the danger of us
 5 trying to move back into an analogue world from the
 6 digital one that we've been used to occupying.

7 We could quite easily delete the material from our
 8 laptops without any problem at all, but it's far more
 9 difficult for them to come round and start taking our
 10 notes off us when we actually need them for what we're
 11 doing.

12 SIR JOHN SAUNDERS: Mr Gardham, can I just stop you for
 13 a minute just to raise a possibility with you?

14 I entirely agree and I am very keen that you should have
 15 every possible assistance in being able to report this
 16 evidence as accurately as you can. I suspect you're
 17 more accurate on a computer than you are on your notes.
 18 I was also concerned to see in your representations that
 19 you don't get the transcript as soon as advocates do.

20 MR GARDHAM: We do, but it tends to arrive around 8 o'clock
 21 in the evening. I think to explain, and there's no
 22 reason why anyone should understand how we do operate,
 23 but deadlines are much earlier than they might have been
 24 in films in the old days and burning the midnight oil,
 25 and really stories are quite often put to bed, as we

1 would say, around 2 or 3 in the afternoon, with perhaps
 2 additional material being added at 5 or 6, so really
 3 we are writing as we go along and I think that's part of
 4 the problem with the transcript that arrives at
 5 8 o'clock.
 6 SIR JOHN SAUNDERS: I understand that. We've obviously got
 7 a running transcript in court. I wonder whether
 8 anything can be done to make something like that
 9 available.
 10 MR GREANEY: Sir, I certainly think it's reasonable to
 11 invite us to look at whether during Witness J's evidence
 12 any further assistance by way of the transcript can be
 13 given to the press. I'm not in a position to make
 14 a commitment now, because it's not my commitment to
 15 give, but we will certainly look into that.
 16 SIR JOHN SAUNDERS: I'm sure you get it at 8 o'clock because
 17 someone's taken it away and tidied it up because
 18 obviously there will be inaccuracies, but in discussion
 19 with you, can we try and look at that as a possibility?
 20 There's nothing I want less than someone coming to
 21 remove bits of your notebook with a pair of scissors or
 22 something.
 23 MR GARDHAM: I think that's something we all want to avoid,
 24 but even with the limits of the transcript, it has to be
 25 appreciated the speed with which material has to be

1 produced. So even a delay of half an hour in the
 2 transcript will mean that the copy will be 50% written
 3 because it will have to be done within those 60 minutes
 4 and put out in that time. But any assistance that can
 5 be offered would be gratefully received. And of course,
 6 we will be able to check it against our shorthand notes,
 7 which sometimes can be surprisingly accurate, although
 8 perhaps a little rusty.
 9 SIR JOHN SAUNDERS: Yes. Obviously, we really do appreciate
 10 the problem and we'll have discussions, which I hope
 11 will be constructive. If you don't find them
 12 constructive, which I hope you will, then please do get
 13 back to me.
 14 MR GARDHAM: I am very grateful, thank you.
 15 Issue 2 around the regularity, I think counsel have
 16 addressed.
 17 Issue 3 around the live feed to court 9, we haven't
 18 heard back on. We are slightly confused about why
 19 there's a delay on that, which there wasn't earlier.
 20 MR GREANEY: The answer is because there was always a delay
 21 on the feed to the media annex and court 9 has now
 22 effectively become the media annex. That is why there
 23 has been a change.
 24 MR GARDHAM: So I appreciate how it came about, but I think
 25 there were media -- I was certainly one of them -- who

1 was in court 9., so there was a system whereby some of
 2 us could come over to the court building and hear the
 3 evidence live. I was in there for several weeks.
 4 MR GREANEY: Again, it's reasonable to ask us to look into
 5 that. At the moment, again, I'm not in a position to
 6 make a commitment, but we've understood the reasonable
 7 point that's been made.
 8 SIR JOHN SAUNDERS: Okay.
 9 MR GARDHAM: I'm very grateful. As you know from
 10 experience, where there is a delay or we don't hear
 11 material, it's difficult for us to make submissions on
 12 that, and equally difficult when there's just one
 13 reporter in court and his attention might well be
 14 elsewhere.
 15 Issue 4 has fallen away. I believe all the
 16 restriction orders applied to PII material and we have
 17 no objection to those orders (inaudible) in place.
 18 Issue 5. Again, I appreciate Mr Greaney has
 19 addressed several of the matters raised there. I won't
 20 raise them in open because I think this is going out,
 21 but we just ask counsel to consider the first two
 22 paragraphs of those issues under issue 5 and whether
 23 there might be a way of explaining in as much detail as
 24 is reasonable the nature of the witnesses that will be
 25 heard in closed and the issues that they will be

1 addressing -- there doesn't seem to us to be any
 2 national security risk in that and we do want to, where
 3 possible, explain the nature of what's going on.
 4 SIR JOHN SAUNDERS: You might be getting an instant
 5 response, Mr Gardham, if you hang on a minute.
 6 MR GREANEY: The question, as I have understood it, under
 7 issue 5, is the first two paragraphs which relate to
 8 paragraphs 31 and 16 of our submissions:
 9 "Can those matters be reported?"
 10 Agree that they can be reported. I know that those
 11 who represent HMG and GMP will still be listening. So
 12 if they disagree, could they indicate within the next
 13 15 minutes, failing which Mr Suter will ensure that the
 14 message is communicated to Mr Gardham and his colleagues
 15 that they can report.
 16 SIR JOHN SAUNDERS: Okay, thank you.
 17 MR GARDHAM: I'm very grateful, thank you very much indeed.
 18 Lastly, an issue that I'm sure we share with
 19 everyone and in many ways our interests align with the
 20 families', to try and explain as fully as we can the
 21 nature of the enquiries that you will be doing in the
 22 next few weeks. But where possible -- and that parts of
 23 this material are moved from closed to open in that
 24 it is disclosed to CPs or gisted, that we would ask for
 25 as much of that material to be made available on the

1 inquiry website because, compared to the other sections
 2 of the inquiry, there will be relatively limited amounts
 3 of information that it is possible to make public and
 4 I'm sure the inquiry will do what they can to make sure
 5 as much information, accurate information, is made
 6 public as possible.
 7 SIR JOHN SAUNDERS: Okay. Thank you, Mr Gardham. Can
 8 I assure you and other members of the press, as far as
 9 I can and I am legally allowed to, I will do my utmost
 10 to ensure that this inquiry is as open as it can be in
 11 accordance with the provisions of national security and
 12 that the procedure which we've adopted, I hope, will
 13 actually ensure that more is known than might otherwise
 14 have happened. That's certainly been the intention. So
 15 I know the proof of the pudding is in the eating, but
 16 nevertheless that is certainly our intention. So
 17 thank you for your submissions.
 18 MR GREANEY: Sir, the inquiry legal team is grateful for all
 19 of the submissions that were made today. There isn't in
 20 fact anything further that we wish to say unless
 21 you have anything you would like to add, that will bring
 22 this week's proceedings to an end.
 23 SIR JOHN SAUNDERS: It has been quite a week and I am very
 24 grateful for the brevity and the clarity of the
 25 submissions which have been made to me today.

1 Thank you. We will now all go away and work on them.
 2 MR GREANEY: Indeed, sir, and we will resume with chapter 12
 3 at 9.30 on Monday morning.
 4 SIR JOHN SAUNDERS: Thank you.
 5 (12.05 pm)
 6 (The inquiry adjourned until 9.30 am
 7 on Monday, 4 October 2021)
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