

<p>1 Monday, 15 March 2021 2 (10.00 am) 3 Opening remarks 4 THE CHAIRMAN: Ms Blackwell, before we start, I wonder if 5 I can take this opportunity for congratulating everybody 6 who is present, both in person and virtually today, 7 because, for us to have reached this point at this time, 8 given what has happened over the last 12 months, is 9 a great tribute to everyone who has been concerned with 10 the preparation of this case. 11 This Inquiry was set up in February 2020, without 12 the pandemic we would have done well to start by the 13 early autumn. 14 With the pandemic, and its knock-on effect, the fact 15 that we have been able to start on the date which was 16 flagged up so long ago is little short of a miracle, and 17 I think you all ought to be blowing your own trumpets 18 and giving yourselves a pat on the back, because without 19 the extraordinary hard work that all of you have put in 20 to overcome the innumerable obstacles, we would be 21 a long way off. I would like to thank and congratulate 22 everybody for having worked as hard and efficiently as 23 they have to get us to this stage today. 24 MS BLACKWELL: Can I begin by (inaudible) current 25 restrictions to which you have already made reference.</p> <p style="text-align: center;">Page 1</p>	<p>1 representatives who are attending remotely, in 2 particular those representing W80, the MPS and the NCA. 3 Our oral submissions are presented this morning to 4 assist you in determining the applications for orders 5 under section 19 of the Inquiries Act of 2005, 6 restriction orders, made by the Metropolitan Police, the 7 National Crime Agency W80 and Serco. Some applications 8 relate to the anonymity of individuals, others relate to 9 the redaction of evidence which may be relevant to the 10 inquiry. 11 The applications are to be heard across the course 12 of the next two days, with the open submissions being 13 made today and closed submissions tomorrow. You, sir, 14 have already made an order under section 19(1)(a) to 15 limit attendance at the closed session tomorrow and to 16 prevent any reporting or publication of the submissions 17 or evidence heard and referred to. 18 THE CHAIRMAN: We are, as you will all appreciate, in 19 a different court today from where we will be tomorrow. 20 MS BLACKWELL: Yes. 21 THE CHAIRMAN: In one sense, it would have been more 22 convenient to be in the same place both days, but 23 I think by adopting the course that we have done, we 24 have made it possible for more people to attend the open 25 hearing than would otherwise have been the case. I hope</p> <p style="text-align: center;">Page 3</p>
<p>1 May I also just make this comment that, whilst it is 2 important that everyone wears their masks whilst walking 3 around the court building, it is entirely a matter of 4 personal choice whether each person present in this 5 courtroom wears their mask or not during the course of 6 the court hearing. 7 I appear as counsel to the inquiry today together 8 with Nikita McNeill and Aaron Moss of counsel, and we 9 are assisted by Abigail Scholefield, who sits below you, 10 as solicitor to the inquiry. 11 The family of Jermaine Baker are represented by 12 Phillippa Kaufmann Queen's Counsel and Fiona Murphy of 13 counsel, together with Michael Oswald. As you know, 14 sir, Mrs Margaret Smith, the mother of Jermaine Baker is 15 also present in court today. 16 The MPS are represented by Matthew Butt Queen's 17 Counsel, together with Daniel Futter. 18 W80 is represented by Duncan Penny Queen's Counsel 19 and Leona Roberts. 20 The NCA are represented by Neil Sheldon Queen's 21 Counsel and Anthea Brookes. 22 The IOPC are represented by Danny Simpson and 23 Liz Parsons. 24 Serco are represented by Sarah Simcock of counsel. 25 There are also a number of core participants'</p> <p style="text-align: center;">Page 2</p>	<p>1 everybody will put up with the inconvenience in order 2 for the other advantage for the other advantage to have 3 been achieved. 4 MS BLACKWELL: Thank you, sir. 5 There are two bundles of documents relevant to 6 today's hearing. 7 The first is a bundle of applications and supporting 8 documentation, which also contains the submissions from 9 all parties. This begins with the written submissions 10 from counsel to the inquiry. 11 Sir, you will find the most recent submissions and 12 skeleton arguments from the core participants at the 13 rear of that bundle, at tabs 98 to 102. 14 The second is a bundle of authorities relied upon or 15 referred to within the submissions of the parties. 16 There is also some additional material, which I will 17 deal with at the relevant point, that I know you have 18 been in receipt of very recently. 19 THE CHAIRMAN: Thank you. 20 Submissions by MS BLACKWELL 21 MS BLACKWELL: The applications received can broadly be 22 summarised as follows, and I propose to deal with them 23 in this order, if I may. 24 Firstly, the applications made on behalf of the NCA. 25 Application 1 is an anonymity application for the</p> <p style="text-align: center;">Page 4</p>

<p>1 corporate witness known as witness C, which you will 2 find at tab 81 in the main bundle. Sir, each reference 3 to a tab that I make henceforth is a reference to the 4 main bundle. If I want to refer to the authorities 5 bundle I shall state as much.</p> <p>6 THE CHAIRMAN: Thank you.</p> <p>7 MS BLACKWELL: Application 2 is an application for the 8 non-disclosure of witness C's evidence and its exhibited 9 documents and the non-disclosure of Stephen Smart's 10 statements.</p> <p>11 Applications 3 and 4 are for the redaction of 12 documents as set out at tabs 85 and 90 in your bundle.</p> <p>13 The inquiry legal team have since the circulation of 14 our written submissions received two further 15 applications from the NCA.</p> <p>16 Application 5, which is an anonymity application for 17 the witness SE11, which is at tab 82C.</p> <p>18 Application 6, which is the non-disclosure of 19 a further statement from witness C, and a statement from 20 witness SE11, as well as material relating to the risk 21 posed by SE11, all of which are to be found at tab 82A.</p> <p>22 Next, the MPS, there are six applications relating 23 to the redaction of documents set out together with 24 their supporting evidence between tabs 51 and 72, and 25 anonymity applications for 25 serving and former</p> <p style="text-align: center;">Page 5</p>	<p>1 journalists should be permitted to see the witnesses if 2 they are anonymised, and I will turn to deal with those 3 at the appropriate time.</p> <p>4 In terms of the law, sir, broadly speaking, there is 5 agreement between counsel to the inquiry, the family, 6 the MPS, W80 and the NCA about the legal principles 7 which apply in these applications. However, it is right 8 that I set out the relevant legal provisions for all of 9 those who attend today and for all of those who are 10 attending remotely and also for the court record.</p> <p>11 I hope that I do so in a way which is clear and 12 relatively easy to follow and is of assistance to you, 13 sir.</p> <p>14 There is under section 18(1) of the Inquiries Act 15 2005, which is set out at tab 1 in your authorities 16 bundle, a presumption of openness in relation to 17 a public inquiry's proceedings and information. You 18 must determine what steps you consider reasonable to 19 secure that members of the public, including reporters, 20 are able to (a) attend the inquiry or to see and hear 21 a simultaneous transmission of proceedings at the 22 inquiry, and (b) to obtain or to view a record of 23 evidence and documents given, produced or provided to 24 the inquiry.</p> <p>25 The presumption at section 18 is subject to any</p> <p style="text-align: center;">Page 7</p>
<p>1 officers listed in the anonymity schedule, which is at 2 tab 4, including applications for the use of ciphers, 3 the giving of evidence whilst screened from members of 4 the public and media and other ancillary protective 5 measures.</p> <p>6 W80, there is an anonymity application including the 7 use of a cipher, the giving of evidence whilst screened 8 from members of the public and the media and other 9 ancillary protective measures at tab 73.</p> <p>10 Finally, Serco, there is an application for the 11 redaction of the route taken by the Serco prison van 12 from Wormwood Scrubs Prison to Wood Green Crown Court at 13 tab 92.</p> <p>14 Finally, there is an anonymity application for all 15 Serco staff, again at tab 92.</p> <p>16 THE CHAIRMAN: Past and present?</p> <p>17 MS BLACKWELL: Yes.</p> <p>18 The inquiry has received submissions in --</p> <p>19 THE CHAIRMAN: Until recently living and dead?</p> <p>20 MS BLACKWELL: Yes, sir.</p> <p>21 THE CHAIRMAN: Yes.</p> <p>22 MS BLACKWELL: The inquiry has received submissions in 23 response to the applications from those representing the 24 family of Jermaine Baker and also on behalf of the 25 Guardian News and Media, to the effect that accredited</p> <p style="text-align: center;">Page 6</p>	<p>1 restrictions imposed by an order under section 19. 2 Section 19 provides for restrictions to be placed on 3 attendance, section 18(1)(a), or disclosure and/or 4 publication of any evidence or documents given, produced 5 or provided to the inquiry, section 19(1)(b).</p> <p>6 Pursuant to section 19(3), you, the chairman, must 7 specify only such restrictions as (a) are required by 8 any statutory provision, section 19(3)(a) -- this 9 includes an individual's rights under the European 10 Convention of Human Rights by virtue of section 6 of the 11 Human Rights Act 1988, (b) are required by any 12 enforceable obligation or rule of law, again 13 section 19(3)(a), this will include applications of 14 public interest immunity and common law duty of fairness 15 and, (c) any restriction that you consider to be 16 conducive to the inquiry fulfilling its terms of 17 reference, section 19(3)(b) and (d) any restriction that 18 you consider to be necessary in the public interest, 19 again section 19(3)(b).</p> <p>20 In assessing the public interest under 21 section 19(3)(b), you are to have regard in particular 22 to what is a non-exhaustive list set out in 23 section 19(4): (a) the extent to which any restriction 24 on attendance, disclosure or publication might inhibit 25 the allaying of public concern; (b) any risk of harm or</p> <p style="text-align: center;">Page 8</p>

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<p>1 damage that could be avoided or reduced by any such 2 restriction; (c) any conditions as to confidentiality, 3 subject to which a person acquired information that he 4 is to give or has given to the inquiry; and (d) the 5 extent to which not imposing any particular restriction 6 would be likely (1) to cause delay or to impair the 7 efficiency or effectiveness of the inquiry or (2) 8 otherwise to result in additional cost, whether to 9 public funds or to witnesses or others.</p> <p>10 Harm or damage is defined at section 19(5) as 11 including in particular (a) death or injury, (b) damage 12 to national security or international relations, (c) 13 damage to the economic interests of the United Kingdom, 14 or of any part of the United Kingdom, and (d) damage 15 caused by disclosure of commercially sensitive 16 information.</p> <p>17 As I have already said, the factors listed in 18 section 19(4) for measuring the public interest as 19 supplemented by section 19(5) are not exhaustive. The 20 use of the words "includes in particular" in 21 section 19(5) makes plain that risk of damage to any 22 relevant public interest can and should be considered 23 under section 19(3)(b).</p> <p>24 Sir Christopher Pitchford as chairman of the 25 Undercover Policing Inquiry, confirmed that the public</p> <p style="text-align: center;">Page 9</p>	<p>1 information.</p> <p>2 (e) make in respect of the information concerned 3 a fact-sensitive assessment of the position at which the 4 public interest balance should rest.</p> <p>5 The law in relation to evidential redactions, where 6 it is in the public interest for documents to be 7 withheld from disclosure, that decision should arguably 8 be made under section 19(3)(a) or (b). We note that no 9 core participant in your inquiry has invited you to rule 10 on whether or not any claim for PII falls to be 11 considered exclusively under section 19(3)(b) or under 12 section 19(3)(a) or (b). We submit that it is not 13 necessary for you to do so here. The High Court has 14 held that it is difficult to envisage a factual scenario 15 in which a document may be restricted on public interest 16 grounds under one subsection but not under the other, 17 since the two tests of public interest will normally 18 produce the same result. You have at tabs in your 19 authorities bundle, the relevant rulings in relation to 20 Lord Justice Pitchford, as he then was in the 21 Azelle Rodney hearing, and then 22 Sir Christopher Pitchford, as he became as chairman of 23 the Undercover Policing Inquiry.</p> <p>24 You are invited therefore, sir, in deciding these 25 applications, in this inquiry, to apply the principles</p> <p style="text-align: center;">Page 11</p>
<p>1 interest in effective policing is a material and 2 important consideration in restriction order 3 applications. We submit that you should have due regard 4 to the potential harm and damage to such effective 5 policing. The relevant ruling of that is at tab 13 in 6 your authorities bundle.</p> <p>7 THE CHAIRMAN: Yes.</p> <p>8 MS BLACKWELL: The family recognises at paragraph 7 of their 9 skeleton argument, which is at tab 98, that there is 10 a public interest in effective policing which properly 11 falls to be weighed in the balance in favour of 12 applications. In the same written submissions at 13 paragraphs 4 to 13, the family helpfully cites the legal 14 framework and route map which Sir Christopher Pitchford 15 said he would apply in the Undercover Policing Inquiry 16 and we commend this as the correct approach for these 17 applications.</p> <p>18 In relation to public interest, you should.</p> <p>19 (a) identify the public interest in non-disclosure. 20 (b) assess the risk and level of harm to the public 21 interest that would follow from disclosure of that 22 information. 23 (c) identify the public interest in disclosure. 24 (d) assess the risk and level of harm to the public 25 interest that would follow non-disclosure of that</p> <p style="text-align: center;">Page 10</p>	<p>1 normally applied in relation to public interest immunity 2 applications, about which I know you are incredibly 3 familiar.</p> <p>4 THE CHAIRMAN: I would not say incredibly, but I know a bit.</p> <p>5 MS BLACKWELL: The foundation principles of public interest 6 immunity were addressed in the House of Lords in Conway 7 v Rimmer back in 1968, in which the House of Lords 8 ruled:</p> <p>9 "It is universally recognised that here there are 10 two kinds of public interest which may clash. There is 11 the public interest that harm shall not be done to the 12 nation or to the public service by disclosure of certain 13 documents and there is the public interest that the 14 administration of justice shall not be frustrated by the 15 withholding of documents which must be produced if 16 justice is to be done. The police are carrying on 17 an unending war with criminals, many of whom are today 18 highly intelligent."</p> <p>19 THE CHAIRMAN: I suppose it might be said if they were 20 highly intelligent in 1968, it speaks ...</p> <p>21 MS BLACKWELL: It certainly does:</p> <p>22 "So it is essential that there should be no 23 disclosure of anything which might give any useful 24 information to those who organise criminal activities 25 and it would generally be wrong to require disclosure in</p> <p style="text-align: center;">Page 12</p>

<p>1 a civil case of anything which might be material in 2 a pending prosecution."</p> <p>3 The House of Lords have described the PII situation 4 as a duty rather than a right and so was held by Lord 5 Justice Bingham in the Makanjuola case.</p> <p>6 In ex parte Mohammed in 2009, at tab 18 of your 7 authorities bundle, Lord Justice Thomas suggested that 8 four questions be posed in turn.</p> <p>9 (a) whether there is a public interest in 10 disclosure.</p> <p>11 (b) whether disclosure would bring about a real risk 12 of serious harm to an important public interest and, if 13 so, which interest.</p> <p>14 (c) whether the risk can be protected against by 15 other means or more limited disclosure.</p> <p>16 (d) if there is no adequate alternative, where does 17 the balance of the public interest lie.</p> <p>18 The final balancing exercise involves you asking 19 whether the public interest in refusing disclosure is 20 outweighed by the public interest in doing justice in 21 the proceedings.</p> <p>22 Section 19(3) allows you to impose only such 23 restrictions which meet one of the statutory tests and 24 the restrictions must go no further than that. The 25 point is properly made on behalf of the family at 21 of</p> <p style="text-align: center;">Page 13</p>	<p>1 cannot be disclosed in the normal way or used in open 2 hearings.</p> <p>3 Third, for a number of anonymity applications, we 4 have submitted that the fears raised may be met by 5 special measures in lieu of anonymity.</p> <p>6 In an inquiry, sir, the public interest in 7 disclosure is in a full and open investigation being 8 conducted with all potentially relevant evidence being 9 available to the core participants. Lord Bingham in 10 ex parte Amin characterised the purposes of the state's 11 investigation into the circumstances of an individual's 12 death by way of inquest as follows:</p> <p>13 "To ensure so far as possible that the full facts 14 are brought to light, that culpable and discreditable 15 conduct is exposed and brought to public notice. That 16 suspicion of deliberate wrongdoing if unjustified is 17 allayed, that dangerous practices and procedures are 18 rectified and that those who have lost their relative 19 may at least have the satisfaction of knowing that 20 lessons learned from his death may save the lives of 21 others.</p> <p>22 "The principle that justice be done in the open 23 applies equally to inquiries and favours the disclosure 24 and deployment of relevant evidence in a public hearing, 25 such that the granting of a restriction order always</p> <p style="text-align: center;">Page 15</p>
<p>1 their skeleton argument, that you must consider whether 2 there are any lesser alternatives to the terms of the 3 restriction orders sought, such as the imposition of 4 undertakings of confidentiality or the inspection of 5 documents in controlled conditions. This is something 6 which we have had very much in mind and which we would 7 submit that you should continue to keep in mind during 8 both the course of submissions today and tomorrow and 9 also consideration of your rulings.</p> <p>10 We have done our best wherever it is possible to 11 engage in a consideration of potential alternatives to 12 restriction orders under section 19, as demonstrated, 13 sir, by the three following examples.</p> <p>14 First, in relation to Serco's application for 15 a restriction order over the route taken by the prisoner 16 escort and custody service, or PECS vehicle, the inquiry 17 legal team has worked with Serco to produce a form of 18 words which may be used in place of the information 19 itself. That has now been disclosed to core 20 participants and I know that you too have seen a copy, 21 sir.</p> <p>22 Second, the MPS now propose that some of their 23 material in relation to the STIC tactic may be made 24 available at the offices of the solicitor to the 25 inquiry, to be viewed by core participants, even if it</p> <p style="text-align: center;">Page 14</p>	<p>1 involves some infringement of the open justice 2 principle."</p> <p>3 This was considered by His Honour Judge Teague 4 Queen's Counsel, chairman of the Anthony Grainger 5 Inquiry. His first ruling on anonymity is at tab 22 of 6 the authorities bundle, and the family relies upon this 7 ruling of anonymity at paragraph 16 of their skeleton.</p> <p>8 His Honour Judge Teague Queen's Counsel identified 9 that where it is the state which seeks to restrict 10 disclosure of sensitive information, as in this case, 11 and where one purpose of the inquiry is to investigate 12 alleged unlawful conduct by an arm of the state, as in 13 this case, there is a public interest both in the public 14 knowing who has been guilty of such wrongdoing and 15 dispelling any unjust suspicion of the innocent. We 16 agree that this is an important factor to be weighed in 17 the difficult balance of public interest factors.</p> <p>18 Furthermore, the independent judgment of the court 19 is critical, even in the context of national security 20 the court simply does not salute a ministerial flag.</p> <p>21 The points that I just made in relation to open 22 justice apply equally to applications which would grant 23 anonymity and special measures to a witness. In 24 deciding whether to make such orders, you will examine 25 the responsibilities of the inquiry at common law, under</p> <p style="text-align: center;">Page 16</p>

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<p>1 section 17(3) of the Inquiries Act and by virtue of 2 section 19(3)(a) of the inquest act and section 6 of the 3 Human Rights Act under the European Convention on Human 4 Rights. This will include primary rights under articles 5 8 and 2. 6 In practice, sir, this involves a two-stage process 7 as set out by the House of Lords in the Officer L case 8 in 2007 which is at tab 8 in your authorities bundle. 9 (a) if the refusal of the orders would create or 10 materially increase a risk to the life of the person, 11 such that the risk would be real and immediate, then you 12 would owe a positive duty under Article 2 to protect the 13 witness by reasonable means. In those circumstances, 14 you would ordinarily have little difficulty in 15 determining that it would be reasonable in all the 16 circumstances to give the witness a degree of anonymity. 17 A risk is real if it is substantial and significant, 18 rather than remote, and it should be objectively 19 verifiable. It is immediate if it is present and 20 continuing. 21 (b) if the refusal of the orders would not result in 22 the person being exposed to a real and immediate risk of 23 death, then you should decide the matter as one governed 24 by common law principles, balancing the factors for and 25 against the orders sought.</p> <p style="text-align: center;">Page 17</p>	<p>1 taken into account as the Court of Appeal said in the 2 earlier case of R V Lord Saville of Newdigate, ex parte 3 A. It is unfair and wrong that witnesses should be 4 avoidably subjected to fears arising from giving 5 evidence, the more so if that has an adverse effect or 6 impact on their health. It is possible to envisage 7 a range of other matters which could make for unfairness 8 in relation to witnesses. Whether it is necessary to 9 require witnesses to give evidence without anonymity is 10 to be determined, as the tribunal correctly apprehended, 11 by balancing a number of factors which need to be 12 weighed in order to reach a determination. 13 In that case the House of Lords approved the 14 formulation of eight factors which should be considered 15 by you in balancing an applicant's fear with the 16 interests of justice. 17 (1) the seriousness of the applicant's fear and its 18 impact on him or her. 19 (2) the reason for the applicant's fear. 20 (3) the likely effect of granting anonymity in 21 removing or reducing that fear. 22 (4) the effect on the person's perception of the 23 impartiality of the inquiry, having regard to the 24 factors which led to the minister's decision to hold 25 a public inquiry and to its terms of reference.</p> <p style="text-align: center;">Page 19</p>
<p>1 Furthermore, section 17(3) requires you to act 2 fairly in making any decisions as to the procedure and 3 conduct of the inquiry. As held by 4 Sir Christopher Pitchford in the Undercover Policing 5 Inquiry, there is for reason to think that in the 6 context of applications for restriction orders there is 7 any difference between the standard of fairness to be 8 applied under section 17(3) and at common law. 9 When applying the common law test, it is relevant 10 for you to consider the subjective fears of the person 11 concerned, whatever their degree of objective 12 justification. The House of Lords so held in the 13 Officer L case and in the judgment of Lord Carswell the 14 principles which apply to the tribunal's common law duty 15 of fairness towards the persons who it proposes to call 16 to give evidence before it are distinct and in some 17 respects are different from those which govern 18 a decision made in respect of the Article 2 risk. They 19 entail consideration of concerns other than the risk to 20 life, although, as the Court of Appeal said in its 21 judgment in the Widgery Soldiers case, an allegation of 22 unfairness which involves a risk to the lives of 23 witnesses is pre-eminently one that the court must 24 consider with the most anxious scrutiny. 25 Subjective fears, even if not well founded can be</p> <p style="text-align: center;">Page 18</p>	<p>1 (5) the likely effect on the applicant of refusing 2 his or her application in whole or in part. 3 (6) the likely effect on the inquiry's ability to 4 arrive at the truth if it refuses or grants the 5 application in whole or in part. 6 (7) the likely effect on the ability of the public 7 to follow the evidence if the panel refuses or grants 8 the application in whole or in part. 9 (8) the fact that the answer to whether there is 10 an objectively justified risk of harm was no. 11 Risks of harm falling short of real and immediate 12 risk of death or of serious harm such as might engage 13 article 3 rights is relevant to the balancing exercise. 14 As was held in the Sunday Newspaper Limited's 15 application of 2012, which you will find at tab 11 in 16 your authorities bundle. 17 When seeking to strike a balance under the common 18 law test, you may consider all the consequences of 19 granting and of refusing the orders sought. For 20 example, in an application for anonymity by a police 21 officer who does specialist work, a relevant factor may 22 be that identification of the officer would prevent him 23 or her continuing in his or her current role and would 24 deprive the force of a valuable resource. 25 When applying the common law test, you are also</p> <p style="text-align: center;">Page 20</p>

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<p>1 required to take proper account of the fundamental 2 principle of open justice. The open justice principle 3 holds that the administration of justice should 4 generally take place in the open as a safeguard and to 5 maintain public confidence, as I have already said. 6 In more recent times, the courts applying this 7 principle have recognised that giving names and 8 personalities to witnesses is an important aspect of 9 openness in the justice system. As Lord Rodger said in 10 the Guardian News and Media Limited case of 2010. Where 11 there is sufficient public interest in publishing 12 a report of the proceedings, which identifies the 13 applicant to justify any resulting curtailment of his 14 rights and his family rights, is to respect for their 15 private and family life is the formulation of the 16 balancing act which you must undertake. 17 Where a witness seeks to justify anonymity by 18 reference to his or her rights under article 8 of the 19 Convention right, the court usually has to perform 20 a balancing exercise which weighs those rights against 21 the rights of media organisations under article 10. 22 This balancing exercise is highly fact specific and must 23 take into account the evaluation of the purpose of the 24 principle of open justice as applied to the facts of the 25 case and the potential value of the information in</p> <p style="text-align: center;">Page 21</p>	<p>1 procedure to be adopted for the application, but the 2 application is necessarily made in their absence. We 3 have tried as far as we can to describe for the family 4 the nature of the evidence which is subject to the 5 applications and, where we can, we have explained if 6 they are statements or documents and as far as we are 7 able, the issues to which they broadly go. We have not 8 simply said that it is material in our possession, for 9 example. 10 I will say now, sir, and will likely repeat for 11 a number of the applications, the inquiry legal team 12 appreciate the nature of the NCA's applications has 13 greatly limited the extent to which the family team are 14 able to make submissions on them. We understand that 15 this is extremely frustrating. Nonetheless I am afraid 16 that it is unavoidable. The inquiry legal team have 17 carefully scrutinised the closed applications together 18 with the closed material and we have specifically 19 considered if there is anything that can be gisted or 20 disclosed, but there is not. 21 We have also, as requested at paragraph 22 of the 22 family's skeleton argument, considered whether there is 23 any material that can be disclosed pursuant to rule 12 24 of the inquiry rules of 2006, which are set out at tab 2 25 in your authorities bundle. Under rule 12(3) and (4)</p> <p style="text-align: center;">Page 23</p>
<p>1 question in advancing that purpose, as against the harm 2 the disclosure might cause the maintenance of 3 an effective judicial process or the legitimate 4 interests of justice. At tab 24 in your authorities 5 bundle you have ex parte T from 2018, which supports 6 that view. 7 Sir, before moving on to address you on the specific 8 applications, I finally observe on the law that the 9 courts have made plain that decisions on anonymity are 10 fact specific and that accordingly, limited assistance 11 can be gleaned from the approach taken in individual 12 cases. As I have indicated, I will turn firstly if 13 I may to address you on the NCA applications. 14 THE CHAIRMAN: Thank you. 15 MS BLACKWELL: Those representing the family have made 16 a number of observations on the procedure to be adopted 17 when deciding the applications made by the NCA. 18 Paragraph 19 of the family's skeleton argument correctly 19 identifies that the NCA applications fall into the 20 second limb as set out in R v H in 2004, namely that the 21 public interest would be injured if disclosure were made 22 even of the category of material. Having seen the 23 closed material, we agree with the NCA's submission to 24 that effect. In such cases, the core participants as 25 here have the opportunity to make submissions on the</p> <p style="text-align: center;">Page 22</p>	<p>1 you have the power to disclose the potentially 2 restricted evidence to a person who would not otherwise 3 be permitted to see if (a) you consider that disclosure 4 to an individual is necessary for the determination of 5 the application and (b) you have afforded the 6 opportunity to, 1, the person providing or producing the 7 evidence to the inquiry panel or, 2, to any other person 8 making the relevant application to make representations 9 regarding whether disclosure to that individual should 10 be permitted. 11 Having regard to your powers under rule 12, and the 12 factors identified by the chairman in the Azelle Rodney 13 case, there is no material that can be disclosed under 14 rule 12 in this case, we submit. To say anything in 15 open about the nature of the application would be to 16 undermine the application. 17 I apologise if this seems circular, but the reasons 18 why we submit that it is not possible to provide more 19 information about the closed material are set out 20 clearly and well supported in the closed material which 21 you will consider tomorrow. I am happy to expand upon 22 our view in those closed sessions tomorrow. 23 THE CHAIRMAN: It seems to me that tomorrow it will be for 24 me, as it were, to put myself insofar as I can in 25 Ms Kaufmann's shoes.</p> <p style="text-align: center;">Page 24</p>

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<p>1 MS BLACKWELL: Yes.</p> <p>2 THE CHAIRMAN: Do you agree?</p> <p>3 MS KAUFMANN: Yes.</p> <p>4 MS BLACKWELL: The brevity of open submissions today, sir,</p> <p>5 should not be taken as an indication that we have not</p> <p>6 subjected the NCA's applications to the most anxious</p> <p>7 scrutiny. We have. Notwithstanding that you will do so</p> <p>8 in closed session, you will of course consider the</p> <p>9 application with the same attention with which you</p> <p>10 consider the other applications before you and, as you</p> <p>11 have heard, the independent judgment of the tribunal is</p> <p>12 crucial and in such applications will only be decided</p> <p>13 after scrutiny of the greatest kind.</p> <p>14 Turning to the applications, I consider that it will</p> <p>15 assist you, sir, and those following if I take them</p> <p>16 slightly out of order.</p> <p>17 THE CHAIRMAN: As you wish.</p> <p>18 MS BLACKWELL: Thank you.</p> <p>19 In relation to the NCA anonymity applications then,</p> <p>20 first, the NCA have emphasised that, having regard to</p> <p>21 the need to be as open as possible, they have not</p> <p>22 applied for anonymity for Stephen Smart, who has</p> <p>23 provided a witness statement on behalf of the NCA for</p> <p>24 your assistance. The NCA's applications as emphasised</p> <p>25 in the closed application and materials are made for</p> <p style="text-align: center;">Page 25</p>	<p>1 role and experience, which if it were to be disclosed,</p> <p>2 would create a real risk of damage to the effective</p> <p>3 prevention and detection of crime by publicising not</p> <p>4 only witness C's work but law enforcement tactics. As</p> <p>5 submitted, and accepted by the family, the effective</p> <p>6 prevention and detection of crime is an important public</p> <p>7 interest factor that you are required to consider.</p> <p>8 We also note, given the purpose of witness C's</p> <p>9 evidence, that it is to explain the policies and</p> <p>10 procedures of the NCA, and mindful that we have already</p> <p>11 submitted in writing that a restriction order ought to</p> <p>12 be granted to prohibit disclosure of the contents of</p> <p>13 that statement, we agree with the NCA's submission that</p> <p>14 the disclosure of witness C's identity would not assist</p> <p>15 the public's ability to follow or understand the</p> <p>16 evidence of the inquiry.</p> <p>17 We have had the benefit of reviewing witness C's</p> <p>18 statement and the supporting material provided with the</p> <p>19 closed applications and we submit that the order sought</p> <p>20 by the NCA ought to be granted in the terms of the draft</p> <p>21 order which has been provided by the NCA and sits at</p> <p>22 tab 81 in your bundle.</p> <p>23 Next, application 5, this is the anonymity</p> <p>24 application for witness SE11 at tab 82C. It is dated</p> <p>25 5 March 2021. SE11 is a law enforcement officer who was</p> <p style="text-align: center;">Page 27</p>
<p>1 witness C and SE11, for very specific reasons. Again,</p> <p>2 I appreciate the disappointment of the family team that</p> <p>3 they are unable to be informed about what those reasons</p> <p>4 are but with the benefit of seeing the statements of</p> <p>5 witness C and SE11, we agree with the stance taken by</p> <p>6 the NCA.</p> <p>7 Application 1 at tab 81 is an application dated</p> <p>8 22 January 2021. The NCA have applied for anonymity</p> <p>9 with respect to witness C who provided a corporate</p> <p>10 witness statement about the NCA's practices and</p> <p>11 procedures. Witness C is a serving NCA officer, but</p> <p>12 played no role in Operation Ankaa.</p> <p>13 The NCA have submitted that the disclosure of</p> <p>14 witness C's identity would give rise to a real threat to</p> <p>15 witness C's safety and that of witness C's family. It</p> <p>16 has submitted that as the UK agency seeking to disrupt</p> <p>17 the UK's most serious organised crime, the NCA's</p> <p>18 officers are obvious targets for criminals seeking to</p> <p>19 hinder the NCA's work. You have in the closed material</p> <p>20 further detail about witness C's position, experience</p> <p>21 and expertise, which it is submitted by the NCA makes</p> <p>22 them a particularly attractive target.</p> <p>23 Having had the benefit of scrutinising the closed</p> <p>24 material, we submit that particularly important in this</p> <p>25 application is the closed evidence about witness C's</p> <p style="text-align: center;">Page 26</p>	<p>1 posted to the NCA at the relevant time and worked on</p> <p>2 Operation Utara. We have had the opportunity of</p> <p>3 reviewing SE11's closed material about the nature of</p> <p>4 their involvement in the operation and would agree with</p> <p>5 the NCA's submission that there is nothing further about</p> <p>6 SE11's role or his involvement in Operation Utara which</p> <p>7 can be discussed in open session. What can be said is</p> <p>8 that SE11's role and experience are highly specialised.</p> <p>9 The NCA have submitted that disclosure of SE11's</p> <p>10 name would create a real threat to SE11's safety and</p> <p>11 that of their family. SE11's work at the NCA was</p> <p>12 focused on targeting Turkish organised crime networks,</p> <p>13 including but not limited to the Tottenham Turks</p> <p>14 organised crime network, who will throughout the</p> <p>15 remainder of my cease be referred to as the "Tottenham</p> <p>16 Turks".</p> <p>17 As such the NCA submitted that SE11, who acted</p> <p>18 contrary to the Tottenham Turks' interest, would face</p> <p>19 a continuing threat from them. SE11 has also in the</p> <p>20 closed material expressed significant subjective fears</p> <p>21 which the NCA submit have an objective basis. I will</p> <p>22 deal with the risks posed by the Tottenham Turks when we</p> <p>23 turn to deal with the MPS anonymity applications, but</p> <p>24 with the benefit of examining the closed applications</p> <p>25 and having considered the closed material, including the</p> <p style="text-align: center;">Page 28</p>

7 (Pages 25 to 28)

<p>1 statements of SE11 and witness C, it is our submission 2 that both applications for anonymity, applications 1 and 3 5, should be granted by you. 4 Unfortunately, for the reasons which I have already 5 set out, I am unable to provide any further submissions 6 in open session. 7 I move on now to deal with the NCA redaction 8 applications and the applications for the non-disclosure 9 of evidence. The NCA have made the following 10 applications for redaction of material and the 11 non-disclosure of documents. 12 Application 2, which is at tab 83 and is dated 13 11 January 2021 is for a number of exhibits known as NCA 14 001 to NCA 043, the non-disclosure of witness C's 15 evidence and exhibits and the non-disclosure of 16 Stephen Smart's statement and exhibits. For 17 completeness, the NCA has provided the following 18 evidence. Witness C has provided a corporate overview 19 statement, which I have already made reference to, and 20 Stephen Smart's statement, which is not in your bundle 21 but has been provided in closed. 22 The family have submitted at paragraph 28 of their 23 skeleton argument that it is extraordinary that there 24 are no aspects of witness C's statement regarding the 25 NCA's practices that are relevant to this inquiry that</p> <p style="text-align: center;">Page 29</p>	<p>1 of a police officer relating to Operation Utara and 2 application 6 at tab 82(a) and dated 5 March 2021 is 3 an application for non-disclosure of a further and 4 second statement from witness C, a witness statement 5 from SE11 and material relating to the risk to SE11 and 6 relevant to the anonymity order sought in relation to 7 SE11. 8 Each of the open redaction applications have been 9 made on the basis that their redactions sought are 10 necessary and/or in the public interest to avoid the 11 risk of harm and damage, including (a) death or serious 12 injury (b) revealing sensitive investigative techniques 13 and capabilities (c) compromising the sensitive 14 collaborative relationship between the NCA and partner 15 forces and (d) offenders trying to evade detection or 16 prosecution if such disclosures were made. 17 The NCA open applications are brief and have been 18 supplemented with closed applications, schedules and 19 closed materials. As a result, the family have been 20 unable to make detailed submissions on these 21 applications but have urged you to fully and carefully 22 examine whether there is any further material which can 23 be disclosed. 24 The family are particularly concerned about the 25 NCA's reliance on the risk of compromising the sensitive</p> <p style="text-align: center;">Page 31</p>
<p>1 might be shared with the bereaved family. I can only 2 repeat that I understand their frustration. However, we 3 have considered carefully witness C's closed statement 4 line by line and invite you to do the same. 5 Having done so, we remain of the view that there are 6 no aspects of this evidence which can be shared without 7 causing the kind of harm and damage which form the basis 8 of the NCA's application. We are unfortunately unable 9 to provide any further reason in open session. Of 10 course, if you are to refuse the application in whole or 11 in part, it follows that the information will be made 12 available to the family. In closed session you and the 13 inquiry legal team will have the family's submissions 14 very much in mind and you have already confirmed that 15 that is the case, sir. 16 It is our submission that for the reasons set out in 17 the closed applications and based upon the closed 18 material, NCA's application number 2 should be granted. 19 Application 3, at tab 85, is dated 1 February 2021 20 and concerns the redactions of the notes of a misconduct 21 interview of witness FE16 and FE16's response to his 22 regulation 16 notice. Redacted copies of those 23 documents appear at tabs 87 to 89 of your bundle. 24 Application 4 at tab 90 and dated 15 February 2021 25 concerns the redactions requested to handwritten notes</p> <p style="text-align: center;">Page 30</p>	<p>1 collaborative relationship between the NCA and partner 2 forces. They make this concern clear at paragraph 29 of 3 their skeleton argument. 4 They submit that this very relationship is a central 5 issue to this inquiry and whilst the centrality of the 6 issue is relevant to the balancing exercise when 7 assessing the public interest in disclosure, we remind 8 you, sir, that you must carry out that exercise as 9 against the risks posed by such disclosure. The 10 importance of the issue does not reduce the risk of harm 11 from its disclosure. This public inquiry, as you know, 12 was established as compared to an inquest to allow you 13 to consider all issues fully by permitting the 14 consideration of closed evidence which is relevant to 15 your terms of reference. 16 I repeat our assurance to the family that we, the 17 inquiry legal team, have carefully and fully considered 18 these applications and the unredacted material in order 19 to determine whether there is anything further that can 20 be disclosed, either to assist in the consideration of 21 the redaction applications or by the refusal of the 22 applications for redactions. We invite you to do the 23 same, sir. Having done so, our submissions remain that 24 the NCA's redaction applications, 3, 4 and 6, should be 25 granted.</p> <p style="text-align: center;">Page 32</p>

<p>1 We do not propose to prepare closed submissions sir, 2 and nor can we make any further substantive submissions 3 in today's hearing. But, with the benefit of the closed 4 material, counsel to the inquiry submit that the orders 5 sought by the NCA ought to be granted in the terms 6 sought in the draft orders which have been prepared by 7 the NCA and appear at tabs 84, 86 and 91 in your bundle. 8 I turn now to deal with the MPS redaction 9 applications. 10 The MPS have submitted six applications for 11 restriction orders relating to the redaction of 12 documents. Counsel to the inquiry have been informed 13 that two of those applications have now been withdrawn. 14 The applications submitted are: application 1, dated 15 1 September 2020 at tab 51; application 2, dated 16 6 October 2020 at tab 57 -- 17 THE CHAIRMAN: You don't need to trouble with 3 and 4. 18 MS BLACKWELL: No, thank you, they have now been withdrawn. 19 Application 5, dated 30 November 2020 at tab 68; and 20 application 6, dated 18 January 2021, at tab 70. 21 Application 1, insofar as it relates to document 22 IPC 000-0229, which is a SCO19 tactical support team 23 course on theory representation, seeks the 24 non-disclosure of details about the vehicles used by 25 mobile armed support to surveillance, or MASTS, and</p> <p style="text-align: center;">Page 33</p>	<p>1 one at the very heart of this inquiry. 2 The inquiry's experts have expressed the view in 3 their recently disclosed report that the use of 4 a contain and call out tactic could have enabled 5 a slower time intervention. The decision not to employ 6 this tactic is one that the inquiry must examine with 7 care. There is a public interest in this examination 8 taking place in public and the family of Mr Baker being 9 able to engage with it. We are grateful to the MPS for 10 reconsidering this part of the application in relation 11 to form FA5 and they have now agreed to the relevance of 12 containment and call out and have withdrawn those 13 aspects of their application, which you will see at 14 paragraph 2 of their skeleton argument that appears at 15 tab 100. 16 In the same vein we, together with the family, 17 submit that the STIC capability references within the 18 FA5 document may well go to the heart of the inquiry. 19 At the hearings in June you will wish to consider the 20 full menu of tactical options which were open to those 21 responsible for planning the operation. As described in 22 the NPFTC, which is the National Police Firearms 23 Training Curriculum, a small team may be closer to the 24 subject, whereas a MASTS team may have greater 25 capability or resources. In order to assess the</p> <p style="text-align: center;">Page 35</p>
<p>1 their placement. The order sought is sought on the 2 basis that disclosure would undermine the tactical 3 efficiency of MASTS and the family have kindly confirmed 4 that they do not oppose the order sought in relation to 5 that aspect of application 1. We submit that, at its 6 highest, this detail is peripherally relevant and as 7 such the public interest in its disclosure is minimal 8 and an order restricting disclosure of these details 9 should be granted and if it does become necessary to 10 deal with this issue, it can be done in closed session. 11 The second part of application 1 and applications 2 12 and 5 relate to various versions of form FA5, which is 13 the MPS authorised firearms operational tactical advice 14 document. 15 Whilst the dates on the various versions of the 16 forms differ, the redactions sought are the same. In 17 particular the MPS seek an order to restrict disclosure 18 of details in respect of the deployment capability known 19 as small team intervention capability, or STIC, and the 20 contain and call out tactic. The MPS initially 21 submitted that to make both of these capabilities public 22 would be to weaken their efficacy and thereby place the 23 police at a disadvantage. We agree with the submission 24 of the family that the question of whether the tactic of 25 containment and call out should have been employed is</p> <p style="text-align: center;">Page 34</p>	<p>1 suitability of the STIC tactic, you will wish to 2 consider all relevant advice which was available to the 3 officer completing the FA5 form. This issue is of such 4 relevance that you will wish to subject the MPS's 5 arguments of security sensitivity to the utmost 6 scrutiny. The MPS have maintained that STIC capability 7 is not relevant in this case and have noted that the 8 report by your policing experts, Mr Arundale and 9 Mr Burrows have not raised it as a relevant 10 consideration. 11 You may also wish to explore with Mr Butt today -- 12 if this issue can be dealt with in open session and he 13 will tell you if that can -- why this means that the 14 STIC capability is not relevant to the case. 15 THE CHAIRMAN: Can that be dealt with in open court, 16 Mr Butt? 17 MR BUTT: To an extent, sir, yes it can. 18 THE CHAIRMAN: Thank you. 19 MS BLACKWELL: As an alternative to the order currently 20 sought, the MPS have proposed making the redacted text 21 available for inspection at the offices to the 22 solicitors to the inquiry. If you are minded to take 23 this course then a practical solution could be to direct 24 that all parties who wish to inspect the material do so 25 and if there are then any submissions as to its</p> <p style="text-align: center;">Page 36</p>

<p>1 relevance, they may be made in writing in advance of our 2 final preliminary hearing.</p> <p>3 Application 6 at tab 70 relates to the type of 4 technical equipment fitted to the Audi KM13 YPT. It 5 will be relevant for you to hear evidence about whether 6 the recording and listening equipment used during 7 Operation Ankaa was suitable and effective. The inquiry 8 legal team is currently in the process of obtaining 9 expert evidence on this issue. The family have 10 confirmed very helpfully that they have no current 11 objection to the redactions sought but reserve their 12 position quite properly should disclosure of those 13 details assist the formation of expert evidence.</p> <p>14 We submit that it will be necessary for the make and 15 model of the equipment used to be disclosed to the 16 inquiry's chosen expert or experts, but that it is not 17 necessary for it to be more generally disclosed at this 18 time. We do, however, submit that this particular order 19 will need to be reviewed upon receipt of an expert 20 report or reports, to determine what if anything can or 21 should be disclosed to the core participants.</p> <p>22 THE CHAIRMAN: I think it is important to bear in mind that, 23 wherever one is dealing with PII, if one makes what in 24 this jurisdiction is called a restriction order, it is 25 always subject to ongoing review.</p> <p style="text-align: center;">Page 37</p>	<p>1 (c) the witnesses to give evidence screened from 2 members of the public and the media.</p> <p>3 (d) the witness's image not to be broadcast during 4 any livestream or publication of the evidence.</p> <p>5 (e) the witness not to be asked questions that might 6 lead to their identification.</p> <p>7 (f) the witness to be permitted to enter and leave 8 court through a route not available to the public.</p> <p>9 (g) the media to be prohibited from publishing the 10 witness's identity or image or any other identifying 11 feature pursuant to section 11 of the Contempt of Court 12 Act 1981.</p> <p>13 The MPS have indicated that they do not object to 14 specific family members seeing the anonymous witnesses 15 subject to what they describe as non-intrusive vetting 16 being completed beforehand. We ask that the MPS expand 17 upon this aspect of their application and explain what 18 this will involve and why it is considered necessary.</p> <p>19 They have sought to deal with this issue in their 20 skeleton arguments, which appear at tab 100 but you may 21 seek further information based upon what is contained 22 there.</p> <p>23 The overarching submission on behalf of the family 24 is that the risk assessments submitted by the MPS are of 25 a poor quality and that, as a result, they have</p> <p style="text-align: center;">Page 39</p>
<p>1 MS BLACKWELL: Yes.</p> <p>2 THE CHAIRMAN: Those reviews don't simply take place at the 3 behest of a party or a core participant, it is the judge 4 or chairman's duty to keep all these matters under 5 continuing assessment.</p> <p>6 MS BLACKWELL: Indeed it is, and particularly so where, as 7 you know, sir, the inquiry legal team have not yet 8 reached a point at which all of their expert evidence 9 has been obtained.</p> <p>10 THE CHAIRMAN: No.</p> <p>11 MS BLACKWELL: In relation to application 6, we would invite 12 you to make the order at this stage. That would provide 13 for the non-disclosure of material setting out the make 14 and model of the equipment used, but again, that order 15 can be revisited and it is within your powers, as you 16 know, to rescind or amend any restriction order at any 17 time.</p> <p>18 I now turn to deal with our submissions on the MPS 19 anonymity applications.</p> <p>20 The MPS apply for the following measures with 21 respect to the witnesses listed in their schedule.</p> <p>22 (a) the witnesses' names and identifying details to 23 be withheld.</p> <p>24 (b) the witnesses to be referred to by their cipher 25 only.</p> <p style="text-align: center;">Page 38</p>	<p>1 overstated the objective level of risk faced by the 2 officers and the ease with which the officers could be 3 traced. The family has also submitted that the 4 subjective fears held by the officers are not reasonably 5 held. We agree with the family's submission that the 6 risk assessments are not of the highest quality.</p> <p>7 Nevertheless, we do not agree that little weight can be 8 attached to them.</p> <p>9 The courts have been plain that as chairman of 10 a public inquiry, you can and should consider the 11 subjective fears held by witnesses, even where they are 12 not objectively supported. In this inquiry, we submit 13 that it is wrong to say that there is no objective 14 evidence of an ongoing risk.</p> <p>15 THE CHAIRMAN: One of the problems is that where risk 16 assessments are made, they reinforce subjectively held 17 fears. Perfectly understandable. It is therefore all 18 the more important that those risk assessments should be 19 properly researched and well founded.</p> <p>20 MS BLACKWELL: Yes.</p> <p>21 We do not agree with the family's submission that to 22 grant anonymity to the witnesses in this application 23 would be, as they suggest, tantamount to denuding the 24 presumption of openness of all weight, nor that it would 25 be grossly unfair to the family and to Jermaine's memory</p> <p style="text-align: center;">Page 40</p>

<p>1 as argued for in their skeleton argument. 2 The family are correct that open justice is the 3 starting point and that you should not make any order 4 which would restrict the openness of these hearings, 5 save for where it is necessary. You should also ensure 6 that any order made is no more than necessary. However, 7 the making of such an order in circumstances where it is 8 necessary cannot "denude the presumption of openness of 9 all weight". 10 The family have submitted that our observation about 11 the quality of the risk assessments is incompatible with 12 our submission that there is objective evidence that 13 there remains an ongoing risk to the officers, but while 14 the risk assessments are lacking in some areas, the risk 15 assessments and the intelligence otherwise provided are, 16 in our submission, very clear about the risk posed by 17 the Turkish organised crime networks, including the 18 Tottenham Turks. They are compelling. 19 The evidence provided has established that the 20 Tottenham Turks, in which Izzet Eren, Kemal Eren and 21 Ozcan Eren are leading members, are considered extremely 22 violent, both historically and currently. A number of 23 those arrested during the conspiracy have been released 24 from prison and, the evidence suggests, are dangerous 25 and motivated criminals. For example Izzet Eren has</p> <p style="text-align: center;">Page 41</p>	<p>1 and have been named on four threats to life. The MPS 2 have concluded that the network continues to have the 3 capability and propensity to commit serious criminality, 4 involving the use of firearms, targeting rivals of the 5 network or to maintain current drug markets controlled 6 by them. Further information has been provided amongst 7 the closed material and I will make further submission 8 about that in the closed hearings. 9 As recently as yesterday, sir, there were a set of 10 further intelligence reports and an FME report and 11 a briefing note served upon core participants, together 12 with two statements, one from Richard Moth, and a second 13 from Superintendent Ross McKibbin dealing with the 14 location and likely location of deployment of the 15 officers, on behalf of whom applications have been made. 16 I know that you, sir, have also received both of those 17 bundles of documents. 18 The family have submitted in their skeleton that 19 there is no basis for concluding that officers face any 20 meaningful risk of harm from this OCN. This submission 21 is based upon the assertion that the OCN would not be 22 inclined to seek retribution for the death of 23 Jermaine Baker, who was not a member and was viewed by 24 them as dispensable. They set out their reasoning 25 behind this principle at paragraph 40 of their skeleton</p> <p style="text-align: center;">Page 43</p>
<p>1 escaped from prison in Turkey and there is reliable 2 intelligence that he is connected to serious 3 criminality, including revenge shootings and other 4 firearms-related crime. 5 Intelligence relating to seven threats to life from 6 or linked to the Tottenham Turks were recorded in the 7 summer of 2020 alone. These include intelligence that 8 Izzet Eren would travel from Turkey to the UK in order 9 to commit a murder. That appears at tab 10 in your 10 bundle. 11 This OCN was the subject of both Operation Utara and 12 Operation Ankaa. The risk that they continue to pose we 13 submit is highly pertinent. There is nothing to suggest 14 that this would dissipate any time soon. The inquiry 15 legal team asked for up-to-date intelligence reports 16 about the activities of this Turkish organised crime 17 network, a gist of which was circulated to all core 18 participants on 11 March. This has, we say, firmly 19 established that Izzet Eren is indeed no longer in 20 custody in the UK or Turkey and his whereabouts are 21 currently unknown. What is clear is that he continues 22 to be an influential figure, issuing orders from 23 wherever he is based. This OCN continue to be involved 24 in the obtaining and use of firearms and in 2020 they 25 were linked to three lethal barreled firearm discharges</p> <p style="text-align: center;">Page 42</p>	<p>1 argument. 2 We submit that this is to misunderstand the risk. 3 The concern is not about retribution sought for the 4 death of Mr Baker. The risk arises from the role of the 5 MPS and its officers in conducting operations intended 6 to disrupt the criminal operations of this OCN. Many of 7 the officers who are the subject of the MPS anonymity 8 applications remain in units which are regularly 9 deployed against OCNs and therefore could conceivably be 10 deployed in an operation touching upon the Tottenham 11 Turks. You have now received support for that 12 submission in the statements of Richard Moth and 13 Superintendent McKibbin. 14 To be plain, sir, our assessment about the level of 15 risk faced is not based upon any risk from 16 Jermaine Baker's friends or family, the risk is posed by 17 the Tottenham Turks, whether directly or through 18 associates, and is of the utmost relevant to your 19 decisions. To consider this material in both open and 20 closed sessions does not represent an abuse of the 21 privileged access of the state core participants, as we 22 are described at paragraph 47 of the family's skeleton 23 argument, to this closed material. It is for this very 24 reason that a gist of the most recent intelligence was 25 requested and shared with the family and the more recent</p> <p style="text-align: center;">Page 44</p>

<p>1 material setting out the intelligence reports has now 2 been provided.</p> <p>3 It is our submission that the risk posed by the 4 Tottenham Turks and any of their associates is relevant, 5 it is active, it is continuing and it is significant.</p> <p>6 Likewise, the MPS have confirmed at paragraph 16 of 7 their skeleton that it is the risk posed by the OCN 8 which they rely upon in support of their submissions on 9 the objective risk and the subjective fears of the 10 officers.</p> <p>11 You must firstly consider whether the refusal of 12 anonymity would create or materially increase a real and 13 immediate risk to life of the witness. We submit that 14 the risk posed likely falls short of a risk of immediate 15 risk to life and so the applications will turn upon the 16 common law. As a result, you must balance the factors 17 for and against the orders sought. The presumption of 18 openness is one factor and in the context of a public 19 inquiry such as this, is a very important factor. It 20 will be balanced by you against, amongst other matters: 21 (a) the witness's subjective fears, a witness's 22 subjective fears are relevant even if they are not well 23 founded, although this may properly go to the weight to 24 be attached to those subjective fears; (b) the likely 25 effect on a witness of refusing the application,</p> <p style="text-align: center;">Page 45</p>	<p>1 THE CHAIRMAN: All right. 2 MS BLACKWELL: Thank you. 3 (11.15 am) 4 5 (A short adjournment) 6 (11.30 am) 7 THE CHAIRMAN: I had intended to have had a break at the 8 conclusion of your submissions. It may be that at the 9 conclusion of your submissions -- I have an idea in my 10 own mind as to the order in which people should respond. 11 MS BLACKWELL: Yes. 12 THE CHAIRMAN: But we may just go through until 12.45, 13 rather than breaking again, if that is convenient to 14 everybody. It looks as if we are going for an hour and 15 a quarter, we will break off for lunch at 12.45 and 16 resume at 1.45. Is that all right for everybody? 17 Thank you. 18 MS BLACKWELL: Thank you. 19 Before the short break, I was about to turn to the 20 family's submissions at paragraphs 33 and 34 of their 21 skeleton argument. 22 THE CHAIRMAN: Yes. 23 MS BLACKWELL: In which they have made specific reference to 24 the decisions made in the inquest into the death of 25 Jordan Begley and the decision in the public inquiry</p> <p style="text-align: center;">Page 47</p>
<p>1 including the effect on their rights under article 8 2 and/or the potential effect on their existing or future 3 employment; and (c) the potential effect on the 4 witness's ability to undertake future police operations 5 and any operational risk to those operations.</p> <p>6 We submit, sir, that you must consider each 7 individual application carefully and separately and 8 assess the entirety of the evidence submitted in order 9 to carry out the nuanced balancing exercise required of 10 you.</p> <p>11 The family at paragraphs 33 and 34 of their skeleton 12 argument have made specific reference to the decisions 13 made in other cases.</p> <p>14 Sir, before I turn to deal with those arguments, 15 I know that at 11.15, it was requested that you take 16 a short break in order for the stenographer to rest 17 their fingers, so would you please take a break there. 18 THE CHAIRMAN: Yes, certainly. 19 Thank you very much indeed. 20 MS BLACKWELL: 15 minutes is being requested, if that is 21 acceptable. Thank you. 22 THE CHAIRMAN: I think I will stay. Unless you would rather 23 I went? 24 MS BLACKWELL: I think it might be more convenient if you 25 went.</p> <p style="text-align: center;">Page 46</p>	<p>1 into the death of Anthony Grainger. These decisions are 2 useful only to indicate the relevant principles and the 3 approach to be taken in such applications. Because it 4 is worthy of note, sir, that both rulings emphasised, as 5 has the High Court on numerous occasions, that decisions 6 in such applications are fact specific.</p> <p>7 The unfortunate and tragic deaths of Jordan Begley 8 and Anthony Grainger both involved the police using 9 violence towards them, but their cases were 10 significantly different to the circumstances in this 11 inquiry, and by that, I mean the background to their 12 deaths.</p> <p>13 In this inquiry, the presence of those acting on the 14 margins, those controlling and directing the events 15 which led to the incident during which Mr Baker lost his 16 life, is distinguishable to the background of the other 17 two cases. This necessarily means that the risks faced 18 by the officers in those cases will differ from the 19 risks in this case. 20 THE CHAIRMAN: Can you develop that, please? 21 MS BLACKWELL: Certainly. 22 At tab 22 in your authorities bundle you have the 23 ruling of His Honour Judge Teague Queen's Counsel, who 24 was the chair of the Anthony Grainger Inquiry, in 25 relation to the anonymity applications. By way of</p> <p style="text-align: center;">Page 48</p>

<p>1 background, following Anthony Grainger's death there was 2 intelligence that a £50,000 reward was being offered to 3 anyone who would shoot a GMP firearms officer. That 4 threat was a threat, although made at the time that it 5 was, was not repeated and did not in the event 6 precipitate an attack. 7 By the time of the ruling made by His Honour Judge 8 Teague Queen's Counsel it was four years after that 9 threat had been made. He, the chairman, found that 10 Stuart Grainger, who was the brother of the deceased, 11 had the capacity to kill, the most powerful reasons for 12 doing so and access to the means to do so. You will see 13 that at paragraph 20 in the ruling. 14 THE CHAIRMAN: He had a conviction for murder. 15 MS BLACKWELL: He did and he was in prison at the time of 16 the inquiry. 17 THE CHAIRMAN: I should declare an interest, I prosecuted 18 him. 19 MS BLACKWELL: Thank you. 20 Although he was in prison he continued through his 21 associates to present what His Honour Judge Teague 22 Queen's Counsel described as "an enduring mortal threat" 23 to the officer who shot his brother Anthony. 24 However, the chairman found that it was only towards 25 that officer that the threat was made and it was limited</p> <p style="text-align: center;">Page 49</p>	<p>1 However, it must be acknowledged that the operation 2 in which Mr Baker lost his life was an operation 3 intimately involved with and seeking to disrupt the 4 ongoing activities of the Tottenham Turks. 5 The threats relied upon in the Jordan Begley Inquiry 6 were wholly based on risks to officers arising from 7 Anthony Grainger's death, from the aforementioned reward 8 of £50,000 for the death of a GMP officer. Mention in 9 that inquest was also made to campaigns for justice for 10 Jordan Begley's death, so the coroner in that case 11 thought, perhaps understandably, that the link between 12 Anthony Grainger's death and that of Mr Begley was 13 tenuous, and that the link was not therefore generalised 14 and not related to the Begley case at all. 15 The distinction here we say, sir, is clear, the risk 16 we have discussed arises directly from the past 17 operations involving the Tottenham Turks and the 18 potential future operations. Importantly, we submit, 19 the Jordan Begley Inquiry -- Inquest, please forgive me, 20 did not require consideration of any sensitive or covert 21 tactics and the coroner in that inquiry was told that 22 there would be no compromise of sensitive or covert 23 tactics. Therefore there would be no need to alter 24 practices or procedures if officers' identities became 25 known.</p> <p style="text-align: center;">Page 51</p>
<p>1 to that extent. He was not satisfied that the threat 2 extended to all officers. 3 In this inquiry, sir, we consider not the risk from 4 any family, friend or associate of Jermaine Baker, but 5 we submit that you should consider the risk from the 6 Tottenham Turks, which is not easy to identify as 7 specific to any individual officer, because the risk 8 comes not from retribution for Mr Baker's death, and 9 therefore it does not diminish with time. The risk is 10 not directed towards W80 alone or specifically, but to 11 the officers by way of their role and their ability to 12 disrupt sophisticated criminal activity. As compared to 13 the reported risk from Stuart Grainger, the intelligence 14 in this inquiry relating to the Tottenham Turks is (a) 15 long standing, (b) continuing, (c) sophisticated and (d) 16 extremely dangerous. 17 At tab 21 in your authorities bundle, you will see 18 the ruling by the coroner who undertook the inquest into 19 the death of Jordan Begley. Neither Jordan Begley nor 20 the circumstances of his death were associated with any 21 OCN or any gang culture. There was no threat from 22 Jordan Begley's family, his friends or associates, and 23 we repeat here we do not rely on any threat or perceived 24 threat from anyone associated to Mr Baker's family or 25 friends.</p> <p style="text-align: center;">Page 50</p>	<p>1 Here, sir, you now have express evidence that 2 disclosure of officers' identities would affect the 3 tactical efficacy of officers' operations, coupled with 4 the most recent information, from Richard Moth and 5 Superintendent McKibbin, that it is highly likely that 6 both the surveillance team and the counter terrorism 7 firearms officers are likely to be deployed in similar 8 ways in the future. 9 In addition, the Tottenham Turks have shown 10 themselves to be willing and able to make use of 11 individuals unconnected to their particular organised 12 crime network and, therefore, as yet unidentified to 13 carry out tactics, not only on other criminal gangster 14 but also those in positions of authority on its behalf. 15 The attempted escape of Izzet Eren is but one example of 16 that. 17 Your assessment of risk should consider not just 18 whether something could or might happen but also the 19 gravity of that risk and the potential consequence if it 20 does materialise. In this case, the intelligence about 21 the danger posed by the OCN indicates that the potential 22 harm to individuals were the risk to materialise is of 23 the highest significance and possibly fatal. 24 May I turn to the individual applications relating 25 to the serving covert surveillance and support officers?</p> <p style="text-align: center;">Page 52</p>

<p>1 THE CHAIRMAN: Yes.</p> <p>2 MS BLACKWELL: There are applications set out in the terms</p> <p>3 already described, made for the following serving covert</p> <p>4 surveillance and support officers. FE3, FE5, FE6, FE7</p> <p>5 and FE10, who are all dedicated surveillance officers</p> <p>6 serving in MO3, the covert policing command. They were</p> <p>7 part of a team conducting armed surveillance of the Audi</p> <p>8 vehicle and each of them was in their vehicle at the</p> <p>9 time of the shooting and so none of these witnesses saw</p> <p>10 the shooting, nor can they give evidence as to that part</p> <p>11 of the inquiry.</p> <p>12 Separately, FE12 is a trained surveillance officer.</p> <p>13 He is not in a dedicated covert role, but does</p> <p>14 participate in covert deployments in individual</p> <p>15 investigations and at the time of the shooting he was</p> <p>16 part of the team at the covert monitoring post listening</p> <p>17 to the live audio feed from the Audi. He too did not</p> <p>18 see the shooting.</p> <p>19 Dedicated covert surveillance officers operate in</p> <p>20 plainclothes and the MPS submit their ability not to be</p> <p>21 recognised or identified as covert police officers is</p> <p>22 an essential part of their role and a source of</p> <p>23 protection for both them and for their colleagues. FE3,</p> <p>24 FE5, FE6, FE10 and FE11 remain active members of unit</p> <p>25 MO3. They are regularly deployed on operations</p> <p style="text-align: center;">Page 53</p>	<p>1 Whilst the family have accepted, at paragraph 60 of</p> <p>2 their skeleton argument, that it is proper for the MPS</p> <p>3 to rely upon the public interest in ensuring the future</p> <p>4 utility of these trained surveillance officers, it is</p> <p>5 their submission that there is no realistic risk to</p> <p>6 a future utility of the surveillance officers that</p> <p>7 cannot be met with other measures.</p> <p>8 The evidence you have received from the MPS is that</p> <p>9 identification in this inquiry would affect the MPS</p> <p>10 officers' ability and willingness to deploy them in</p> <p>11 future operations. The witnesses' ability to continue</p> <p>12 to perform their current job is a factor properly to be</p> <p>13 considered both under article 8 and common law fairness.</p> <p>14 The MPS at paragraph 18 of their skeleton argument</p> <p>15 have submitted that it is axiomatic that a covert</p> <p>16 surveillance officer's operational effectiveness relies</p> <p>17 upon their not being identified as a police officer. It</p> <p>18 is also submitted at paragraph 19 of their skeleton that</p> <p>19 so essentially is the work of the CTSFOs that there must</p> <p>20 be a strong public interest in protecting that resource.</p> <p>21 At paragraph 20 the MPS submit, in terms, that giving</p> <p>22 evidence as surveillance officers in this inquiry would</p> <p>23 of itself likely prevent future covert deployment and at</p> <p>24 that the family's submissions do not recognise the</p> <p>25 realities of the specialist surveillance work of these</p> <p style="text-align: center;">Page 55</p>
<p>1 involving terrorists and OCNs which include this Turkish</p> <p>2 OCN or those associated with them. FE7 is a serving</p> <p>3 member of Royalty and Special Protection Command, his</p> <p>4 protection role requires him to be seen in public but</p> <p>5 not to be recognised publicly as a police officer.</p> <p>6 The risk assessments provided have assessed the risk</p> <p>7 of harm to these officers were they to be publicly</p> <p>8 identified as high. Based upon the known intelligence</p> <p>9 relating to the Tottenham Turks and for the reasons</p> <p>10 already set out, we submit that this is not</p> <p>11 an unreasonable conclusion.</p> <p>12 Each of the officers has expressed subjective fears</p> <p>13 of physical harm and interference with themselves and</p> <p>14 their families from the OCNs that they are deployed to</p> <p>15 investigate or from others that may seek to target</p> <p>16 police officers. We submit, for the reasons already</p> <p>17 given, that intelligence available relating to the</p> <p>18 Tottenham Turks and other OCNs means that these fears</p> <p>19 are not wholly without objective justification.</p> <p>20 The family have agreed that where there is</p> <p>21 a sufficiently serious risk that operational</p> <p>22 effectiveness will be undermined by identification, it</p> <p>23 would be appropriate to grant the application, and we</p> <p>24 submit that, for these officers, the evidence provided</p> <p>25 has established such a risk.</p> <p style="text-align: center;">Page 54</p>	<p>1 officers.</p> <p>2 We submit that, based upon the ongoing risk posed by</p> <p>3 the OCN and the high risk of future operational</p> <p>4 efficacy, restriction orders in the terms sought should</p> <p>5 be granted for FE3, FE5, FE6, FE7, FE10 and FE11,</p> <p>6 including the grant of anonymity and the right to give</p> <p>7 evidence from behind a screen. We submit that to do so</p> <p>8 will not undermine the public perception of this</p> <p>9 inquiry, inhibit members of the public from following</p> <p>10 the inquiry or prevent you from investigating events</p> <p>11 fully in order to satisfy the inquiry's terms of</p> <p>12 reference.</p> <p>13 No application was initially made for anonymity for</p> <p>14 FE3 or FE6 and core participants have been informed of</p> <p>15 their names, with documents disclosed bearing those</p> <p>16 names. The current application for FE3 and FE6 is that</p> <p>17 their name and identifying details are not disclosed to</p> <p>18 the general public or members of the press by mentioning</p> <p>19 them in open court, and that they be permitted to give</p> <p>20 evidence with the other special measures listed,</p> <p>21 including giving evidence behind a screen.</p> <p>22 We submit that this is reasonable and proportionate</p> <p>23 in the circumstances.</p> <p>24 The family submit at paragraph 43 of their skeleton</p> <p>25 argument that the fact that the MPS have not originally</p> <p style="text-align: center;">Page 56</p>

<p>1 made an application for anonymity for FE3 and FE6 is 2 telling and indicates that the their work as 3 surveillance officers was not seen as a basis for 4 seeking anonymity. The MPS have accepted -- at 5 paragraph 9 of their addendum application, which is at 6 tab 5 -- that an error was made with these officers and 7 that the MPS failed to consider the potential 8 operational impact and that the risk of jigsaw 9 identification and hostile research were also not 10 properly considered. 11 Our view is that an error on behalf of the MPS 12 should not be determinative of this application. Where 13 FE3 and FE6 remain in covert surveillance roles, and if 14 you consider that the risk posed by the OCN and 15 potential effects on effective policing necessitates 16 orders for covert surveillance officers, then those 17 orders should extend to these two officers. There is no 18 justifiable reason for drawing a reason between them on 19 those grounds. 20 FE12 is a trained surveillance officer and, as 21 I have already said, although not in a dedicated 22 surveillance role, he does participate in covert 23 deployments. On 11 December 2015 he was deployed in 24 a covert monitoring post listening to the live Audi 25 feed. FE12 was named in the IOPC report and the MPS</p> <p style="text-align: center;">Page 57</p>	<p>1 is central to his application is not his title, or the 2 function he carried out during Operation Ankaa, but his 3 current role and the future risk inherent in it. 4 Sir, at this stage, it may be helpful to highlight 5 a number of issues which are significant in the 6 balancing exercise you must conduct in this inquiry. 7 Firstly, even if these orders are granted, the 8 witnesses will be seen by you, the inquiry legal team, 9 core participants and their representatives, including 10 the family and those representing the family. 11 Second, the grant of the orders in no way inhibits 12 the ability to challenge the officers' evidence. 13 Third, the grant of orders does not inhibit your 14 ability to arrive at the truth or to fulfil your terms 15 of reference, including to hold individuals and 16 organisations to account for any failings you identify. 17 With those factors very much in mind, I turn to deal 18 with the applications made on behalf of serving counter 19 terrorism specialist firearms officers. 20 THE CHAIRMAN: Thank you. 21 MS BLACKWELL: The witness statement at tab 7 by 22 Superintendent McKibbin confirms that for CTSFOs any 23 disclosure of their identification would have 24 a significant impact upon their ability to undertake 25 operations in that role. It may lead to a risk to</p> <p style="text-align: center;">Page 59</p>
<p>1 risk assessment has concluded that, notwithstanding 2 this, he remains extremely difficult to identify by 3 conducting open research. Additional information is 4 provided in FE12's closed application, which you will 5 wish to explore further. 6 Based on the information originally provided, we 7 would have submitted that the MPS have not demonstrated 8 that the order sought is necessary for FE12. However, 9 since the circulation of our written submissions, the 10 MPS have provided further evidence which is at tab 101 11 and entitled "Annex A to the MPS skeleton argument". 12 This material describes FE12's current operational role 13 and the regularity with which he undertakes covert 14 surveillance roles, calculated at having been no less 15 than 32 times this year already. 16 It is on that basis that the MPS submit at 17 paragraph 23 of their skeleton argument that there is no 18 real basis now to distinguish FE12 from the dedicated 19 surveillance officers. 20 The MPS also invite you to consider the closed 21 evidence relating to the specific risks faced by FE12 22 and his family at paragraph 25 of their skeleton 23 argument. With the benefit of this new evidence, we 24 submit that an order should be made for FE12 on the same 25 grounds as the other covert surveillance officers. What</p> <p style="text-align: center;">Page 58</p>	<p>1 themselves and their colleagues. Although they do not 2 operate in covert roles, they do assist in covert 3 operations and were they to be identified, the witnesses 4 who have made applications would be unable to deploy as 5 part of covert operations. 6 Again, whilst we agree with the family's submissions 7 as to the quality of the individual risk assessments, 8 I repeat our submissions that the evidence and 9 intelligence about the Tottenham Turks is clear and 10 compelling in demonstrating that they are active and 11 extremely dangerous. 12 Operation Ankaa was an ultimately successful 13 operation to disrupt this criminal conspiracy by that 14 OCN. The family have accepted at paragraph 10 of their 15 skeleton argument that the CTSFOs for whom applications 16 are made played a far more direct role in that operation 17 than for instance the surveillance officers. It may 18 assist if I just take a moment to remind you, sir, of 19 what those roles were. 20 P2 is a CTSFO who was seated in the rear seat of the 21 Bravo vehicle involved in the interception. P2 was 22 present at the scene of the shooting and was involved in 23 the restraint of one of the conspirators, 24 Gokay Sogucakli. 25 R116 is a CTSFO who drove the Alpha vehicle involved</p> <p style="text-align: center;">Page 60</p>

<p>1 in the interception. R116 helped to extract Mr Baker 2 from the Audi after he had been shot and was involved in 3 the attempts to administer first aid. 4 S105 is a CTSFO who was the operational firearms 5 commander for the Bravo team and responsible for 6 delivering an operational briefing. S105 was involved 7 in the interception and approached the Audi prior to the 8 shooting, aiming their weapon at the driver of the Audi, 9 Nathan Mason. 10 V68 was a CTSFO who was the front seat passenger of 11 the Charlie vehicle, in which W80 also road. V68 12 approached the Audi during the interception and 13 attempted to smash the driver's window, and V68 opened 14 the door and extracted Nathan Mason from the vehicle. 15 W97 is a CTSFO involved in the reconnaissance of the 16 areas around HMP Wormwood Scrubs and Wood Green Crown 17 Court. W97 was not present at the shooting. 18 W108 is a CTSFO and was driver of the Bravo vehicle. 19 W108 was involved in the attempts to administer first 20 aid to Mr Baker. 21 W109 is a CTSFO and was the passenger in Charlie 22 vehicle. W109 was involved in the restraint of 23 Nathan Mason following the shooting. 24 W112 is a CTSFO who was a passenger in Bravo 25 vehicle. W112 assisted W109 in the removal and</p> <p style="text-align: center;">Page 61</p>	<p>1 or others. They note that there is no individual 2 analysis for each officer about the ease with which they 3 can be identified through open source research and 4 submit that the risk of their being traced is very low. 5 We submit that any risk of identification of any of 6 these CTSFOs by a criminal gang who now have the 7 knowledge that the period of time that Operations Ankaa 8 and Utara were running, these officers were and still 9 are infiltrating, targeting and preventing them from 10 achieving their grievous and deadly criminal aims is 11 a serious matter and a risk to be avoided. 12 We cannot provide to you, sir, a percentage chance 13 of the success of an attempt to locate these officers 14 and their families. No one can give that figure to you. 15 But that risk exists and it is that risk which you must 16 balance in your assessment. 17 The family have submitted at paragraph 75 of their 18 skeleton argument that the MPS submission that 19 identification of these officers would pose a threat to 20 operational effectiveness is not qualified or 21 substantiated in the material provided. They rely upon 22 the ruling of His Honour Judge Teague Queen's Counsel in 23 the Anthony Grainger Inquiry, when applications were 24 refused on that basis. 25 The MPS have submitted at paragraph 42 of their</p> <p style="text-align: center;">Page 63</p>
<p>1 restraint of Nathan Mason and was involved in attempts 2 to administer first aid to Mr Baker. 3 Q89 is a CTSFO who was driver of the Delta jump-off 4 vehicle -- sorry, Q89 drove to Bracknell Close after the 5 shooting and was involved in the attempts to administer 6 first aid to Mr Baker. 7 We agree with the MPS that there is a difference 8 between undertaking an overt policing role and 9 involvement in a public inquiry. This public inquiry, 10 which is likely to attract significant media attention. 11 The MPS has assessed the risk of harm to the CTSFOs as 12 high were they to be publicly identified in this 13 inquiry. Each of the officers has expressed 14 a subjective fear that they may be at risk of harm from 15 the Tottenham Turks or others were they to be identified 16 as involved in Operation Ankaa. 17 As I have already said, the intelligence profiles 18 provided indicate that such fears are not without 19 foundation. We note that a number of individual 20 officers were either directly involved in or very close 21 to the armed intervention, or involved in providing 22 first aid to Mr Baker at the scene. 23 The family have submitted, at paragraphs 73 to 75 in 24 their skeleton, that the risk of harm to officers would 25 only materialise were they to be tracked down by the OCN</p> <p style="text-align: center;">Page 62</p>	<p>1 skeleton that the current risk to police officers, 2 including their targeting during attacks in Westminster, 3 Borough Market and Fishmongers' Hall cannot be ignored. 4 It has happened and continues to happen, some might 5 argue with increased frequency. 6 The MPS also emphasise at paragraph 43 of their 7 skeleton that CTSFOs provide support to covert 8 operations and so are required to operate in covert 9 roles and, as a result, were they to be recognised it 10 would compromise operations. 11 We submit that, based upon the ongoing risk posed by 12 the OCN and the high risk to future operational 13 efficacy, restriction orders in the terms sought ought 14 to be granted for P2, R116, S105, V68, W97, W108, W109, 15 W112 and Q89, including the granting of anonymity and 16 the right to give evidence from behind a screen. 17 For all the reasons already emphasised, we submit 18 that to do so would not undermine the public perception 19 of this inquiry, would not inhibit members of the public 20 from following the inquiry and would not prevent you 21 from investigating events fully in order to satisfy your 22 terms of reference. 23 In relation to the retired officers, the retired 24 counter terrorism specialist firearms officers, in 25 relation to whom applications are also made, the family</p> <p style="text-align: center;">Page 64</p>

<p>1 have observed generally there can be no issue about 2 future operational effectiveness, that the objective 3 risk of harm is low and the subjective fears as 4 expressed in the applications are not reasonably held. 5 That is set out at paragraph 79 of their skeleton 6 argument. 7 For all the reasons given, we do not agree that the 8 objective risk is low, nor that the subjective fears are 9 unreasonably held. In relation to serving police 10 officers, the effect on potential future operational 11 effectiveness has been an important factor in our 12 submission that orders should be granted. We agree with 13 the family, save that where specific evidence indicates 14 to the contrary, the same factor does not apply to the 15 retired officers. These applications require a careful 16 consideration of the current circumstances of these 17 officers, including whether their identification would 18 increase the risk that they face and/or have an effect 19 on their ability to carry out their current employment 20 in accordance with both article 8 and the common law. 21 I will take a few moments to go through their 22 applications and address you on those aspects of them. 23 S111 was the operational firearms commander for team 24 Bravo on 15 December 2015 and was present at the scene, 25 assisting to provide first aid to Mr Baker.</p> <p style="text-align: center;">Page 65</p>	<p>1 also now been provided by V64, which is at tab 42A of 2 your bundle. That describes his current role in more 3 detail. It confirm that is his current role does not 4 require him to perform any close protection roles or to 5 deploy covertly and no evidence has been provided that 6 he will be unable to continue in that role were he to be 7 identified. 8 So our submission remains that in relation to V64, 9 the MPS have not established that, having balanced all 10 of the relevant factors, the order is necessary for V64. 11 S48 was the firearms tactical adviser on 12 11 December 2015 and was present in C3000, he has since 13 retired from the MPS but the inquiry has the benefit of 14 closed material about his current employment. Based 15 upon that closed material, which cannot be elaborated 16 upon here, we submit that a restriction order in the 17 terms sought is necessary, including anonymity and the 18 giving of evidence from behind a screen. 19 The family have asked to distinguish between risks 20 which arise because of the work carried out by S48 in 21 his new role and risks to those he now works with 22 because of his involvement in Operation Ankaa. We are 23 constrained in what we can say in open session, but our 24 view remains that based upon the closed evidence 25 relating to the nature of S48's current employment, the</p> <p style="text-align: center;">Page 67</p>
<p>1 V64 was the operational firearms commander for team 2 Alpha on 11 December 2015. He did not present at the 3 time of the shooting and was not involved in the 4 immediate aftermath. Both officers have since retired 5 from the police, but the inquiry has the benefit of 6 closed evidence about their current employment. 7 Based on that closed evidence, we are satisfied that 8 there is significant risk that, if S111 were identified 9 by this inquiry, he would be deprived of his continuing 10 employment and/or that his ability to carry out that 11 role safely and effectively would be inhibited. We 12 submit that, based upon the closed material, 13 a restriction order in the terms sought ought to be 14 granted for S111. In addition, S111's employer has 15 provided open evidence confirming that were S111 to be 16 identified in the inquiry, then there is a real risk 17 that they would no longer be able to continue in their 18 current role. He would be unlikely to allow an employee 19 to remain in their current post when they were the 20 subject of such public scrutiny, as would happen in this 21 inquiry. That is set out at tab 46A. 22 However, in relation to V64, the inquiry legal team 23 have likewise received evidence that his identification 24 in the course of this inquiry might have an effect on 25 his current employment. A further open statement has</p> <p style="text-align: center;">Page 66</p>	<p>1 order ought to be granted. 2 K78 drove Charlie vehicle and restrained 3 Gokay Sogucakli during the armed intervention. V112 4 drove the control vehicle and assisted with providing 5 first aid to Mr Baker. Both have since retired from the 6 MPS, and the inquiry has closed evidence about their 7 current employment. Upon careful review of that closed 8 material, we submit that the threshold has not been met 9 for the grant of anonymity and the risks posed to both 10 K78 and V112. 11 The risks posed may satisfactorily be met by the 12 prohibition on broadcast or publication of their images 13 and allowing both officers to enter and leave court 14 through a route not available to the public. It may be 15 necessary for these aspects to be explored in closed 16 session. The family have asked that this application if 17 possible be discussed in open session. It is our view 18 that based upon the open material an order is not 19 required in the case of either officer, and additional 20 grounds for the making of such an order are raised in 21 the closed material but unfortunately these cannot be 22 discussed in open session. 23 We submit that these additional grounds should be 24 explored in closed session but that you should not 25 currently be persuaded that the threshold for the grant</p> <p style="text-align: center;">Page 68</p>

<p>1 of either order sought has been met.</p> <p>2 FE25 is a Turkish-speaking officer who was deployed</p> <p>3 in the covert monitor post to listen to the live audio</p> <p>4 feed from the Audi. He is currently posted to counter</p> <p>5 terrorism command, but in a non-covert role. The risk</p> <p>6 assessment has confirmed that he is discoverable through</p> <p>7 open source research in his own name and the inquiry has</p> <p>8 the benefit of further closed evidence in support of his</p> <p>9 application.</p> <p>10 It is based upon this closed evidence that we submit</p> <p>11 that a restriction order should be granted in the terms</p> <p>12 sought, including anonymity and giving evidence from</p> <p>13 behind a screen. We note the family's submission at</p> <p>14 paragraph 84 of their skeleton that, "If possible, any</p> <p>15 further disclosure should be made and if not, there</p> <p>16 should be careful scrutiny of any MPS evidence or</p> <p>17 analysis of harm".</p> <p>18 Despite careful consideration, we have not</p> <p>19 identified any further material which should be</p> <p>20 disclosed, or may be disclosed. We endorse the family's</p> <p>21 submission that closed evidence should be subject to</p> <p>22 searching scrutiny. Having done so, our submissions are</p> <p>23 that an order should be granted for FE25 in the terms</p> <p>24 sought.</p> <p>25 FE16 was the tactical firearms commander for</p> <p style="text-align: center;">Page 69</p>	<p>1 view, has not established any risk to FE16 or others in</p> <p>2 this new role were he to be identified.</p> <p>3 In light of all of this, we submit that the MPS have</p> <p>4 not established that either section 19(4)(b) or FE16's</p> <p>5 common law and Convention rights warrant the restriction</p> <p>6 order sought or that the concerns raised cannot be met</p> <p>7 by a less onerous order. For example: an order</p> <p>8 prohibiting the broadcast and publication of FE16's</p> <p>9 image.</p> <p>10 The MPS have emphasised that the order could be made</p> <p>11 for FE16 based upon his subjective fears alone, which</p> <p>12 are to an extent objectively justified. That's set out</p> <p>13 at paragraph 35 of their skeleton argument, but failing</p> <p>14 that the MPS agree with the measures proposed by us.</p> <p>15 FE19 is a trained surveillance officer. He is not</p> <p>16 in a dedicated covert role, although he does assist in</p> <p>17 covert deployments and he was present at C3000 at the</p> <p>18 time of the intervention. The MPS have assessed the</p> <p>19 risk of harm to FE19 as high and the operational risk</p> <p>20 should FE19 be identified as high. However, FE19 has</p> <p>21 accepted that ordinarily he would expect to give</p> <p>22 evidence in open court in criminal proceedings in his</p> <p>23 own name.</p> <p>24 In light of FE19's role within the MPS and his role</p> <p>25 in Operation Ankaa, we were to submit that the MPS have</p> <p style="text-align: center;">Page 71</p>
<p>1 Operation Ankaa. He was involved in the planning of the</p> <p>2 operation and was present in C3000 throughout the</p> <p>3 operation. He was the subject of a recommendation by</p> <p>4 the IOPC that there was a potential case to answer for</p> <p>5 misconduct as a result of his role in the operation. As</p> <p>6 you know, sir, he has since retired. He is a central</p> <p>7 witness in this inquiry, whose evidence will go directly</p> <p>8 to many of the questions to be answered within the terms</p> <p>9 of reference.</p> <p>10 THE CHAIRMAN: It might be said, I suppose, without</p> <p>11 diminishing the importance of the importance of the</p> <p>12 evidence of other witnesses, the two most important</p> <p>13 witnesses in this are W80 and FE16.</p> <p>14 MS BLACKWELL: Yes.</p> <p>15 We submit that there is insufficient evidence of</p> <p>16 operational risk which would arise from the</p> <p>17 identification of FE16.</p> <p>18 He has accepted that whilst still a serving officer</p> <p>19 in the MPS, he would have expected to give evidence in</p> <p>20 open court in criminal proceedings if so made. The MPS</p> <p>21 risk assessment provided in support of his application</p> <p>22 has assessed the risk of physical harm to FE16 as low</p> <p>23 and the risk of interference with his family as medium.</p> <p>24 The inquiry has received limited closed evidence about</p> <p>25 FE16's role since his retirement. This evidence, in our</p> <p style="text-align: center;">Page 70</p>	<p>1 not provided sufficient evidence that the threshold was</p> <p>2 met for the grant of a restriction order in the terms</p> <p>3 sought. We initially believed that the concerns raised</p> <p>4 could be met by a less onerous order, for example</p> <p>5 an order prohibiting the broadcast and publication of</p> <p>6 FE19's image. As with FE12, since the circulation of</p> <p>7 our written submissions, the MPS have provided further</p> <p>8 evidence supporting these applications and describing</p> <p>9 FE19's current operational role and the regularity with</p> <p>10 which he undertakes covert surveillance roles, which has</p> <p>11 been counted as 12 times this year. That information is</p> <p>12 set out at tabs 16, 17 and 101 in your bundle.</p> <p>13 The MPS have emphasised in their skeleton that</p> <p>14 naming this officer and/or allowing him to be seen in</p> <p>15 public would damage his operational deployment. With</p> <p>16 the benefit of that statement, we submit that</p> <p>17 an anonymity order in the same terms as with the other</p> <p>18 officers should be made for FE19 due to the nature of</p> <p>19 his current risk and the future risk inherent in it.</p> <p>20 EG39 is a civilian engineer working as a technical</p> <p>21 support officer for the MPS. He was present at C3000 at</p> <p>22 the time of the intervention and assisted with the</p> <p>23 listening equipment in the covert monitoring post. On</p> <p>24 occasion he deploys with dedicated surveillance teams,</p> <p>25 including entering premises covertly to install</p> <p style="text-align: center;">Page 72</p>

<p>1 listening equipped. He has previously been called to 2 give evidence in his own name and he was previously 3 named in the IOPC report. 4 The inquiry has received additional closed material 5 in support of EG39's application that will need to be 6 explored further in closed session. In particular, you 7 will wish, sir, to consider why anonymity is required 8 and why the concerns expressed in relation to his 9 identification being revealed cannot be met by giving 10 evidence from behind a screen and permission granted to 11 enter and leave the building via an entrance not 12 available to the public. 13 Unfortunately, we have not identified any aspects of 14 the closed material relating to EG39's application which 15 can be disclosed to the family. We advise you simply to 16 scrutinise this material and the arguments of the MPS in 17 closed session with great care. 18 THE CHAIRMAN: I don't think it is a case of fortunately or 19 unfortunately, that is the state of the evidence. 20 MS BLACKWELL: It is, yes. 21 THE CHAIRMAN: Yes. 22 MS BLACKWELL: We are conscious that throughout the course 23 of our submissions to you we are constantly providing 24 what may be seen by the family as bad news in term of 25 the amount of material that is capable of being</p> <p style="text-align: center;">Page 73</p>	<p>1 proceedings; (b) that he be allowed to give evidence 2 from behind a screen so as to be visible only to you, 3 legal representatives and approved family members; and 4 (c) that there be a prohibition on the publication of 5 W80's identity or any facts that could lead to his 6 identification, including the publication of any 7 photograph or images. 8 As you know, sir, W80 is a serving CTSFO in the MPS. 9 He is trained to undertake both overt and covert roles 10 and at the time of the intervention, he is the officer 11 who fired the shot that killed Mr Baker. He was 12 subsequently subject to a police investigation, but as 13 you know he was not charged with any offence. The IOPC 14 found that there was a case to answer by W80 for gross 15 misconduct and that decision remains the subject of 16 ongoing litigation which has attracted, not 17 surprisingly, significant press attention. 18 At this time, W80 is posted to SCO19 specialist 19 firearms command as a national firearms instructor, but 20 it is his intention is to return to operational duties 21 and ultimately to become an armed close protection 22 officer. 23 W80 relies upon the risk assessments provided by 24 Superintendent McKibbin at tab 7, that the risk of harm 25 to CTSFOs is high and that the identification of any</p> <p style="text-align: center;">Page 75</p>
<p>1 disclosed to them. 2 THE CHAIRMAN: I think you may be being unduly protective of 3 your position. I think it is quite apparent and I am 4 sure it is acknowledged that just as your ground shifts 5 on receipt of fresh evidence, you are constantly looking 6 for alternatives to measures which you submit might be 7 appropriate, given the state of the evidence. 8 MS BLACKWELL: Yes. 9 THE CHAIRMAN: I don't think that there will be any 10 suggestion that you are approaching this exercise with 11 anything other than a wholly open mind. 12 MS BLACKWELL: As you have already made reference to, sir, 13 this is a moving picture and any orders made at this 14 stage -- 15 THE CHAIRMAN: I don't think any suggestion that you are 16 rubber-stamping -- as is quite apparent from the stance 17 that you have taken in relation to one of the, if not 18 the, most important witnesses in the inquiry. So there 19 we are. 20 MS BLACKWELL: Turning, if I may, to the other, as you have 21 identified, main witnesses in the inquiry, W80's 22 application for anonymity. There is an application for 23 a restriction order on his behalf which is set out at 24 tab 73 in the following terms: (a) that he not be 25 identified by name or collar warrant number in the</p> <p style="text-align: center;">Page 74</p>	<p>1 CTSFO would have a significant operational impact upon 2 their future deployment. W80 has expressed the 3 subjective fear that he might be the subject of 4 retribution were he to be identified. A witness, 5 Alex Coubrough, heard a threat by an unidentified person 6 shortly after Mr Baker's death. We submit that, as the 7 officer who made the lethal shot, the risk to W80 from 8 anyone inclined to seek retribution is particularly 9 high. 10 Furthermore, of all the officers involved in this 11 inquiry, he has been the focus of significant and 12 ongoing press coverage, and his evidence before this 13 inquiry is likely to attract further significant media 14 attention. 15 The family have submitted that the public interest 16 in the identification of W80 is all the more compelling 17 because he was directly involved in Mr Baker's death. 18 They also rely upon paragraphs 45 to 47 of their written 19 submissions at tab 2 in your bundle, that W80's 20 application rests predominantly on the objective risk to 21 life, interference with private life and operational 22 effectiveness, rather than subjective concern which 23 itself indicates that the balance should be in favour of 24 openness in this instance. 25 In accordance with what we have set out in our</p> <p style="text-align: center;">Page 76</p>

<p>1 written submissions, the risk of harm and the risk of 2 future operational effectiveness apply to W80 as they do 3 to any other of the serving CTSFO. Moreover, in W80's 4 application, there is a greater likelihood of 5 interference with his private life than with the other 6 CTSFOs. We recognise the importance of his evidence to 7 the family and to the inquiry as a whole. 8 We submit that, having balanced all of the public 9 interest factors previously identified, a restriction 10 order ought to be made in terms consistent with the 11 other CTSFOs. These terms differ slightly from those 12 within the application of W80 but, having regard to your 13 section 17 duty to act with fairness, we submit that it 14 is necessary to ensure the efficacy of any order 15 protecting W80's identity that he also be permitted to 16 enter and leave the building through an exit not 17 available to the public. We submit that the making of 18 such an order will not affect the public's perception of 19 the impartiality of this inquiry or inhibit your ability 20 to arrive at the truth or to hold individuals to 21 account. 22 THE CHAIRMAN: Ms Blackwell, the MPS restriction orders 23 speak about the ability of members of the family to see 24 the witness "Subject to non-intrusive vetting". 25 MS BLACKWELL: Yes.</p> <p style="text-align: center;">Page 77</p>	<p>1 that the disclosure of the route driven by the van would 2 create a risk of far more damage as defined in 3 section 5(a). The route taken was a primary optimum 4 route, calculated to maximise route efficiency and to 5 minimise the risk level of risk and harm presented by 6 those in transit, as set out in the witness statement of 7 Pete Masters, which is at tab 95. If this route was 8 disclosed, the security of that route would be 9 compromised. The entirety of the route taken is not 10 relevant to the work of this inquiry, though it will be 11 necessary to consider the vehicle's anticipated route as 12 it got close to Wood Green Crown Court and as it relates 13 to the known position of the conspirators. So in those 14 circumstances it is our submission that you should grant 15 a restriction order prohibiting the disclosure or 16 reporting of the full route taken by the prison 17 transport vehicle. The terms of the order sought are 18 noted in the draft order at tab 93, in particular that 19 it will not prevent reference to general geographical 20 locations associated with the occurrence of events on 21 11 December 2015. 22 To ensure that evidence can be properly heard about 23 the van's anticipated arrival at Wood Green Crown Court, 24 as you know we invited Serco to provide a form of words 25 capable of agreement to describe the end of the route</p> <p style="text-align: center;">Page 79</p>
<p>1 THE CHAIRMAN: I don't quite know what that means, no doubt 2 Mr Butt will tell me in due course, but that is not 3 something which has been raised in the case of W80, who 4 is arguably at greater risk, both subjectively and 5 objectively. 6 MS BLACKWELL: We note your comments, sir. 7 THE CHAIRMAN: It is something for discussion by those to 8 whom it applies or not as the case may be. 9 MS BLACKWELL: Sir, may I turn, please, to deal with the 10 applications made on behalf of Serco? 11 THE CHAIRMAN: Yes. 12 MS BLACKWELL: Thank you. 13 Firstly, the redaction applications. Dated 14 4 January 2021, application is made by Serco, who have 15 sought the redaction of the route taken by the prisoner 16 transport vehicle from HMP Wormwood Scrubs to Wood Green 17 Crown Court on 11 December 2015. That application is at 18 tab 92. 19 THE CHAIRMAN: Yes. 20 MS BLACKWELL: It is submitted by Serco that the disclosure 21 of the route may encourage or assist in further escape 22 attempts by prisoners and that any such attempts will 23 create the risk of violence to Serco employees. The 24 family have confirmed that they do not object to this 25 redaction which is sought. Serco have provided evidence</p> <p style="text-align: center;">Page 78</p>	<p>1 and a form of words has been prepared by Serco, reviewed 2 by us and now circulated to all core participants. It 3 is our submission, sir, that this form of words captures 4 all aspects of the route that may be relevant to the 5 inquiry and nobody has so far raised any objection to 6 the form of words or to this proposed course. 7 We therefore submit that the order sought ought to 8 be granted. 9 THE CHAIRMAN: Thank you. 10 MS BLACKWELL: Serco have also applied for anonymity in 11 respect of 11 individuals who were at the time of 12 11 December 2015 employed by Serco. In fact as I say 13 that number, I think that that number has been reduced 14 as recently as this morning. 15 THE CHAIRMAN: I think it has gone down and gone up with 16 the -- there has been removal and an addition. It is 17 nine now? Right, thank you. Very good. 18 MS BLACKWELL: That application, sir, is at tab 92. 19 Statements in support of the applications have been 20 provided by just two of the officers, JBI1 and JBI2. 21 They appear at tabs 96 and 97. Serco also rely upon the 22 witness statement of Pete Masters, who is the head of 23 standards and security for the prison escort services. 24 That statement, as you know, is at tab 95. His evidence 25 can be summarised as follows. Serco staff in</p> <p style="text-align: center;">Page 80</p>

<p>1 front-facing roles deal with prisoners on a daily basis 2 and come into close contact with them. They wear 3 nametags identifying them, but if their names were 4 published by the inquiry then they become vulnerable to 5 parties unknown who could abuse that knowledge, and 6 those affiliated with or loyal to Jermaine Baker may 7 seek to manifest their arrange at his death by attacking 8 PECS employees. 9 JBI1 was involved in loading prisoners, including 10 Izzet Eren, onto prisoner transport vehicles at Wormwood 11 Scrubs but was not present in the vehicle transporting 12 Izzet Eren to court. JBI1 remains employed by Serco in 13 a role which involves regular contact with prisoners and 14 fears that if recognised they would be approached more 15 regularly by prisoners, "... whether this be to ask 16 about the incident verbally or to physically attack me". 17 That is a quote from JBI1's statement at tab 96. 18 JBI2 remains employed by Serco in a front-facing 19 role which involves regular contact with prisoners and 20 offenders. JBI2 has stated that they fear physical 21 harm, harassment, intimidation or unsolicited approaches 22 from members of the public or those associated with 23 Mr Baker. That statement is at tab 97. 24 Both of these witness statements include redacted 25 passages about their particular circumstances which</p> <p style="text-align: center;">Page 81</p>	<p>1 no role in Operation Ankaa. In particular, they played 2 no role in the planning or execution of the intervention 3 which resulted in the death of Mr Baker and the foiling 4 of the escape plan of Izzet Eren. There is no evidence 5 that any Serco witness would face a risk of reprisals 6 from those associated with Jermaine Baker or from the 7 Tottenham Turks. 8 THE CHAIRMAN: Yes. 9 MS BLACKWELL: Would your Honour just give me a moment 10 whilst I check the current position in relation to the 11 remaining applications. 12 THE CHAIRMAN: Certainly. 13 MS BLACKWELL: Applications remain in relation to the 14 following ciphred individuals. JBI6, JBI7, JBI8, JBI9, 15 JBI10 and JBI11. 16 THE CHAIRMAN: Thank you. 17 MS BLACKWELL: Serco has not contacted these individuals, 18 they are no longer employed by Serco and there is no 19 evidence that they wish an application for anonymity to 20 be made in their name. 21 Similarly, there is no evidence about their current 22 roles or whether they come into contact with prisoners 23 or offenders. We note that four of these officers had 24 no contact with prisoners or offenders at the time of 25 the incident.</p> <p style="text-align: center;">Page 83</p>
<p>1 support their applications. We invite you to read the 2 closed unredacted copies of those statements. I know 3 that counsel for Serco will also wish to make certain 4 submissions to you during the closed hearings tomorrow. 5 THE CHAIRMAN: Thank you. 6 MS BLACKWELL: However, even with regard to the closed 7 material in those statements, it is our view that the 8 threshold has not been met for the grant of an order in 9 either case. The applications rest wholly on subjective 10 fears. Unlike the police witnesses, the Serco witnesses 11 played no active role in operations to disrupt the OCN's 12 criminal activities and there is no objective evidence 13 in support of such a risk. 14 THE CHAIRMAN: Are any of the Serco witnesses on the witness 15 list? 16 MS BLACKWELL: Yes. Some are on the witness list. Not all 17 of those in relation to whom applications are made, and 18 we can provide you with a list of those who do currently 19 appear on the list. 20 THE CHAIRMAN: Are any of those who are making 21 an application on the witness list? 22 MS BLACKWELL: We will check that now. 23 THE CHAIRMAN: Thank you. 24 MS BLACKWELL: We note that Serco employees were not aware 25 of the conspiracy prior to 11 December 2015 and played</p> <p style="text-align: center;">Page 82</p>	<p>1 THE CHAIRMAN: Yes. 2 MS BLACKWELL: In light of everything that has just been 3 said, we submit that neither section 19(4)(b), nor their 4 common law and convention rights warrant a restriction 5 order preserving the anonymity of any of the Serco 6 witnesses. 7 In relation to your question, sir, as to which of 8 those who are making applications for anonymity in 9 relation to Serco are on the witness list, the only 10 employee who is on the list is JBI2 and no decision has 11 yet been taken about whether that individual's evidence 12 will be received live or be read and/or summarised. 13 THE CHAIRMAN: Yes. 14 MS BLACKWELL: May I turn, please, sir, to deal with the 15 role of the media. 16 THE CHAIRMAN: Just a moment, please. 17 MS BLACKWELL: Guardian News and Media, supported by 18 Associated Newspapers Limited, the BBC, the PA Media 19 Group, Sky News, the Telegraph Media Group and Times 20 Newspapers Limited have submitted that in the event that 21 restriction orders granting anonymity and the use of 22 screens are made, accredited journalists should be 23 permitted to follow the proceedings and to see the 24 relevant witnesses. Their application and their 25 comments in that regard appear at tab 3.</p> <p style="text-align: center;">Page 84</p>

<p>1 In the recent case of <i>Dyer v The Assistant Coroner</i> 2 for West Yorkshire, Lord Justice Males said that he 3 could see no reason why representatives of responsible 4 media organisations, who can be relied upon not to 5 disclose information and to report the unlikely event of 6 any threat being made to them by him, should not be 7 permitted to see police officers give evidence. That 8 this would go some way to promote the objectives served 9 by the principle of open justice. We submit that 10 whether or not to permit members of the media to see 11 an anonymous witness is a decision for you, having 12 regard to the specific circumstances of these witnesses, 13 and of this inquiry. It is also within your power to 14 put in place safeguards such as any additional 15 undertakings to be provided by members of the media as 16 you may consider to be necessary.</p> <p>17 The application by the MPS has asked specifically 18 that anonymous witnesses be screened from both the 19 general public and the media. No reason has been 20 provided for the inclusion of the media in that 21 application. In light of the court's observations in 22 the case of <i>Dyer</i>, it will be, we submit, for the MPS to 23 persuade you that, notwithstanding the public interest 24 in transparency and open reporting, it is necessary for 25 the witnesses to be screened from the media. The MPS</p> <p style="text-align: center;">Page 85</p>	<p>1 which he would resist applications from the press to be 2 permitted to see.</p> <p>3 You may also wish to hear too from Mr Penny on 4 behalf of W80 about his observations on any such 5 application.</p> <p>6 You can thereafter, if you consider that there is 7 merit in the MPS submissions, set out a timetable by 8 which the press would have to indicate which witnesses 9 they wish to see, together with reasons and a timetable 10 for responses to those applications.</p> <p>11 In the event of course that Government restrictions 12 require the inquiry to amend the way in which the 13 hearings can be conducted, or to limit attendance at 14 those hearings, the means by which both the media and 15 the public can follow the evidence will of course be 16 carefully reconsidered.</p> <p>17 Sir, that is all I intend to say at this stage.</p> <p>18 As you know, we have provided a schedule of the 19 applications and our submissions in relation to those 20 applications.</p> <p>21 THE CHAIRMAN: I am sure everybody is very grateful for the 22 trouble that you have all taken, but I don't think it is 23 necessary to go into it because you have effectively 24 gone through it.</p> <p>25 MS BLACKWELL: Thank you. If there is a necessity for me to</p> <p style="text-align: center;">Page 87</p>
<p>1 have now submitted at paragraph 53 of their skeleton 2 argument, behind tab 100, that allowing the press to see 3 anonymous witnesses presents an appreciable risk that 4 this could be abused. They have not confirmed why they 5 are not satisfied that additional safeguards could be 6 put in place to alleviate this risk, for example prior 7 notice of who is attending, to allow non-intrusive 8 vetting and the requirement of presenting identification 9 and a prohibition on live reporting.</p> <p>10 The MPS propose that you adopt the approach set out 11 in Fishmongers' Hall Inquest, namely that restriction 12 orders may be made but that the press may then apply to 13 see specific witnesses.</p> <p>14 Our concern with this approach is that you would 15 simply be pushing this argument down the road to a time 16 when all parties will be extremely busy preparing for 17 the hearing. We submit that as much constructive use as 18 can reasonably be made of the opportunity to discuss 19 these issues today should be made. Mr Butt should be 20 invited to explain to you today the following matters.</p> <p>21 (a) the risks that are posed by the press being 22 permitted to view anonymous witnesses.</p> <p>23 (b) whether there are any safeguards he can foresee 24 being able to mitigate those risks.</p> <p>25 (c) whether there are any categories of officers</p> <p style="text-align: center;">Page 86</p>	<p>1 do so, I can do so, for the completion of everybody 2 else --</p> <p>3 THE CHAIRMAN: Is there anything else you want to say at 4 this stage?</p> <p>5 MS BLACKWELL: No, thank you very much.</p> <p>6 THE CHAIRMAN: As far as a batting order is concerned, can 7 I suggest the following and if it comes as a surprise 8 and you want to change it, I will not object but it 9 seems to me to be appropriate.</p> <p>10 First, the NCA, then the MPS, then W80, then Serco, 11 and then the family, followed by a reply by you, should 12 you wish.</p> <p>13 Does anybody disagree with that approach?</p> <p>14 Right, over to you then, Mr Sheldon. Thank you.</p> <p>15 Submissions by MR SHELDON</p> <p>16 MR SHELDON: Sir, thank you very much.</p> <p>17 As you will no doubt anticipate the NCA's six 18 applications are necessarily limited, as indeed are the 19 open written submissions which I hope you have seen.</p> <p>20 THE CHAIRMAN: Yes.</p> <p>21 MR SHELDON: As you have heard, there is good reason for 22 that. As you will know though, in addition to our open 23 written submissions, and what I am about to say to you 24 now, we have also provided a significant quantity of 25 closed or restricted material in support much the</p> <p style="text-align: center;">Page 88</p>

22 (Pages 85 to 88)

<p>1 applications which will be considered carefully tomorrow 2 and we have also prepared a set of closed written 3 submissions to assist with that consideration. Can 4 I say at the outset that I agree entirely with your 5 observation that it will be your role, along with 6 Ms Blackwell, to apply what the family rightly describe 7 as maximum scrutiny to those applications and to take 8 all and any points that they would wish to take were 9 they present. 10 THE CHAIRMAN: I suppose one might put us in the role of 11 devil's advocate. 12 MR SHELDON: Quite so. 13 THE CHAIRMAN: Yes. 14 MR SHELDON: Sir I make no submissions as to the correct 15 legal approach, which has been accurately set out by 16 your counsel. I do seek to make five short general 17 observations in light of the submissions of the family 18 in particular, which of course (Inaudible). 19 I make these submissions because it is recognised 20 that Mr Baker's family have a powerful and entirely 21 understandable interest in disclosure of as much of the 22 relevant evidence concerning the circumstances of his 23 death as possible. And that it is difficult and 24 inevitably frustrating to be told that there is material 25 that cannot be disclosed to them, particularly when it</p> <p style="text-align: center;">Page 89</p>	<p>1 not have been possible to consider and evaluate much, if 2 not all, of this material. 3 The correct starting point, in my respectful 4 submission, therefore, as the NCA's material is 5 concerned, is that the mechanisms provided by section 19 6 of the Act enable evidence to be considered, tested and 7 subjected to rigorous examination, which would otherwise 8 have been excluded from the proceedings. It is 9 therefore a means of allowing evidence to be considered 10 and not a means of allowing it to be suppressed and the 11 NCA's applications are designed to facilitate that 12 consideration. 13 Sir, the second point which is linked to the first, 14 is that the evidence to which the NCA's restriction 15 orders relate will all be considered and subject to 16 detailed independent scrutiny by you and your counsel. 17 Indeed it has already been subjected to such scrutiny 18 and you will know that counsel to the inquiry has 19 required the NCA to produce additional evidence dealing 20 with specific questions arising from the witness 21 statements at that we have provided. As matters stand, 22 three NCA witnesses have provided statements, and it is 23 anticipated that they will give evidence and they will 24 be subjected to questioning by you and your counsel. 25 Again, I say that the restriction order process is</p> <p style="text-align: center;">Page 91</p>
<p>1 is not possible even to provide a detailed open 2 explanation as to why. 3 THE CHAIRMAN: If I may say so, the family are lucky to be 4 represented by Ms Kaufmann and her team, because they 5 will receive from her the reasons why these applications 6 have to be made in this way. 7 MR SHELDON: Yes, sir. I will certainly echo that. 8 THE CHAIRMAN: Their frustration is understandable, but it 9 will be alleviated by the discussions that the family 10 members have had with Ms Kaufmann and Ms Murphy. 11 MR SHELDON: Quite so, sir. I hope it might also be 12 alleviated to some limited extent by what I am about to 13 say as well. 14 THE CHAIRMAN: Thank you. 15 MR SHELDON: The first point is while a number of 16 applications for restriction of documents, including 17 witness statements, have been made by the NCA, it has 18 always been clearly understood by all concerned in this 19 case that that would be inevitable, given the particular 20 circumstances with which we are concerned. Sir, you 21 will recall that it was primarily for this reason, 22 namely to enable the consideration of the NCA's evidence 23 that you, sir, requested the Home Secretary establish 24 this inquiry in the first place, because if your 25 investigation had remained as an inquest then it would</p> <p style="text-align: center;">Page 90</p>	<p>1 not a means of avoiding independent scrutiny of the 2 NCA's involvement in this case, it is a means of making 3 it possible. 4 Sir, the third submission I make is one that has 5 been set out in writing but which I should perhaps just 6 make very clear orally. Although some of the NCA's 7 application is based upon the public interest 8 considerations reflected in section 19(3)(b), either as 9 the sole or, most commonly, the alternative ground of 10 application, the greater part by far of the NCA's 11 applications are based on section 19(3)(a), namely that 12 the restriction orders are required by statutory 13 provision, enforceable community obligation or other 14 rule of law. 15 I am not able, any more than Ms Blackwell is able, 16 to be more specific, for reasons that are addressed in 17 closed submissions which you will consider tomorrow. 18 But it is important to make clear in my submission that 19 with very limited exception, the NCA's restriction order 20 applications are addressed not as exercises of 21 discretion, either on your part or the NCA's, but on the 22 basis that the restriction orders must be made as 23 a matter of law, and I hope that some reassurance can be 24 taken from that. 25 Fourth, the applications that have been made by the</p> <p style="text-align: center;">Page 92</p>

<p>1 NCA go no further than they have to to meet the 2 requirements of the law and to protect the vital public 3 interests that reside in the detection and prevention of 4 the most serious crime. There are no class-based claims 5 amongst the NCA's application and where material has 6 been identified as falling within a restriction order 7 application, the entirety of that material has been 8 considered for the purposes of determining whether or 9 not the disclosure can be made. 10 You heard Ms Blackwell tell you this morning that 11 there has been consideration line by line of the NCA's 12 material. I can of course confirm that that has been 13 the case, not just by her but by us when making the 14 applications in the first place. 15 I recognise of course that it will ultimately be 16 your view that is determinative and you will scrutinise 17 the material yourself in order to satisfy yourself that 18 nothing can be disclosed over which a restriction order 19 has been sought. But it is important to make clear that 20 the scrutiny that has been applied up until now has been 21 rigorous. 22 Sir, finally, can I say a word about anonymity 23 applications. 24 THE CHAIRMAN: Yes. 25 MR SHELDON: Particularly with regard, I should say, to the</p> <p style="text-align: center;">Page 93</p>	<p>1 THE CHAIRMAN: Of course I will. 2 MR SHELDON: -- why I say that in respect to each witness. 3 Sir, witness C is as you know the NCA's corporate 4 witness, providing the inquiry with two detailed witness 5 statements dealing with matters general and specific to 6 this case. That is important evidence and it is 7 important that it is given by a witness who is properly 8 qualified to give it and who can speak with authority on 9 behalf of the organisation. But the name of that 10 corporate witness is not, I would respectfully submit, 11 important. Or at least the conduct of your 12 investigation would not be materially impeded were that 13 name not to be placed in the public domain. 14 To the extent that the analysis requires you to 15 weigh in the scales the competing considerations of the 16 interests of the protection of witness C and their 17 family on the one hand, and the benefit of putting 18 witness C's name in the public domain on the other, then 19 putting the name in the public domain, in the particular 20 circumstances of this case, would not carry significant 21 weight, in my submission. 22 Much the same applies to the other witness for whom 23 anonymity is claimed by the NCA, namely SE11. If you 24 conclude that the witness's evidence should be covered 25 by the restriction order for which we have applied, and</p> <p style="text-align: center;">Page 95</p>
<p>1 observations made at paragraph 2 of the family's 2 submission, where it is said that the applications for 3 anonymity are based wholly on subjective fears of the 4 officers' concern and that this is inadequate in the 5 complete absence of credible evidence of serious risk to 6 operational effectiveness or harm to themselves or 7 interference with their article 8 rights. 8 It is not entirely clear whether this is intended to 9 be addressed or these observations are intended to be 10 addressed for the two NCA witnesses for whom anonymity 11 applications have been advanced but, if so, then I can 12 say quite clearly that it is not the case. 13 Whilst most, if not all, of this evidence is 14 inevitably closed, you do have before you objective 15 evidence relating to both the NCA witnesses concerning 16 the risk that they would face were their identities to 17 be placed in the public domain. That risk, in both 18 cases, is substantial and it engages their article 2 and 19 3 rights, as well as article 8 and common law fairness. 20 In my submission, even if the risk were not 21 substantial and only were limited, it would still be 22 sufficient to outweigh any public interest benefit in 23 the identification of the witnesses' concerns. 24 May I say briefly in a minute, which I hope you will 25 let me take, given we are at 12.45 --</p> <p style="text-align: center;">Page 94</p>	<p>1 this witness gives evidence in restrictive session only, 2 then the short point, sir, is that the public interest 3 would reside primarily in everybody being reassured that 4 you were taking this evidence, that you were testing it, 5 that you were seeking the account of an individual 6 directly involved in the relevant events, but it would 7 not be materially advanced by providing into the public 8 domain the name of that individual. 9 Sir, those are the five submissions I would make in 10 open court of the NCA's application. Having considered 11 the submissions of the family, can I confirm simply that 12 the NCA of course supports the submission that you 13 should apply maximum scrutiny to each of its six 14 applications, that you should keep in mind the 15 importance of openness and transparency, particularly in 16 an inquiry of this nature, and that you should derogate 17 from the principle of open justice to the most limited 18 extent necessary in order to comply with the law and 19 protect the public interest. 20 But it is our submission that on the proper 21 application of these principles, all six of the NCA's 22 applications fall to be granted. 23 THE CHAIRMAN: Thank you. 24 MR SHELDON: Those are all the submissions I propose to make 25 in open, unless I can be of any further assistance.</p> <p style="text-align: center;">Page 96</p>

<p>1 THE CHAIRMAN: No, thank you. 2 Right. 3 MS BLACKWELL: Sir, is that a convenient moment for to us 4 break for lunch. 5 Is it possible to have a time for which we need to 6 come back, so we can let the live feed people know. 7 THE CHAIRMAN: I did say 1.45. 8 MS BLACKWELL: Is that still your view? 9 THE CHAIRMAN: I am really in the hands of those who are 10 going to address me this afternoon. I am quite 11 relaxed -- first of all it doesn't matter what time we 12 finish, as far as I am concerned. If you tell me, 13 having discussed the matter with your colleagues, that 14 we will finish no later than 5.00 if we come back at 15 2.00, allowing for what would be two breaks in the 16 course of the afternoon for the benefit of the 17 stenographer, then we can come back at 2.00 but if you 18 think we need that extra time, then we need to come back 19 at 1.45. 20 MS BLACKWELL: I am seeing nodding heads that we will be 21 finished by 5.00 if we come back at 2.00. So could we 22 say 2.00, please? 23 THE CHAIRMAN: Mr Penny, do you agree? 24 MR PENNY: Yes. 25 THE CHAIRMAN: Ms Simcock?</p> <p style="text-align: center;">Page 97</p>	<p>1 Submissions by MR BUTT 2 MR BUTT: Sir, it is very obvious you have read our written 3 submissions and I will expand briefly upon four areas, 4 but certainly not read out submissions you have well in 5 mind. 6 THE CHAIRMAN: Thank you. 7 MR BUTT: First, I am going to address you in relation to 8 our restriction order applications insofar as they 9 relate to material which we submit ought not to be 10 disclosed further than to your team and closed session. 11 Secondly, I want to make some breach introductory 12 remarks in relation to anonymity. 13 Thirdly, to address you, again briefly, in relation 14 to the law so far as it relates to anonymity in order, 15 I hope to show an agreed way forwards. 16 Fourthly, and finally, to address you on some of the 17 individual applications where there is a difference 18 between either those who I represent and the family, or 19 the handful of examples where your counsel has urged you 20 look particularly carefully at requests which have been 21 made by the commissioner. 22 The vast majority of the material and submissions 23 that we make in today's legal application, and tomorrow, 24 will be open. Both orally and in writing. 25 Where there have been redactions, as you will have</p> <p style="text-align: center;">Page 99</p>
<p>1 MS SIMCOCK: Yes, thank you. 2 THE CHAIRMAN: Very well, 2.00. Thank you very much indeed. 3 (12.55 pm) 4 (The Luncheon Adjournment) 5 (2.00 pm) 6 MS BLACKWELL: May I make one point of clarification, 7 please, in relation to some -- 8 THE CHAIRMAN: Yes. 9 MS BLACKWELL: -- information you sought this morning about 10 the position of the Serco witnesses and which of them 11 are currently expected to be giving evidence. I told 12 you that JBI2 is the only witness who has written 13 a statement requesting anonymity that we may call, and 14 that is the correct position, but for the sake of 15 completeness, I should also tell you that witnesses 16 JBI7, JBI8 and JBI9 have also provided evidence which we 17 may read or summarise. 18 We would encourage you to make your decision on the 19 current applications on the basis that JBI2 is the only 20 witness in relation to whom there is any prospect of 21 them giving live evidence. 22 THE CHAIRMAN: Thank you. 23 Yes, thank you very much indeed. 24 Mr Butt. 25</p> <p style="text-align: center;">Page 98</p>	<p>1 seen from a review of the closed material, in virtually 2 every instance, that which has been redacted is only 3 material that would identify a person who seeks to be 4 kept anonymous or material that itself is the underlying 5 material we seek not to be disclosed in the public 6 interest. 7 I am very conscious of what the family say about the 8 need not to abuse the great privilege that we have to 9 put closed material before you. And we have 10 endeavoured, by working with your counsel and your team, 11 to put as much as we possibly can into open, and only 12 redact or seek to rely upon redacted material where it 13 is absolutely necessary. 14 In terms of the restriction order application, this 15 relates to paragraphs 2 to 8 of our March skeleton 16 argument. As you have been told, we have made six 17 applications for restriction orders relating to the 18 redaction of material. These have either been agreed 19 between all core participants and your team, in which 20 case I can be extremely brief, or they have been 21 withdrawn by my client, in which case I need to say 22 nothing. 23 The only item that remains in contention is the 24 content dealing with the small team intervention 25 capability, I will endeavour to explain to you why that</p> <p style="text-align: center;">Page 100</p>

25 (Pages 97 to 100)

<p>1 is both irrelevant and sensitive, and alternatively, if 2 you take the view, adopting as of course we suggest you 3 must, a very wide approach to relevance at this stage, 4 a proposal as to how it can be dealt with without 5 compromising any public interest matters. 6 The content to which there is no objection by core 7 participants or the inquiry legal team relates to, 8 firstly, training content dealing with the capability of 9 MASTS techniques, that material is behind tabs 53, 54 10 and 55. The reasons for the sensitivity of that 11 material can only be explained in closed but in my 12 submission they are obvious. The information would be 13 of assistance to anyone trying to pre-empt or defeat 14 police armed tactics, putting both police officers, the 15 public and in fact those subjects at greater risk. 16 The family do not oppose these applications and they 17 make the entirely correct observation which you also 18 have made, that these, as with all rulings, must be kept 19 under review. We fully accept that and agree to play 20 a full part in assisting you in that regard. 21 Secondly, some of the content of the FA5 forms, the 22 tactical advice to the TFC and SFC provided by 23 Sierra 48, but not the content relating to containment 24 and call out, which we have agreed and has been 25 unredacted and the content relating to STIC.</p> <p style="text-align: center;">Page 101</p>	<p>1 has been redacted as being irrelevant and sensitive. 2 All of the other material that has been put on 3 Relativity relating to small team intervention 4 capability has also been redacted as irrelevant and 5 sensitive. 6 For example, at COP000004 the small team section at 7 page 9 has been redacted in its entirety as irrelevant 8 and sensitive. So the inquiry has taken the view in 9 relation to this capability, insofar as it is explained 10 and set out in the College of Policing documents, that 11 it is irrelevant and sensitive. The reason why we 12 submit that is a correct analysis is difficult to 13 explain, certainly fully, in a closed session. The 14 nature of that capability -- 15 THE CHAIRMAN: Do you mean in an open session? 16 MR BUTT: I am so sorry, in an open session. 17 The nature of that capability is College of Policing 18 material and it has already been redacted as irrelevant 19 and sensitive from the College of Policing material. 20 What I think I can say in open is that, when it 21 relates to CTSFOs, the officers would need to be covert. 22 To the extent that STIC has any relevance in these 23 proceedings, there of course was a small team 24 intervention capability and that was within a vehicle 25 known as a jump off, which was being led by Q89, and</p> <p style="text-align: center;">Page 103</p>
<p>1 We have also agreed, and already on Relativity this 2 has been unredacted, the content relating to nicknames 3 that either can be heard or Mr French thinks could 4 possibly be heard on the transcript. We made those 5 applications in relation to nicknames, not out of 6 a desire to be overly secretive but because we wanted to 7 preserve the position in advance of the anonymity 8 application and as soon as we saw the framework you were 9 to approach, we withdrew those applications. 10 Whilst of course you must be satisfied the grounds 11 are made ought for all of the application, the only 12 contentious area relates to small team intervention 13 capability. 14 THE CHAIRMAN: Because the situation in relation to the Audi 15 is clear at the moment? 16 MR BUTT: In relation to? 17 THE CHAIRMAN: I'm sorry, carry on, my fault. 18 MR BUTT: In terms of STIC, it is entirely right that in the 19 National Police Firearms Training Curriculum, as your 20 counsel has pointed out, there is a single reference to 21 the capability and it observes that, using STIC, a small 22 team could be closer whereas a MASTS allows for a more 23 dynamic form of intervention. 24 That, however, is the only reference to small teams 25 in this document. If there is any other reference, that</p> <p style="text-align: center;">Page 102</p>	<p>1 which was, at the time of the intervention, parked near 2 Wood Green Crown Court. Q89 specifically says that his 3 team was available for deployment in support of the 4 MASTS operation. 5 All that a small team intervention capability within 6 a jump off would provide is the opportunity to bring 7 more officers in that vehicle to the scene of 8 a deployment. The reference to being able to deploy 9 officers closer to the scene of any potential arrest 10 would of course rely upon the ability of the commanders 11 to know in advance where that arrest would take place 12 and to remain covert during that deployment. I don't 13 think I can say anymore in relation to the topic than 14 that. 15 If you look at the redacted material in the FA5, all 16 it really sets out are the reasons why a capability of 17 that kind would not in fact have been of assistance on 18 the 11 December deployment. The broader question as to 19 the nature of that tactic, whether it ought to have been 20 considered in different ways, would need to be examined 21 in the context of the College of Policing material that 22 explains that capability and how that capability could 23 be deployed. 24 Sir, it perhaps is telling that your experts in 25 their report have made reference only in passing to STIC</p> <p style="text-align: center;">Page 104</p>

<p>1 and only to comment upon the fact that a STIC was 2 available as part of the contingency in relation to the 3 separate escort operation. 4 Sir, in our submission, this capability, on the face 5 of it, one can entirely understand why the family might 6 want to see the material, but, absent any indication 7 from your experts that in fact it was a relevant 8 consideration that wasn't considered or ought to have 9 been considered, and absent the primary material 10 explaining the capability and how it could be deployed, 11 our submission is the material is irrelevant to the 12 terms of reference, it is also sensitive. You will see, 13 sir, when you look at the closed material, that there 14 are obvious instances set out there as to how the 15 capability could be defeated by those who knew it was 16 going to be deployed and how armed criminals could put 17 measures in place that might make it more difficult for 18 a small team intervention capability to be used. 19 We would submit it is irrelevant and also sensitive. 20 Of course it can be kept under review. If you are 21 against me on that, I entirely accept a broad approach 22 must be taken to relevance, and we are at a very early 23 stage, all materials are disclosed under a duty 24 confidentiality, we would ask that there be a further 25 restriction upon that disclosure, either by way of the</p> <p style="text-align: center;">Page 105</p>	<p>1 problem that those who have been instructed in this case 2 for far longer than I have has had, is that we have 3 prepared anonymity applications only for matters to 4 change over time, officers retire or they move roles or 5 the intelligence changes. 6 So we had to prepare the applications at a time when 7 they would be up to date. 8 It may well be that my client underestimated the 9 task in hand and was too ambitious in seeking to 10 complete these risk assessments in November and then in 11 December 2020. What nobody anticipated was the impact 12 that the winter COVID-19 restrictions would have had, 13 especially around Christmas time. That meant that 14 almost all of these documents had to be completed by 15 lawyers and police officers in different locations, 16 couriering often sensitive material from address to 17 address and putting the final documents together when it 18 involved even the slightest of changes involved very 19 significant challenges. It was not helped by key people 20 self-isolating and being taken ill during the process. 21 We are not asking for sympathy and we are not asking 22 for anything other than an exacting approach is taken to 23 this, but I can say this: it is hard to imagine more 24 resources having been dedicated to the task in hand and 25 it is certainly hard to imagine those charged with that</p> <p style="text-align: center;">Page 107</p>
<p>1 material being held at your team's offices, so it could 2 be inspected, or, if Relativity has this capability, for 3 it to be stored on a separate version of Relativity, 4 where it was clear the content was sensitive and was 5 therefore separated from the rest of the material. 6 Just as you will of course take a broad view to 7 relevance, I know you will also take an appropriate and 8 strict view to what is relevant and what is not within 9 the terms of reference. Our submission is that this 10 material in fact falls on the other side of the line. 11 Sir, there is nothing more I can say on this topic 12 without revealing the nature of the confidential 13 information. Unless I can assist you further, that is 14 all I have to say about the restriction order 15 applications, because otherwise they are agreed. 16 THE CHAIRMAN: Thank you. 17 MR BUTT: In terms of anonymity, can I just very briefly 18 address the understandable criticism there has been in 19 relation to the risk assessments that my client has 20 submitted. 21 THE CHAIRMAN: Yes. 22 MR BUTT: I say this not to be defensive but because it is 23 right that I put this into context. Those who instruct 24 me did not want to complete risk assessments, for 25 example in the summer of last year, because an ongoing</p> <p style="text-align: center;">Page 106</p>	<p>1 task working harder, especially over the Christmas 2 period. 3 The documents in my submission compare favourably to 4 risk assessments submitted in other inquests and 5 inquiries, but there are problems with all of them, not 6 least of all the watermark on all the risk assessments, 7 and to the extent that they are not of the quality that 8 your team are entitled to expect, I take responsibility 9 for that and I apologise. 10 Secondly, my client entirely understands the reason 11 why Mr Baker's family might perceive these anonymity 12 applications as sending a message about Mr Baker and his 13 associates and why they argued that this could cause 14 unfairness to the family and to Jermaine's memory. The 15 concern that the family express is there is 16 an implication that all of these concerns somehow relate 17 to Mr Baker. 18 I have sought to set out in the written -- 19 THE CHAIRMAN: Whereas in fact you would say that none of 20 them -- 21 MR BUTT: Sir, yes. 22 I have set out in the written application, and 23 I publicly state now, that this is not the case. Whilst 24 it is not disputed that Mr Baker and others in the 25 vehicle was involved in serious criminality on</p> <p style="text-align: center;">Page 108</p>

27 (Pages 105 to 108)

<p>1 11 December 2015, the objective basis for fear that the 2 MPS submits is present in this case relates not to 3 Mr Baker, and most certainly not to his family, but 4 primarily to the organised criminal network whose 5 day-to-day business is organised crime and which 6 Mr Baker was not party to in terms of that day-to-day 7 basis. 8 To the extent that it has previously been said, or 9 intimated, that Mr Baker was -- inasmuch as there is 10 such a thing -- a member of the Tottenham Turks, I make 11 it clear that he was not. 12 THE CHAIRMAN: If I may say so, Mr Butt, that is, I am sure, 13 music of some kind to Mrs Smith's ear, but it is 14 unfortunate that this position was not clarified a long 15 time ago. 16 MR BUTT: Sir, it is. 17 THE CHAIRMAN: Because it could have been. 18 MR BUTT: It could have been, yes. 19 THE CHAIRMAN: Thank you. 20 MR BUTT: Returning to the risk assessments, the one thing 21 I hope was clear from all of those documents is we took 22 as great care as we could to make sure that nothing like 23 that crept through. 24 THE CHAIRMAN: Thank you. 25 MR BUTT: If we failed, I apologise but we certainly tried.</p> <p style="text-align: center;">Page 109</p>	<p>1 We certainly have no shortage of law in the bundle 2 you have been provided to assist you, as is entirely 3 appropriate given the importance of these issues. The 4 relevant legal principles do not appear to be in dispute 5 and despite the comparative scarcity of public inquest, 6 you have a number of precedents where you can see how 7 other chairmen have approached the question in terms of 8 the Azelle Rodney Inquiry or the analysis in UCPI or the 9 analysis of that analysis in the Grainger Inquiry. 10 It is of course agreed that the effect of section 11 19(3) of the Act is that you will make an order if it is 12 required by the Human Rights Act or the common law duty 13 of fairness and you will also make an order if it is 14 conducive to the effectiveness of your inquiry, or, 15 perhaps more relevantly, if it is necessary in the 16 public interest. 17 In order to be satisfied that you need to make 18 an order, all are agreed that this will involve 19 a balancing act considering competing public interest 20 considerations. 21 A consistent message, as your counsel has told you, 22 in all of those authorities is that these applications 23 are first and foremost fact sensitive. The family 24 entirely understandably ask you to have regard to the 25 decisions themselves in Grainger and in Begley. We urge</p> <p style="text-align: center;">Page 111</p>
<p>1 THE CHAIRMAN: I don't think anybody is in any doubt ... 2 appreciate the observations which I have made relate not 3 to the fact of that wholly proper concession, but its 4 timing. 5 MR BUTT: I entirely understand, sir. 6 THE CHAIRMAN: Thank you. 7 MR BUTT: You will hear a little about this gang and their 8 propensity for deadly violence but, as you clearly have 9 done already, my client would ask you to draw a dividing 10 line between that gang and the memory of Jermaine Baker. 11 It is absolutely plain that you have done so already and 12 perhaps it is my client that needs to do that more 13 swiftly. 14 We however do respectfully disagree for that reason 15 with the family's submission that to grant these 16 applications would cause unfairness to them. The 17 witnesses will be present at court and they will be able 18 to be questioned, including by counsel for the families. 19 Unlike in some inquests and inquiries, the witnesses 20 will be present in court and the family will be able to 21 see them. There is therefore no forensic prejudice and 22 there is no unfairness by taint or by implication, as 23 I hope I have made clear. 24 The third topic, the legal framework, I will take 25 briefly.</p> <p style="text-align: center;">Page 110</p>	<p>1 real caution in that regard because of how fact 2 sensitive every decision about anonymity and about the 3 threat posed in that case is inevitably going to be. It 4 is impossible for you to weigh the threat from, for 5 example, the Grainger family, against the threat from, 6 for example, the OCN in this case, with all the 7 different facets that would apply. 8 It is impossible for you to know where the 9 respective responsibilities and operational 10 effectiveness impairment might lie between the GMP 11 special operations team and the MPS CTSFOs. There is 12 also potentially no limit to the number of inquests, 13 which Begley was, or inquiries, which Grainger or 14 Manchester Arena are, which you could have regard to as 15 to the outcome of anonymity applications and argument. 16 Because all of them reached different conclusions. In 17 London Bridge and Borough Market and Fishmongers' Hall 18 for example, all of the firearms officers who applied 19 for anonymity were granted it, as were the overarching 20 TFCs and the ground-assigned TFCs. 21 In the Mark Duggan Inquest all of the specialist 22 officers who applied were granted anonymity, as was the 23 TFC Z51 and the intelligence officer ZZ17. 24 Each case was unique in terms of the nature of the 25 threat, the role of the officers and the approach of the</p> <p style="text-align: center;">Page 112</p>

<p>1 coroner or the chairman. 2 In our submission, you really get little more 3 assistance from the outcome in Grainger than you would 4 from London Bridge or the Mark Duggan Inquest. 5 All parties are agreed that when deciding whether 6 the orders sought are required by the Human Rights Act 7 or common law, or necessary, then you must perform 8 a balancing exercise. We note that counsel to the 9 inquiry has concluded that the high threshold for 10 Article 2 is not engaged. Rather like W80 has done in 11 writing, whilst we do not formally concede the point, we 12 do not propose to press today as to whether Article 2 is 13 engaged or not. You will see in fact the point is taken 14 shortly in our application and skeleton argument. 15 Our primary submission, and the only submission I am 16 going to develop orally today, is that you can grant 17 these orders, either under the common law duty of 18 fairness or under section 19(3)(b), as they are 19 necessary in the public interest, and there is a very 20 substantial overlap between the two and you might think 21 it likely that if an order were justified under one 22 basis, it would probably be justified under another, 23 though there are some individual cases where that might 24 differ. 25 As we have submitted in our skeleton argument, we</p> <p style="text-align: center;">Page 113</p>	<p>1 CTSFOs, including in relation to terrorists and in 2 relation to the investigation of north London drugs 3 gangs. 4 As summarised in our applications in the risk 5 assessments, organised criminal networks such as the 6 Tottenham Turks continue to pose a threat on the streets 7 of London and it is these surveillance officers, CTSFOs 8 and specialist crime officers who will be called upon to 9 deal with them when their offending or alleged offending 10 relates to in particular firearms. 11 Confirmation for this, for the surveillance 12 officers, is included for example within the witness 13 statement of FE3, who explains that he is still deployed 14 against Turkish OCNs with links to Operation Ankaa. His 15 statement is behind tab 9 at page 10, paragraph 12.1. 16 As does FE5, at tab 10, page 11. 17 As you have heard, we provided a statement over the 18 weekend from Richard Moth of the surveillance command, 19 who confirms the officers could be deployed in the near 20 future against this OCN, and this has happened in the 21 recent past. 22 FE12 and FE19 remain as officers working on 23 specialist crime in north London and so I will not 24 repeat what your counsel has said but whilst it was 25 mentioned in their risk assessments they conduct covert</p> <p style="text-align: center;">Page 115</p>
<p>1 believe the approach suggested by your counsel between 2 paragraphs 21 and 39 is fair and balanced. I am not 3 going to repeat any of those points. I endorse them on 4 my client's behalf, and I am going to keep in particular 5 the eight factors approved by the House of Lords as 6 being relevant to the test in Officer L at paragraph 26 7 when considering the application. 8 Briefly looking at some global matters, the fears of 9 the applicants and their reasons for them. Each of the 10 applicants has expressed subjective fears should they be 11 identified and, as one would imagine, they vary between 12 witness and in terms of the areas that are of concern to 13 them. However, principally, it is the organised 14 criminal network which planned the escape attempt and 15 the serious criminals who were apprehended in this and 16 other operations that the officers are concerned about. 17 This includes terrorist suspects in relation to the 18 surveillance officers and the firearms officers. 19 We have provided as much evidence as we can about 20 the dangers posed by this gang in open. The family 21 accept that this is obviously a capable and dangerous 22 gang that should not be underestimated. The 23 surveillance officers all continue to be deployed 24 against the most dangerous criminals in London and 25 nationally, in relation to the surveillance officers and</p> <p style="text-align: center;">Page 114</p>	<p>1 surveillance work, we entirely accept it would not have 2 been clear to you or to your team the extent of that 3 work. You know in relation to FE12 it is some 32 4 deployments over the course of this calendar year and in 5 relation to FE19: 12, but that would have been much 6 higher had it not been for COVID. 7 The reality is that any of these serving covert 8 officers could be deployed against this organised 9 criminal network and those connected to them this week 10 or next. We entirely accept that the family advance 11 sound logical reasoning as to why, if images were not 12 broadcast, and the officers were not photographed 13 leaving court, the risk of their identification and then 14 either being targeted by the serious criminal groups 15 that they have been intimately involved in disrupting, 16 arresting and imprisoning could be reduced. These 17 arguments are stronger, perhaps, when used to counter 18 an article 2 submission made by the applicants. But 19 they do not have the same force when you come to 20 consider under the common law whether these officers' 21 subjective fears have a proper or any objective 22 foundation. 23 One of the reasons why I do not press article 2 is 24 that one could see how the threshold would not be 25 reached if intermediate measures were put in place but</p> <p style="text-align: center;">Page 116</p>

<p>1 this could never exclude the risk. It is to that end 2 that we submit that there remain real fears which have 3 an objective foundation and which in each case would 4 justify making an order. 5 As to the objective basis for these fears, you have 6 the report from Adam Cox, the police subject matter 7 expert and Helen Larson, a researcher from the MPS. As 8 you have been told, the Tottenham Turks are 9 a well-established gang, which is led by the Eren family 10 and in particular by Kemal Eren and his cousin Izzet, 11 who was at the very centre of the conspiracy the police 12 were targeting on 11 December 2015. 13 For nearly 20 years this gang has been involved in 14 large-scale drug dealing, firearms crime, extortion and 15 protection rackets and indiscriminate violence, as well 16 as executions, on the streets of London. For the last 17 10 years there have been repeated acts of serious 18 violence as a result of, in particular, feuds between 19 the Tottenham Turks and another Hackney-based Turkish 20 drugs gang. Once again, this feud has focused upon 21 Izzet Eren, who is as I say at the very centre of the 22 events of 11 December 2015. Something as innocuous as 23 a nightclub fight involving Izzet Eren led to reprisals, 24 including 31 firearms discharges, four arsons, five 25 stabbings and two GBHs. Three people died from gunshot</p> <p style="text-align: center;">Page 117</p>	<p>1 response. There seems little doubt that is precisely 2 what Izzet Eren was doing on October 2015 when he was 3 arrested, given the firearms he was arrested with and 4 the readiness of those weapons. 5 The murder of Huseyin Eren around 12 months ago is 6 a clear current catalyst for the violence that has 7 occurred over the course of 2020. There is up-to-date 8 current intelligence that Izzet Eren plans to return to 9 the UK to seek revenge on lots of people, following the 10 murder of his cousin, Huseyin, last year. The 11 intelligence is that when he comes back to the UK he 12 will meet with Ozcan Eren, who is not currently in 13 custody, and others who have been recruited for the 14 purpose of taking revenge. As you have heard, shortly 15 after he was repatriated to Turkey to serve his sentence 16 he escaped from custody and he is currently a fugitive 17 whose whereabouts are unknown. 18 In addition to the matters specific to the Erens, 19 this gang more widely has been involved in numerous acts 20 of violence over recent years. These are detailed at 21 tab 4, page 38, and include three fatal shootings in 22 2017 and 2018, and three fatal shootings and four threat 23 to life warnings in 2020 alone. As I say, these all 24 appear to be linked to the murder of Huseyin. 25 Without labouring the point, the evidence is this is</p> <p style="text-align: center;">Page 119</p>
<p>1 wounds in that violent, with the suspect still at large 2 and thought to be in Turkey. This relates primarily to 3 violence sparked off as a result of a nightclub argument 4 or fight involving Izzet Eren. 5 FE19 in his anonymity statement raises a well-known 6 shooting that occurred in May 2014, in which this OCN 7 was involved in a shooting in which gang members opened 8 fire on National Crime Agency officers who were present 9 as a threat-to-life contingency, in fact to protect 10 them. And FE19 provides open source reporting in 11 relation to that incident. 12 Bulunt Eren was linked to that shooting. 13 The reports of Adam Cox and Helen Larson provide 14 a picture of the violence peaking at various periods, 15 with quieter intervals in which the gang will focus on 16 core activities of organised crime, and in particular 17 medium-level importation and distribution of class A 18 drugs in the UK. 19 It is hard to assess exactly where we are on the 20 scale of violence but one thing is clear from the 21 evidence, that there have been over the last two years 22 a series of planned assassinations that have continued 23 up to the present day. Numerous members of the Eren 24 family have, over the past few years, been murdered or 25 maimed, with the OCN planning revenge attacks in</p> <p style="text-align: center;">Page 118</p>	<p>1 an extremely dangerous and organised OCN. Any of the 2 serving London-based covert officers, be they 3 surveillance, specialist crime or CTSFOs could be 4 deployed against them next week. Without doubt, the 5 services of all three commands will be required against 6 this OCN in the near future. 7 With that in mind, it is impossible to say either 8 that the subjective fears these officers have are not 9 honestly held or that they are without objective 10 justification. One of the unique features of this case 11 is it all centres around the leader of this gang, 12 Izzet Eren, whose escape from custody and unlawful 13 activities were thwarted in part by actions of these 14 officers on 11 December 2015. 15 You will also see from the intelligence profiles 16 that those who are not direct members of the Tottenham 17 Turks have continued to be involved in serious violence. 18 Mr Gyamfi, for example, who was arrested on the 19 motorbike with Mr Eren, has an updated profile at tab 9, 20 page 48. He remains in custody for the offences which 21 he and Izzet Eren were arrested for, but there is 22 evidence he has access to very significant funds and at 23 least in 2016 was considering an escape bid. 24 Gokay Sogucakli is currently in custody awaiting 25 trial for drugs and firearm offences, allegedly</p> <p style="text-align: center;">Page 120</p>

<p>1 committed in 2019 after his release for these matters. 2 Turning then to the specific application, in terms 3 of the surveillance officers, we are dealing here with 4 highly trained officers whose job it is to put 5 themselves within arm's reach of the most dangerous 6 armed criminals, including terrorists. These are the 7 people that the police and society rely upon to prevent 8 terrorists from detonating bombs or launching marauding 9 attacks and to stop armed criminals from killing their 10 enemies and rivals. They do that by placing themselves 11 in the immediate vicinity of the dangerous individuals 12 they are conducting surveillance against. They 13 obviously cannot wear disguises when they deploy in 14 order to remain covert. 15 Their main source of protection, as the supporting 16 evidence states, therefore, is their anonymity. It is 17 unsurprising, as a result, that Superintendent Maddison 18 from the surveillance command makes the following three 19 points. 20 First of all, the anonymity of these officers is 21 vital in the progression and development of major and 22 often long-running terrorist investigations. That is 23 behind tab 9 at page 86. 24 Secondly, on the same page, identification of the 25 officers involved in this operation would almost</p> <p style="text-align: center;">Page 121</p>	<p>1 it is our submission that the balancing exercise 2 justifies making the order. Each of the officers 3 expressed real fear about being identified, not just by 4 the OCN in this case -- that is obviously a very serious 5 consideration -- but also by other OCN and terrorist 6 groups who will have seen them or might have seen them 7 either in the past or in the future. These fears are, 8 for the reasons I have identified and outlined, not 9 without objective justification. 10 There is the added impact, whether considered under 11 the common law or under section 19(3) of the Act, of the 12 operational impact it would have if they were identified 13 in any way. It would without doubt be significant. It 14 would either risk the officers being deployed in the 15 future or put them at risk of being identified when they 16 are deployed and believe they are safe. 17 The possibility of that happening can be reduced by 18 the alternative measures suggested, namely cipher, ban 19 on broadcast, handing in mobile devices, leaving by 20 a separate exit, but this could not eliminate the risk. 21 In our submission, it is not a risk that should be 22 taken when dealing with the most dangerous armed 23 criminals and terrorists that these officers tackle in 24 their day-to-day work. If granted there would be no 25 impact on the inquiry's ability to arrive at the truth.</p> <p style="text-align: center;">Page 123</p>
<p>1 certainly have an adverse effect upon other ongoing and 2 future operations and could put the officers and their 3 colleagues' lives at risk. 4 Thirdly, the cost of training one of these officers 5 to the level required for threat-to-life operation is 6 £135,000 and takes two years. This would be jeopardised 7 by identification of the officers, tab 9, page 87. 8 I know, sir, you will have in mind the limited 9 evidence that these very highly trained officers can 10 give. None of them saw the fatal shooting. None of 11 their evidence is likely to be disputed to a great 12 extent. None of the officers have been accused of 13 wrongdoing by, for example, the IOPC, and none of them 14 are particularly criticised by your experts. Most of 15 the officers can simply say that they saw the Audi A6 16 for a few seconds, hours before state amber. That 17 certainly is true of FE3, FE5, FE6 and FE7. FE10 was in 18 Bracknell Close before amber, where his role was to 19 accurately describe the location of the Audi to the 20 firearms officer. 21 FE11 was in an observation pose and he saw the 22 vehicle at the time of the extract, but he could not see 23 inside. 24 When you apply to these officers the matters the 25 House of Lords approved as considerations in Officer L,</p> <p style="text-align: center;">Page 122</p>	<p>1 No impact on the public's ability to follow the 2 evidence. The family would be able to see the witnesses 3 and question them through counsel and the press would be 4 able to apply to see the witnesses or, if it were more 5 convenient that way, approved members of the press would 6 be able to see those witnesses. 7 I do not propose to separate out each individual 8 surveillance officer. You will note that for example 9 some are more easily identifiable by name than others. 10 THE CHAIRMAN: You may not separate them out but I will have 11 to consider each one. 12 MR BUTT: Yes. 13 In order to make any meaningful submissions you need 14 to know their names and you need to know the redacted 15 matters in the risk assessments and the reasons why they 16 could be more readily identified. It seems to me more 17 appropriate that I assist you with that in closed when 18 you can, as your counsel has already said, press those 19 matters and ensure that they are properly made out. 20 FE7 is of course no longer a serving surveillance 21 officer. Sir, you will no doubt have noticed that he 22 performs a role that is sensitive for a different 23 reason. 24 THE CHAIRMAN: Yes. 25 MR BUTT: He is a serving officer within the Royalty and</p> <p style="text-align: center;">Page 124</p>

<p>1 Specialist Protection Command, working as a close 2 protection officer. 3 THE CHAIRMAN: Yes. Now, it might be regarded as the 4 elephant in the room but I am going to raise it. 5 MR BUTT: Yes. 6 THE CHAIRMAN: This should not be thought of as anything 7 other than an investigation by me of an individual 8 application, but I would appreciate it if both you, and 9 Ms Kaufmann for that matter, could address me on the 10 extent to which you think that the position of 11 a diplomatic protection officer has been affected, if at 12 all, by the recent arrest of Police Constable 13 Wayne Couzens. 14 MR BUTT: Sir, yes. 15 THE CHAIRMAN: I am not commenting on anything other than 16 the fact of very extensive publicity. It will be for 17 others to decide, no doubt, on a future occasion, 18 whether that was or was not appropriate, but it may be 19 that being a diplomatic protection officer at the 20 moment, quite apart from gang-related risk, is something 21 that both you and Ms Kaufmann would like to take 22 a moment or two addressing me about. 23 MR BUTT: I entirely understand why you raise the point, 24 sir. 25 THE CHAIRMAN: As I said, it was the elephant in the room.</p> <p style="text-align: center;">Page 125</p>	<p>1 I have no instructions and no specialist knowledge of 2 the other officer, and others might have this, my 3 understanding is that his job was far more to patrol and 4 protect the estate as an armed officer and from other 5 inquests and inquiries I am familiar with that role, and 6 that would appear to meet the description of what I have 7 seen. 8 Sir, we appreciate that you have raised it. We 9 appreciate the opportunity to make submissions in 10 relation to it. We don't think it supports our 11 application. 12 THE CHAIRMAN: Thank you. 13 MR BUTT: What is however important is the definition of his 14 role as a close protection officer, he is seen in public 15 but he should not be identified as a police officer. 16 Sir, I am sure that you can imagine situations in which 17 close protection officers will need to attend venues in 18 advance, they will need not to be noticed by the public 19 in order to protect their principals and how that role 20 would be compromised if the individual were to be 21 publicly identified in any way. It is a matter of 22 concern to my client, the principals they protect and 23 the Home Office that the efficiency of these highly 24 trained officers is not in any way undermined. 25 Of course we are not dealing with a terrorism case,</p> <p style="text-align: center;">Page 127</p>
<p>1 MR BUTT: Yes. 2 THE CHAIRMAN: If I am not going to raise it, then I don't 3 suppose anybody else will. 4 MR BUTT: If I may say so, the public might be surprised if 5 this hearing were conducted without any reference to 6 that. 7 THE CHAIRMAN: Yes. 8 MR BUTT: For my part, I have no intention of making any 9 submission that FE7's basis for anonymity is in any way 10 improved as a result of the events of the last week. In 11 my submission, it is entirely right the matter is 12 ventilated and raised and explored and other core 13 participants might seek to do so. I think it would be 14 wrong of me on my client's behalf to seek to in any way 15 submit it heightens the risk to him, because the risk to 16 him and the principal he protects is already the matter 17 of the most anxious consideration by the police and by 18 the Home Office. 19 THE CHAIRMAN: Thank you. 20 MR BUTT: We wouldn't really be doing our jobs properly if 21 we needed to pray that in aid. 22 It is also right to note that the two individuals 23 are doing very different jobs. One is a close 24 protection officer, which primarily relates to 25 protection of a principal and is a mobile role. Whilst</p> <p style="text-align: center;">Page 126</p>	<p>1 and every case is fact specific, but the two officers, 2 SA74 and SD73 in Westminster were also close protection 3 officers and that is referred to in the then chief 4 coroner's ruling on anonymity. He makes the same 5 observations about being seen in public but not 6 identified as a police officer. 7 Sir, the family raise the point, and we entirely 8 understand again why they do, about FE3 and FE6, that 9 provisional anonymity was not sought for these officers. 10 THE CHAIRMAN: Yes. 11 MR BUTT: We agree with your counsel, our submission is that 12 does not undermine their application. It is also 13 important to note that both of those officers in the 14 post-incident procedure in 2016 did make witness 15 statements requesting anonymity. You have those within 16 the bundle. Applications were not made in 2018 when 17 this was an inquest, because it was not thought that 18 they would be witnesses. FE3 saw the Audi only between 19 7.18 and 7.24 for a few seconds and FE6 gives no 20 evidence of surveillance. 21 I entirely accept that my client should have 22 followed this up and when dealing with your team, we 23 were given every opportunity to do so. As these 24 officers did not make a proactive request for anonymity, 25 the witnesses were missed. But the fact remains that</p> <p style="text-align: center;">Page 128</p>

<p>1 they are in the same position as the other serving 2 situation officers. They have limited evidence to give, 3 that the effect would be significant, both upon them 4 personally and upon the police surveillance capability 5 and the public interest it serves if they were not to be 6 granted anonymity. 7 THE CHAIRMAN: Ms Blackwell, you have already said something 8 about those who might or might not be called. What is 9 the position as far as FE3 and FE6 are concerned? 10 MS BLACKWELL: They are both currently on the witness list 11 and we are yet to respond to the submissions made in 12 writing by core participants in relation to that first 13 provisional -- 14 THE CHAIRMAN: I was just wondering whether there might be 15 an argument for not at this stage making rulings on 16 those whose attendance as witnesses before the inquiry 17 is questionable. 18 MS BLACKWELL: You are right, sir, that the position is 19 still very much up in the air but we would invite you to 20 approach the applications from the other viewpoint, that 21 you should consider at this stage the applications on 22 their merits and that, if the position shifts, the 23 orders and the directions can always be revisited. 24 It is important in our respectful submission that 25 these applications are dealt with now, because whether</p> <p style="text-align: center;">Page 129</p>	<p>1 THE CHAIRMAN: I am perfectly happy with the explanation, 2 thank you. 3 MR BUTT: In conclusion, on those officers and surveillance 4 generally, it would be wrong if an error by my client 5 should be seen as undermining either their applications 6 or the surveillance applications globally. 7 Unless I can assist further, those are my 8 submissions in relation to the surveillance officers. 9 THE CHAIRMAN: No thank you. 10 MR BUTT: I will not repeat points I have made already as 11 I move through the different categories. 12 In terms of CTSFOs, the risk is equally real. These 13 officers will need to deploy in close proximity to 14 dangerous criminals and could at short notice be 15 deployed against north London Turkish drugs gangs. If 16 they are not able to remain covert, then they, the 17 subjects and the public, are put at risk. Each officer 18 expresses subjective fears and as your counsel notes at 19 paragraph 57, these fears are not without objective 20 justification. We also submit and rely upon the impact 21 that a failure to anonymise and screen these officers 22 would have upon their operational effectiveness. 23 For the avoidance of doubt as the matter is raised 24 in the family's submissions, CTSFOs do operate in covert 25 roles. This is confirmed by Superintendent McKibbin at</p> <p style="text-align: center;">Page 131</p>
<p>1 or not those two witnesses eventually come to give live 2 evidence, it may not in the event affect their anonymity 3 application, it may affect the ancillary orders but it 4 will not affect their anonymity applications. 5 THE CHAIRMAN: Whether it affects it or not, I should 6 approach the case, these applications, on the basis that 7 everyone in respect of whom there's an application will 8 give evidence? 9 MS BLACKWELL: Yes. 10 THE CHAIRMAN: Thank you. 11 MR BUTT: And in fact there has already -- 12 THE CHAIRMAN: I'm sorry to interrupt you, Mr Butt. 13 MR BUTT: Not at all. 14 There has been a process whereby we have been asked 15 to submit in order to help refine the number of possible 16 applications who we think would fall into an irrelevant 17 category and your team, having considered it, have said 18 FE3 and FE6 do not fall into that category. One can 19 also understand why core participants might want to ask 20 questions, even if not relating to their personal 21 evidence, about for example what radio transmissions 22 they heard. 23 THE CHAIRMAN: Yes. 24 MR BUTT: So I am not seeking to say they will not be 25 called.</p> <p style="text-align: center;">Page 130</p>	<p>1 tab 7, page 6, paragraph 30, and in the risk assessments 2 behind tab 8, which specifically address the officer's 3 covert ability to deploy if identified. 4 Sir, without being technical about it, you can see 5 from APP documents on Relativity and in the public 6 domain that a great many of the roles we are dealing 7 with, so MASTS deployments, are under approved 8 professional practice, covert policing tactics. 9 The family submit at paragraph 76 that evidence has 10 not been produced regarding operational effectiveness, 11 that compares to that which relates to the SOT officers 12 in Grainger. For that we respectfully disagree and we 13 agree with CTI's submissions at 62 and 63, which are 14 based upon the evidence of Superintendent McKibbin and 15 the risk assessments. These documents establish the 16 following. 17 First of all, from Superintendent McKibbin's 18 statement, CTSFOs are both a London wide and also, in 19 terms of counter terrorism, a national resource that 20 tackles the most dangerous armed criminals and 21 terrorists. That is paragraph 17. They are trained in 22 highly specialist activities which include dealing with 23 subjects in the open, in vehicles, in boats and in 24 aircraft. They are trained in dynamic entry and using 25 firearms to subvert covert operations. They also</p> <p style="text-align: center;">Page 132</p>

<p>1 delivered these options under their training in 2 chemical, biological and radioactive environments. 3 The cost of training an officer to this level is 4 £150,000. And if their ID are exposed -- 5 THE CHAIRMAN: Is that over two years? 6 MR BUTT: I believe that is the total additional cost over 7 two years, yes. 8 THE CHAIRMAN: Thank you. 9 MR BUTT: If their ID is exposed, it may mean they could not 10 continue to work in a covert role and as a CTSFO. The 11 risk assessments state, in terms, as to covert ability, 12 any form of disclosure will have a severe impact upon 13 their ability to deploy, their future value as 14 an operative would have to be assessed in light of their 15 potential for compromise for operations this would 16 prevent and the likelihood of this occurring and the 17 impact are both given as high. 18 Superintendent McKibbin also speaks about the likely 19 impact of a refusal of anonymity upon officers 20 volunteering to become CTSFOs. This is an essential 21 resource that is already 30 per cent under strength. 22 The loss of officers by their identification in this 23 inquiry would add to that, but also the deterrent effect 24 of officers volunteering to become firearms officers at 25 all, and CTSFOs, if they learn that they are then</p> <p style="text-align: center;">Page 133</p>	<p>1 easily identifiable. 2 V64 is employed in a sensitive role. He has 3 provided further evidence, as you note, in relation to 4 his employment and ultimately it is a matter for you 5 whether you are satisfied that that would justify 6 a screen being granted. There is, however, 7 an additional matter relating to V64 that must be raised 8 briefly in closed. I can indicate, if the family ask, 9 it is wholly unconnected to this case and in fact to the 10 OCN and certainly to Mr Baker. 11 The same applies in relation to K78 and V112 and 12 also to S48. None of the matters relate to the facts of 13 this case. 14 I can't assist more in relation to those officers, 15 because the only area we ask you to look at in more 16 detail is closed material I have identified. 17 THE CHAIRMAN: Yes. 18 MR BUTT: In terms of FE25, the family entirely 19 understandably ask why FE25 applies for anonymity but 20 not FE24. The latter works in safeguarding. Her role 21 in Anchor was confined to that day. She performs 22 an absolutely essential role for my client, but it is 23 not one which has any degree of covert work. 24 Whereas FE25, for reasons you have seen in closed, 25 performs a highly sensitive covert role.</p> <p style="text-align: center;">Page 135</p>
<p>1 identified in public inquiries, is assessed as being 2 medium likelihood and high impact. 3 As CTI submits at paragraphs 62 to 65, based on at 4 least the high risk of operational impact, anonymity 5 ought to be granted to the serving CTSFOs. It would not 6 undermine public perception of the inquiry. It would 7 not inhibit the public following or prevent the inquiry 8 from fully satisfying the terms of reference. In our 9 submission, the balance comes down firmly in favour of 10 granting the applications as they are made. 11 Can I turn, sir, to retired CTSFOs and of course 12 I readily accept retired officers are in a different 13 category and of course operational issues, as far as my 14 client is concerned, do not apply to them. 15 There are, however, specific circumstances relating 16 to these officers that would justify an officer being 17 made either under the common law or under article 8 and 18 in the main part, the issue seems to be whether those 19 additional factors would justify screens or if special 20 measures confined to cipher, non-broadcast and separate 21 ingress/egress would suffice. 22 In terms of S111, we respectfully agree with your 23 counsel that he would lose his current employment and as 24 such his article 8 rights would be interfered with. He 25 is someone that you will see from the closed material is</p> <p style="text-align: center;">Page 134</p>	<p>1 Again, I can't say any more. 2 THE CHAIRMAN: No. 3 MR BUTT: In terms of the tactical firearms commander, we 4 note the submission that the family make at paragraph 30 5 and that CTI make at paragraphs 72 to 74. We are 6 grateful for the proposal from counsel to the inquiry 7 that if anonymity and screens were not granted, then we 8 do endorse the suggestion of prohibiting the broadcast 9 and publication of his image and permitting the witness 10 to enter and exit court by a separate entrance. 11 Sir, we do maintain our submission in relation to 12 FE16. He plainly has subjective fears and, as you have 13 heard from your counsel, they are not without objective 14 verification. We simply refer you to our written 15 submission as developed in the skeleton argument. 16 Finally, FE12 and FE19. As I said in opening, we 17 accept, whilst it is raised that they perform covert 18 surveillance work, it was not as clear as it should have 19 been, and providing you with the figures which we have 20 done, explains why it would be inconsistent to treat 21 them differently to dedicated surveillance officers. 22 The final witness, and perhaps the one that presents 23 the most discrete difficulty, is EG39. 24 THE CHAIRMAN: Yes. 25 MR BUTT: EG39's technical support role in these proceedings</p> <p style="text-align: center;">Page 136</p>

34 (Pages 133 to 136)

<p>1 would not of itself normally require the degree of 2 anonymity that we are asking for him. You know from the 3 closed material that he performs a highly sensitive 4 covert role in an entirely unconnected area. I have 5 raised with your counsel a matter which I will need to 6 raise with you in closed, which is raised in part of the 7 closed material as to an additional reason in relation 8 to EG39 only, why you might need to consider whether it 9 is right that that witness is seen by anyone apart from 10 you and your team, for reasons completely unconnected to 11 this case and the background to this case. There is 12 a unique feature of his work that in our submission 13 would require restriction of his image to you and your 14 team. Again, in relation to that, I can't say any more. 15 THE CHAIRMAN: Thank you. 16 MR BUTT: Sir, can I finally deal with the press and the 17 rather ugly phrase "non-intrusive vetting". 18 THE CHAIRMAN: Yes. 19 MR BUTT: I will take the second one first. 20 That phrase is one I have borrowed from other 21 inquests and inquiries. 22 THE CHAIRMAN: Yes. 23 MR BUTT: I make it absolutely clear, and I say it orally, 24 it is in my written submission, there is nothing known 25 to the detriment of Mr Baker's family, who are obviously</p> <p style="text-align: center;">Page 137</p>	<p>1 family members", we can see no problem with that. 2 Because there will not be a problem with Mr Baker's 3 family. It is only if, as has happened before, someone 4 claiming to be a family member were to say, "Well, 5 family are allowed to see him, and I claim to be 6 a family member". But we don't anticipate any problem. 7 THE CHAIRMAN: That will be, I am sure, of some comfort. 8 MR BUTT: In terms of the press, we don't propose any 9 deviation from the approach which was suggested by the 10 Court of Appeal in Dyer. That does speak about 11 safeguards. Again, our only concern is that somebody 12 might, as has happened in the past, attend claiming to 13 be a member of the press, possibly with accreditation, 14 who is not. It is vanishingly unlikely, perhaps, but it 15 is simply to have a provision in place to deal with 16 that, in order really to give you the ability to control 17 access within the courtroom. I am sure, sir, that we 18 can agree with all core participants a sensible protocol 19 to deal with that. 20 The Recorder of London in Fishmongers' Hall has done 21 that by saying the press could apply in order to see 22 anonymous witnesses. I think in that case one member of 23 the press has applied and there is no objection. We 24 would be content with that approach, or we would be 25 content with reviewing applications as and when they</p> <p style="text-align: center;">Page 139</p>
<p>1 responsible decent people who have behaved with marked 2 dignity in these incredibly difficult proceedings. We 3 understand how it can sound offensive to say 4 "non-intrusive vetting". In relation to those family 5 members that we know about, and we anticipate it is most 6 if not all of them through their involvement with the 7 IPCC and with various officers, there will be no issue 8 with them. What we mean by non-intrusive vetting, is 9 the possibility that someone attends claiming to be 10 a family member, perhaps not being a family member, in 11 relation to whom we would want to conduct a PNC check 12 and if there was a problem, we might need to make 13 submissions to you. That is the only caveat we put upon 14 family attendance. It is simply the ability to know who 15 is going to attend, perform a PNC check and if there is 16 a problem to raise it with you. 17 THE CHAIRMAN: It is not a very felicitous phrase, is it? 18 Far be it from me to make that comment, because I don't 19 even know who coined it first of all, but it is bound to 20 cause hackles to rise, isn't it. 21 MR BUTT: The only reason why it is used is to make it 22 clear, or it should have made it clear, that no one is 23 going to want to interview people or enquire personally 24 into their lives. A much better phrase perhaps is what 25 W80's team has said in relation to an "approved list of</p> <p style="text-align: center;">Page 138</p>	<p>1 come. Again, we don't view it as being a difficulty. 2 As the Court of Appeal said, there is no reason why 3 approved, accredited members of the press, would not be 4 able to see the witnesses. It is simply giving you 5 control in case there is an attempt to (Inaudible). 6 Unless I can assist further, those are my 7 submissions. 8 THE CHAIRMAN: Yes. 9 MS BLACKWELL: (Inaudible) 10 THE CHAIRMAN: I think I will do that after the break, 11 because otherwise you will be interrupted in the middle. 12 MR PENNY: I will not be very long but -- 13 THE CHAIRMAN: You tell me, I don't know how long you are 14 going to be, Mr Penny. 15 If you think you are only going to be 10 minutes 16 I will hear you. You are not on timer, but if you think 17 you are going to be that short, we might as well have 18 the break after you rather than before you. 19 MR PENNY: I will be. 20 Submissions by MR PENNY 21 MR PENNY: The application is in writing and the basis for 22 the applications set out in the documents. 23 I have got two points to make about points which 24 have been made on behalf of the family in the documents 25 in response. The first is this, and counsel to the</p> <p style="text-align: center;">Page 140</p>

<p>1 inquiry drew this to your attention this morning. 2 Our position is that it is wrong to downplay the 3 subjective fears expressed by W80 in his witness 4 statements and in the application lodged on his behalf. 5 Those subjective fears are, of course, borne out by the 6 objective material to which your attention has been 7 drawn during the course of the submissions both by 8 counsel to the inquiry and by counsel on behalf of the 9 Metropolitan Police Service. 10 It is made abundantly clear what W80's position is 11 so far as his own fears are concerned within the witness 12 statements which are lodged with the inquiry, as 13 identified in the short skeleton argument before the 14 court. 15 The second point I would wish to address on behalf 16 of W80 is to look at paragraph 88 in the skeleton 17 argument lodged on behalf of the family where an 18 argument by analogy with the case of the R (On the 19 Application of T) v The West Yorkshire Senior Coroner is 20 made. That is at tab 24, sir, of your bundle of 21 authorities. 22 THE CHAIRMAN: Yes. 23 MR PENNY: We say in simplistic terms that that argument by 24 analogy is flawed. The facts of that case are not even 25 vaguely analogous to those which apply in this case, so</p> <p style="text-align: center;">Page 141</p>	<p>1 Court of Appeal found, accredited members of the press 2 should have access. 3 THE CHAIRMAN: Yes. 4 Ms Blackwell, you made the point that you and others 5 wouldn't want to be troubled with such applications 6 during the latter stages of preparation. 7 MS BLACKWELL: Yes. 8 THE CHAIRMAN: If I were to direct that applications should 9 be submitted on paper and that I would rule upon them on 10 paper, then -- 11 MS BLACKWELL: We don't see that as a difficulty. And of 12 course -- 13 THE CHAIRMAN: That might be the best of both worlds. 14 MS BLACKWELL: You can set a timetable as well -- 15 THE CHAIRMAN: Yes. 16 MS BLACKWELL: -- so that those applications will be 17 submitted in good time before our next preliminary 18 hearing. 19 THE CHAIRMAN: Which I think is going to be 4 May? 20 MS BLACKWELL: Yes, I think so. 21 THE CHAIRMAN: Can I just ask whether any of the core 22 participants disagree with that as a proposal which, as 23 it were, let's them off the hook and leaves it to me to 24 deal with those applications on paper? 25 You are happy with that, Ms Kaufmann?</p> <p style="text-align: center;">Page 143</p>
<p>1 much is apparent from the analysis of the Lord Chief 2 Justice which follows on at paragraph 78 of that report, 3 from that to which reference has been made as to the 4 position in which the claimant herself had put herself 5 in that particular case. 6 This situation, as you have been addressed 7 throughout the day, involves one of balancing a number 8 of factors. And, in our submission on behalf of W80, 9 that particular balance comes down firmly in favour of 10 a grant of anonymity in his case on the terms as 11 proposed by CTL. 12 Sir, I was going to make submissions in relation to 13 the question of being W80 being viewed by approved 14 family members and by accredited members of the press, 15 but I have nothing to add to that which my learned 16 friend Mr Butt has just submitted. 17 THE CHAIRMAN: What do you want to do or what do you see as 18 the better way forward in relation to the press's 19 position? 20 MR PENNY: I have submitted essentially in writing, exactly 21 as Mr Butt submits, namely that you should consider 22 applications on an individual basis from individual 23 members of the press and regulate it according to your 24 own judgment. Plainly, however, the principle is 25 recognised, that in appropriate circumstances, as the</p> <p style="text-align: center;">Page 142</p>	<p>1 MS KAUFMANN: Yes. 2 THE CHAIRMAN: All right, somebody can draw up the 3 appropriate form of words but that is the way we will 4 deal with it. 5 MR PENNY: Thank you, sir, I have nothing further. We will 6 have our break. 7 MS BLACKWELL: Yes, please, for 15 minutes, so just after 8 3.30. 9 THE CHAIRMAN: Thank you. 10 (3.16 pm) 11 (A short adjournment) 12 (3.34 pm) 13 MS BLACKWELL: Sir, you are now going to hear submissions 14 from Ms Simcock on behalf of Serco. 15 Submissions by MS SIMCOCK 16 MS SIMCOCK: There are two applications on behalf of Serco. 17 The first is in relation to the route of travel 18 referred to in disclosed documents. 19 The second relates to anonymity of the names of 20 Serco employees or former employees. 21 Sir, in relation to the first application, the basis 22 is contained in paragraphs 8 to 10 of the open 23 application of Serco in written form, and I don't 24 propose to go into -- 25 THE CHAIRMAN: (Inaudible)</p> <p style="text-align: center;">Page 144</p>

<p>1 MS SIMCOCK: Exactly, sir. 2 THE CHAIRMAN: It is a matter for me but it is not disputed. 3 MS SIMCOCK: Indeed and the basis, sir, as I said is 4 contained in paragraphs 8 to 10, it is evidence in 5 support contained in Pete Masters's statement. He is 6 the head of standards and security for the prison escort 7 and court services. I would draw your attention, sir, 8 in particular to paragraphs 9 to 15 of his statement. 9 The route is the primary optimum route, as you have 10 heard, sir, from counsel to the inquiry, it has been 11 chosen to maximise efficiency and minimise the risk of 12 harm to Serco employees and indeed to those that they 13 transport, and it could not continue to be used if that 14 route in its entirety were to be made public. 15 We note and are very grateful for the indication 16 that the application is not disputed by the other core 17 participants and is indeed agreed by counsel to the 18 inquiry, although, of course, sir, as you observe, it is 19 a matter for you. We were invited to provide a form of 20 words and have done so, and, again, we understand that 21 this is effectively agreed by all core participants, 22 including counsel to the inquiry. We respectfully 23 submit that the adoption of those form of words would 24 not impede the inquiry in any way whatsoever, in that 25 the evidence in relation to the route which is pertinent</p> <p style="text-align: center;">Page 145</p>	<p>1 part of my instructions. I felt there were other more 2 pressing matters in the time I had available to me. 3 THE CHAIRMAN: I will consider myself duly reprimanded. 4 MS SIMCOCK: Sir in relation to JBI3 and JBI4, the basis of 5 those withdrawals is they have been contacted 6 successfully by Serco and have confirmed that they have 7 no objection to the disclosure of their name in public 8 in this inquiry and therefore there is no basis for 9 an application on the grounds of any subjective fear, 10 because they have expressly confirmed that they hold no 11 such fears -- 12 THE CHAIRMAN: No. 13 MS SIMCOCK: -- and that is a matter entirely for them. 14 THE CHAIRMAN: Yes. 15 MS SIMCOCK: Sir, the applications then, as I have 16 indicated, are made in relation to the two current 17 employees who have been, as you know, sir, contacted and 18 object, and they have served redacted witness statements 19 in relation to this application. And seven former 20 employees, who Serco has attempted to contact on several 21 occasions but have been unable to do so and they have 22 attempted by various different means, including through 23 email addresses they have held in the past and through 24 post to last-known addresses, but have simply obtained 25 no response.</p> <p style="text-align: center;">Page 147</p>
<p>1 to the inquiry will be fully capable of being understood 2 and followed. 3 Sir, I move on then to the application in relation 4 to the anonymity of Serco employees or former employees. 5 The application is made in relation to nine 6 individuals in total, two of whom are current Serco 7 employees -- JBI1 and JBI2 -- and seven former 8 employees. Three applications previously made are 9 withdrawn and I apologise that that withdrawal has come 10 very late in the day. 11 THE CHAIRMAN: Well, there we are. 12 MS SIMCOCK: I have been instructed rather late in the day. 13 THE CHAIRMAN: Better late than never. 14 MS SIMCOCK: Indeed, sir. 15 THE CHAIRMAN: (Inaudible) be directed to those who instruct 16 you or your lay client, it is not directed at you at 17 all. 18 MS SIMCOCK: I am very grateful, sir. 19 In relation to the applications withdrawn, I will 20 just confirm that those are in relation to JBI12, sir, 21 the individual who you observed is deceased, and for 22 that reason. 23 In relation to JBI3 -- 24 THE CHAIRMAN: (Inaudible) 25 MS SIMCOCK: I am afraid I don't know, sir, it didn't form</p> <p style="text-align: center;">Page 146</p>	<p>1 THE CHAIRMAN: You don't know whether they are in the same 2 boats as JBI3 and JBI4 or not. 3 MS SIMCOCK: I don't, sir. 4 THE CHAIRMAN: No. 5 MS SIMCOCK: We are not aware, therefore, of their current 6 roles or jobs or location and have not been able to 7 confirm their personal views on the disclosure of their 8 names, including if they hold any particular subjective 9 fears or not. 10 THE CHAIRMAN: Yes. 11 MS SIMCOCK: We acknowledge entirely therefore that there is 12 no evidence directly from those former employees 13 regarding whether they hold any subjective fear and the 14 reasonableness of those fears, or the -- and the effect 15 of that is likely to be on the strength of their 16 applications. We simply observe that Serco has felt 17 duty bound to make the application nevertheless, given 18 their inability to ascertain their individual view and 19 the effect that the possible disclosure of their names 20 might have upon them. 21 Sir, I concentrate, bearing that in mind, on the two 22 whose views we do have. 23 THE CHAIRMAN: Yes. 24 MS SIMCOCK: The evidence for the application is contained 25 within the statement of Pete Masters at tab 95</p> <p style="text-align: center;">Page 148</p>

<p>1 generally. That applies, to the extent that it can, to 2 all of the applications, but in particular to the two 3 current employees. Then, sir, as I have referred to, 4 JBI1 and JBI2 have served witness statements in these 5 applications, which are at tabs 96 and 97. 6 THE CHAIRMAN: Yes. 7 MS SIMCOCK: Sir, it is accepted on behalf of my client that 8 their is limited evidence of any objective risk to the 9 safety of there employees or former employees, in terms 10 of a risk of death or harm of serious injury or the 11 like. Therefore, sir, you are likely to be looking at 12 the balancing exercise primarily and the eight factors 13 approved by the House of Lords in the case of Re 14 Officer L, which is helpfully set out at paragraph 26 of 15 counsel to the inquiry's written submissions. 16 I concentrate upon those eight factors in this oral 17 application. 18 In that balancing exercise it has been confirmed, 19 and we agree, that subjective fears are relevant. It is 20 important to look at the specific facts of this case and 21 the particular circumstances in relation to the 22 particular witnesses who make the application. We rely 23 upon the following matters in considering those factors. 24 In relation to JBI1 and JBI2, they confirm they are 25 employed by Serco in forward-facing roles. In other</p> <p style="text-align: center;">Page 149</p>	<p>1 which they are not in fact privy to. 2 In particular, JBI2 holds concerns that that person 3 could not continue in their particular role should such 4 harassment, the risk of such harassment, eventuate. In 5 looking at the factors to be balanced then in relation 6 to the eight set out in the Re Officer L case, looking 7 at the seriousness of the applicant's fear and its 8 impact upon them, and the reason for that fear, the 9 likely effect of granting the application in removing or 10 reducing that fear, and the likely effect on the 11 applicant in refusing the application, in our 12 submission, those factors weigh heavily in favour of 13 non-disclosure and in relation to these factors and in 14 particular the reasons for the fear, there are some 15 further very brief submissions I would like to make in 16 closed session tomorrow, as you have heard. Those 17 relate really only to the parts of JBI1 and JBI2's 18 witness statements which are redacted, and relate to 19 material which effectively was would serve to identify 20 them were it to be revealed openly. 21 Sir, in looking at the other circumstances relevant 22 to the remaining factors, we rely upon the following. 23 Contrary to some of the other witnesses, here, the 24 Serco employees or former employees played an extremely 25 peripheral role, at its highest, in the matters that are</p> <p style="text-align: center;">Page 151</p>
<p>1 words, roles that not only bring them into daily contact 2 with members of the public but into daily contact with 3 prisoners who may very well be extremely dangerous 4 criminals. 5 That daily contact involves very close physical 6 proximity personally to those individuals, contrary to 7 some of the more central witnesses in the inquiry, such 8 as some of the police witnesses who may have a somewhat 9 more removed presence from the physical proximity to 10 those prisoners or dangerous criminals. They confirm 11 they fear a risk of attack and Serco has unfortunately 12 experience and knowledge of incidences of PECS employees 13 and PECS staff being attacked physically in the past. 14 We rely on the MPS material regarding organised 15 crime networks and these in particular in that regard. 16 In particular, sir, we would draw your attention to the 17 passages of Pete Masters's statement which detail that 18 the affiliations and risks associated with prisoners who 19 may well be dangerous criminals can be extremely 20 unpredictable and it is not always clear what the motive 21 is for any particular violence directed at PECS staff. 22 They confirm that they have a fear of harassment and 23 effectively an interference with their article 8 rights, 24 simply by people, including prisoners, going to them for 25 further information about the nature of this inquiry,</p> <p style="text-align: center;">Page 150</p>	<p>1 the subject of this inquiry. They were not involved in 2 the planning of Operation Ankaa, either prior to it or 3 during it, which resulted in the shooting of Mr Baker. 4 They were not involved in the carrying out of that 5 operation, neither in any strategic, nor tactical sense. 6 Indeed, they were not aware of it until afterwards. 7 Currently, other than JBI2, as you have heard, sir, they 8 are not on the witness list to give live evidence and 9 so, although referred to as witnesses, in fact that is 10 a technicality really, it is witness in name rather than 11 in substance. 12 We appreciate that is not a final decision but, in 13 our submission, it is unlikely in the circumstances 14 I have outlined concerning their role in the matters the 15 subject of the inquiry, that they will be called to give 16 evidence, other than perhaps JBI2. 17 THE CHAIRMAN: I suppose that might be a bit of 18 a double-edged sword. 19 MS SIMCOCK: Indeed, sir, and I was going to observe exactly 20 that, that we note the principle of open justice and we 21 accept entirely that the important aspect of that is 22 being able to give names and personalities to witnesses 23 in a particular case, as is set out in the Guardian News 24 case, set out at paragraph 29 of counsel to the 25 inquiry's submissions. We observe in relation to that</p> <p style="text-align: center;">Page 152</p>

<p>1 that the circumstances described where Serco employees 2 and former employees are technically witnesses, they are 3 not central or significant, including JBI2. Other than 4 JBI2 are not likely to give evidence and hold only 5 a peripheral role. 6 Indeed, the terms of reference of the inquiry really 7 do not primarily concern Serco at all. 8 THE CHAIRMAN: They are not core participants. 9 MS SIMCOCK: They are not. 10 THE CHAIRMAN: No. 11 MS SIMCOCK: Indeed, sir. 12 The peripheral role of Serco is relied upon to 13 emphasise the lack of objective risk and the fact that 14 subjective fears are not reasonably held by those 15 seeking disclosure of their names. We rely upon the 16 converse point that if so peripherally relevant, indeed 17 really as to be not relevant at all, what is the public 18 interest in disclosure of their names? We note, in 19 relation to a different point concerning MPS material, 20 that at paragraph 38 of counsel to the inquiry's 21 submissions there is an acceptance, "Where a detail is 22 peripherally relevant, the public interest in its 23 disclosure is minimal". 24 We submit that the names of Serco employees, or 25 former employees, fall firmly into the peripherally</p> <p style="text-align: center;">Page 153</p>	<p>1 except perhaps JBI2. 2 It is unlikely there is going to be a need to refer 3 to them, even in documentary evidence. 4 When giving evidence, if indeed JBI2 does, or when 5 referred to in statements to be read or summaries, for 6 example in relation to the other three who are in that 7 category, JBI7, 8 and 9, the use of their job title or 8 role that they held at the time or hold now in Serco 9 will suffice to ensure that the inquiry can hear the 10 evidence and it can be followed and will be of no 11 detriment whatsoever to either the public or core 12 participants following or the arriving at the truth. 13 We simply say that weighing all those factors 14 together in the particular circumstances of Serco 15 witnesses in this case, both relying upon the open and 16 the closed material, we submit the balance comes down in 17 favour of non-disclosure of their names. 18 Sir, unless there is anything else which I can 19 assist, those are my submissions. 20 THE CHAIRMAN: No, and I would like to thank you very much, 21 Ms Simcock, and rest assured that the strength and 22 cogency of your submissions has not suffered for the 23 fact that I didn't have the benefit of a skeleton 24 argument in advance. 25 MS SIMCOCK: I apologise for that, sir.</p> <p style="text-align: center;">Page 155</p>
<p>1 relevant category. If, as I have said, they are 2 relevant at all. That therefore the public interest in 3 their disclosure is at its highest minimal. 4 In looking then at the remaining of the eight 5 factors, and considering any counterbalance to the 6 subjective fear factors which I have submitted fall in 7 favour of non-disclosure and whether those factors fall 8 in favour of disclosure instead. In our submission, 9 they don't, they fall again in supporting of 10 non-disclosure. In looking at the effect on the 11 public's perception of the impartiality of the inquiry, 12 we simply submit that it is really very unlikely to be 13 affected or significantly affected by the non-disclosure 14 of the names of these particular Serco employees or 15 former employees. The likely effect on the inquiry's 16 ability to arrive at the truth if the application is 17 granted or refused is a further factor to consider and 18 in our submission, the non-disclosure of these names 19 would have no effect whatsoever, given the entirely 20 peripheral role that these individuals played. 21 The likely effect on the ability to follow the 22 evidence, if the application is granted or refused, 23 again, we say that non-disclosure would simply have no 24 effect, particularly where a person does not give live 25 evidence, which is the case in relation to all of them</p> <p style="text-align: center;">Page 154</p>	<p>1 THE CHAIRMAN: I don't want you to. 2 MS SIMCOCK: As I said, I had very limited time. 3 THE CHAIRMAN: No, well -- 4 MS SIMCOCK: I am very grateful, sir, thank you. 5 MS BLACKWELL: Your honour, (Inaudible). 6 THE CHAIRMAN: Yes, thank you. 7 Ms Kaufmann, I am going to ask you at the outset if 8 you could deal with something which came as news to me, 9 and may or may not have come as news to you. I am going 10 to raise it now, lest we have to return tomorrow in open 11 session having been in closed. That is EG39's position 12 and the observation by Mr Butt that there is something 13 about his case that necessitates the witness being 14 screened (Inaudible), apart from counsel to the inquiry 15 and (Inaudible). 16 MS KAUFMANN: Well, I have a grave difficulty in saying 17 anything about that, because the reason for that is 18 something he is going to canvass with you tomorrow in 19 closed. 20 THE CHAIRMAN: Yes. 21 MS KAUFMANN: All I can say is that you and counsel to the 22 inquiry are going to have to very, very carefully 23 consider that. 24 THE CHAIRMAN: It comes under the umbrella of careful 25 scrutiny.</p> <p style="text-align: center;">Page 156</p>

<p>1 MS KAUFMANN: I can't see that it can be dealt with in any 2 other way. None of us can gainsay at the moment 3 whether, firstly, it has to be dealt with in closed and 4 whether or not whether or not it is something that has 5 substance to the argument. 6 THE CHAIRMAN: Are you happy to leave it to me to decide 7 whether it is necessary (Inaudible) open, even if I am 8 in any doubt as to which way it should go or if I think 9 that there is anything about which you should be given 10 further information. 11 MS KAUFMANN: Yes, I would be very grateful if you 12 approached it in exactly that way. 13 THE CHAIRMAN: Then I will, thank you. 14 Sorry to have interrupted you before you started. 15 MS KAUFMANN: Not at all. 16 Submissions by MS KAUFMANN 17 MS KAUFMANN: You have had from us full submissions, both by 18 way of our initial response -- 19 THE CHAIRMAN: I have, thank you. 20 MS KAUFMANN: As Mr Butt has, I am going to take those as 21 read and I am going to just simply emphasise some of the 22 more important points in that or points that emerge in 23 light of what has been said today. 24 THE CHAIRMAN: Yes. 25 MS KAUFMANN: Starting with the approach, it is clear that</p> <p style="text-align: center;">Page 157</p>	<p>1 Prohibitions that operate there, is we come down to 2 a balancing of one set of interests that favour openness 3 against a number of other sets of interests that are 4 said to be in play that favour the granting of 5 restriction orders by way of redaction of documents or 6 anonymity. 7 We are absolutely agreed about that, that the point 8 where we disagree and where we submit that very careful 9 testing and analysis of the evidence is required by the 10 inquiry is in relation to calibrating the risks that are 11 said to arise by the Metropolitan Police, by W80, and in 12 relation to the NCA insofar as RIPA is not entailed as 13 a basis for their application, that call for those 14 restrictions. It is calibrating those risks that is the 15 cause for concern for us, not the nature of the risks 16 that are capable, in principle, of justifying 17 restriction. 18 Can I start just briefly by saying something about 19 what goes on to the other side of the equation, the 20 equation favouring open. 21 At paragraph 18, and we were reminded of it again 22 today, counsel to the inquiry in their submissions 23 recognises the public interest lying in openness, lying 24 in a full and open investigation being conducted with 25 all potentially relevant evidence available. That is</p> <p style="text-align: center;">Page 159</p>
<p>1 there is not a great deal between any of the parties as 2 to the correct approach. We are grateful for counsel to 3 the inquiry in agreeing with us that the approach taken 4 by Sir Christopher Pitchford in the Undercover Policing 5 Inquiry is a very useful way in which to traverse the 6 statutory provisions, because what he usefully does, and 7 he does so in relation to a set of circumstances which, 8 though not identical, are relevantly indistinguishable, 9 because they concern risks to officers, because they 10 concern threats to operational effectiveness, the same 11 kinds of considerations as arise here, article 8 issues, 12 subjective fears. What he does is he synthesises both 13 the rule of law requirements in section 19(3)(a), and 14 I am speaking here in relation to anonymity of police 15 officers -- 16 THE CHAIRMAN: Yes. 17 MS KAUFMANN: -- and the public interest test under section 18 19(3)(b) into a set of consideration that is are set out 19 in part 6, and questions that the inquiry has to ask. 20 In our submission, that is a very useful framework and 21 set of guiding questions that the inquiry should ask. 22 Essentially, what we come down to in relation to 23 questions of anonymity and restriction orders, save in 24 relation to the NCA, which is in a different category 25 because of the implications of RIPA and the rule of law</p> <p style="text-align: center;">Page 158</p>	<p>1 right, but it is also important to consider specifically 2 in the context of the Inquiries Act, because this is 3 a specific requirement of section 19(13)(b), the public 4 interest in the allaying of public concern. That is why 5 public inquiries are brought into being, to allay public 6 concern by investigating the matters that the public 7 inquiry has been established to look at. Openness 8 serves that interest, very, very strongly, in all public 9 inquiries. 10 In this particular public inquiry, which is also 11 serving the function of an article 2 inquest, the 12 allaying of public concern, integral to that is an open 13 investigation of the state's potential culpability for 14 the taking of a life by agents of the state and the need 15 for the state to account in those circumstances openly, 16 that is for the officers that it deploys to exercise 17 those coercive roles, to openly give their evidence has 18 an added force. That has to be put into the side of the 19 equation that favours openness. It is particularly 20 important in this context. 21 We would also commend, we have referred to it in our 22 skeleton argument, the Court of Appeal's judgment in 23 Binyam Mohammed, at paragraphs 35 to 53 at tab 18, which 24 looks generally at the importance of openness, 25 particularly where you are looking at the context of</p> <p style="text-align: center;">Page 160</p>

<p>1 wrongdoing by the state. 2 Against that, all the public interest, all the risks 3 that are relied upon by the other core participants, 4 have to be measured. One always has to come become to 5 balancing those against that important interest. 6 Can I just turn now, then, to the NCA applications. 7 I am very grateful to Mr Sheldon for taking us through 8 in more detail the position of the NCA. It is quite 9 clear, I would suggest, and I am able to say this but 10 nobody else is, that the application is in large part, 11 from what Mr Sheldon said, based upon RIPA and based 12 upon what cannot be disclosed, including the fact that 13 there was an intercept, the state agents can make no 14 mention of that. That seems pretty clear to us, but it 15 does leave us with some question marks still in trying 16 to understand how that can in fact be the case. 17 So officer C -- I do put in parenthesis here: is 18 there any reason we cannot know the office of that 19 particular officer? His role, his status within the 20 NCA? Even if we cannot know his identity. 21 But officer C was asked to put together a corporate 22 statement. In his corporate statement he was asked to 23 address and, sir, you directed that he address some 24 particular matters that we were concerned about. 25 One was the relationship between the MPS and the NCA</p> <p style="text-align: center;">Page 161</p>	<p>1 disclosed, and the mechanisms by which such information 2 is processed and passed on, for example, to the MPS, 3 which cover not only the intercepts but also other forms 4 of intelligence gathering which are not prohibited by 5 RIPA, it is difficult, we submit, to see why that 6 information, or information about those processes, 7 cannot be disclosed. Particularly because we know that 8 that will be heavily regulated and one of the questions 9 for this inquiry is whether or not there was compliance 10 with the regulatory requirements as to the processing of 11 that information. 12 For example, regulations relating to how that 13 information is graded and -- 14 THE CHAIRMAN: You mean A to E, 1 to 5? 15 MS KAUFMANN: Exactly. 16 THE CHAIRMAN: Yes. 17 MS KAUFMANN: So if we, the family, don't know how 18 processing is regulated, if we don't know how it was 19 processed in this particular case and whether or not it 20 breached those regulations, then our ability to 21 participate is seriously prejudiced. 22 If it really is the case that, because of 23 a statutory prohibition such as RIPA, we simply cannot 24 know, then of course we have to accept that but we, as 25 matters stand, cannot clearly see why that would be the</p> <p style="text-align: center;">Page 163</p>
<p>1 in terms of information sharing. 2 The other was to account for electronic disclosure. 3 We find it very difficult to understand how both of 4 those matters, if indeed they have been addressed in the 5 corporate witness statement, cannot be disclosed -- 6 nothing about those matters can be disclosed. So we do 7 ask, when you, sir, tomorrow act as devil's advocate, 8 that you really test that, because the NCA, of course, 9 are engaged in gathering information from all sorts of 10 different sources in all sorts of different ways. 11 Some of that will engage RIPA, and will create 12 a prohibition on the part of the NCA of making any 13 disclosure whatsoever about it, save through the closed 14 process that these proceedings have facilitated. 15 But information-gathering processes, record-keeping 16 processes, that apply to other forms of intelligence 17 gathering, are ones that it is difficult, standing on 18 the outside, to understand why information about that 19 cannot be disclosed, just because some of the 20 information and intelligence that is processed through 21 those mechanisms might include intercepts, for example, 22 or other matters that are prohibited from disclosure 23 under RIPA. 24 The distinction between the information itself, the 25 fact that there was an intercept, all of which cannot be</p> <p style="text-align: center;">Page 162</p>	<p>1 case. 2 THE CHAIRMAN: Ms Kaufmann, you don't have eyes in the back 3 of your head, but I know that Mr Sheldon has been taking 4 notes on points that you have raised in not one colour 5 of pen but at least two colours of pen. 6 MS KAUFMANN: What do they stand for? 7 THE CHAIRMAN: Be quite sure that he will not need too much 8 encouragement from me to address these matters in the 9 closed hearing tomorrow. 10 MS KAUFMANN: I am grateful. 11 THE CHAIRMAN: Thank you. 12 MS KAUFMANN: Moving on to anonymity then. Mr Sheldon made 13 an observation in respect of our submission that we had 14 asserted that the fear that the officers held of being 15 harmed was entirely subjective and he didn't know 16 whether or not that was something that applied also on 17 our part in respect of the NCA. 18 My answer to that is it didn't, because we don't 19 have any information about the threat to the NCA, so we 20 don't intend to make assertions about things we have no 21 evidence about. 22 THE CHAIRMAN: I have to look at that very carefully. 23 MS KAUFMANN: You have to look at that very carefully. 24 THE CHAIRMAN: Yes. 25 MS KAUFMANN: It may be those officers are at risk and if</p> <p style="text-align: center;">Page 164</p>

<p>1 they are then it will have been clear from our 2 submission that we do not object to anonymity being 3 granted to protect officers from physical threats of 4 violence. Similarly, as we have made clear in our 5 submissions, if on a proper analysis of the evidence, 6 you, sir, are satisfied that disclosure of identities is 7 going to risk operational effectiveness, then again, as 8 we have made clear, we do not object to anonymity 9 applications being made. 10 That brings me -- 11 THE CHAIRMAN: You don't object to them being granted. 12 MS KAUFMANN: Sorry, to them being granted, I am so sorry. 13 THE CHAIRMAN: It is all right, yes. 14 MS KAUFMANN: That brings me on to the next application, 15 where I will focus on the concerns that we do have about 16 the analysis of the evidence about threats. 17 Before I do that, can I just briefly deal with their 18 restriction order application and the STIC. 19 THE CHAIRMAN: Yes. 20 MS KAUFMANN: It really just comes now down to STIC, and it 21 seems like a sensible way forward as has been proposed 22 by Mr Butt, which is that somebody holds that evidence 23 in the FA5 and we -- as I understand it, Mr Butt was 24 open to the family looking at that as well to identify 25 whether we think it is relevant.</p> <p style="text-align: center;">Page 165</p>	<p>1 MS KAUFMANN: Can I then come on to the anonymity 2 applications for the Metropolitan officers. 3 Firstly, I am grateful to Mr Butt for making clear 4 on behalf of the Metropolitan Police, albeit very 5 belatedly, that the concerns that have been voiced about 6 the risks faced by surveillance officers, CTSFOs, any 7 officer in respect of whom an application for anonymity 8 has been made, that threat does not come from 9 Jermaine Baker and his friends, or associates. 10 I also want to reiterate that we do not stand in the 11 way of making orders if there is a proper evidential 12 basis on analysis for showing that there is some sort of 13 physical risk to these officers -- put article 2 aside, 14 I think we have all done that -- or a threat to 15 effective policing. 16 But we do believe it is extremely important that the 17 evidence is properly scrutinised and tested. That is 18 for a number of reasons, some specific to this inquiry 19 and some general. Those that apply generally is that, 20 in every inquiry or inquest of this sort, one can expect 21 and one does see the police making applications for 22 anonymity and it is not surprising, I don't criticise 23 them in that sense, anybody, see the Serco officers, 24 people don't want to be identified and they will make 25 the application. Therefore it is critical that that</p> <p style="text-align: center;">Page 167</p>
<p>1 THE CHAIRMAN: If I am -- 2 MR BUTT: If you were against me -- 3 THE CHAIRMAN: If I am satisfied that it is relevant -- 4 MS KAUFMANN: If you are satisfied it is relevant. 5 THE CHAIRMAN: -- then there is a way of common ground. 6 MS KAUFMANN: Yes, precisely. 7 We are in the difficult position about saying 8 anything about relevance, because we cannot see anything 9 about it. 10 THE CHAIRMAN: No, that is something I will have to keep my 11 eye on tomorrow, for my shopping list. 12 MS KAUFMANN: On your shopping list. 13 If you do consider it to be relevant, then, yes, 14 that is a sensible approach that we should then be able 15 to look at it. But of course it does then open up the 16 question about all the College of Policing material as 17 well, because if and insofar as it is relevant, then 18 that material, which has thus far been redacted, will 19 have to be unredacted, or there will have to be 20 application about that in any event, because needless to 21 say, Mr Butt is absolutely correct. You need to know 22 what the training is in relation to the tactic in order 23 to make any decision about whether the decision not to 24 deploy it was a reasonable one or not. 25 THE CHAIRMAN: Yes.</p> <p style="text-align: center;">Page 166</p>	<p>1 kind of knee-jerk response is subjected to very, very 2 testing and careful scrutiny. Because, as you, sir, 3 stated at the outset, if applications are made, which do 4 not have objective foundation, then that in itself can 5 lead officers themselves to be more fearful than they 6 really reasonably ought to be. And that is not a good 7 thing for them and it is not a good thing for public 8 inquiries if anonymity is granted in circumstances where 9 there is no objective threat because the officers 10 unreasonably fear that they are at risk. 11 THE CHAIRMAN: It makes it more difficult to assess the 12 validity of the subjective fear if there is no objective 13 basis for subjective fear. 14 MS KAUFMANN: It makes it more difficult to assess its 15 legitimacy. It also opens up a risk that inquiries and 16 inquests will grant anonymity even on the basis of 17 unreasonable subjective fears, if the inquiry considers 18 at the end of the day they are nonetheless genuinely 19 held. 20 So it creates a real problem and it creates a real 21 creeping process towards secrecy, replicated across all 22 sorts of inquiries and inquests, when it is not actually 23 necessary. 24 I also have specific concerns because of the risk 25 assessments in this particular case. Counsel to the</p> <p style="text-align: center;">Page 168</p>

<p>1 inquiry shared our concern about the quality of the risk 2 assessments, we heard from Mr Butt an explanation for 3 why, but that explanation simply doesn't really address 4 some of the obvious weaknesses in the risk assessments. 5 Just pointing to two, there were a number of bases 6 upon which it was said that the officers were at risk of 7 physical harm. 8 One was from the Tottenham Turks, this particular 9 OCN, but there was also an assessment that they faced 10 a risk from Jermaine's friends. There was also 11 an assertion that they faced a risk from terrorist 12 organisations. 13 In our submission, both of those, and certainly the 14 MPS distanced itself in submissions, since both of those 15 assertions of risk are palpably untrue or unreasonable. 16 It is now accepted that there is no risk from Jermaine's 17 friends, but that sits there fair and square in the risk 18 assessments upon which the MPS's application was based. 19 In relation to the risks from terrorists in general, you 20 have seen our submissions on that, in our submission 21 they are powerful. It is not these officers who really 22 face a risk from terrorists, it is officers who are 23 uniformed on the streets, every single day, walking up 24 and down, readily identifiable as part of the state's 25 coercive machinery dealing with terrorism. They are far</p> <p style="text-align: center;">Page 169</p>	<p>1 What we are concerned about is that there is 2 a proper analysis, a proper stepping through to try and 3 identify how that risk might emerge and, if so, how or 4 once one knows the train by which that risk might 5 emerge, how likely is it that any officer would actually 6 ever face such a risk? 7 I am trying to work out, and I am still not entirely 8 clear, how precisely it is said that, because these 9 gangs are so dangerous, these officers, should they be 10 named, are in danger. I think there are two possible 11 paths. 12 It looks now as though revenge, a revenge attack, is 13 out of the question. That is how I understood Mr Butt's 14 submission. So there is no sense in which anyone would 15 seek to avenge the killing of Jermaine, but there was 16 a suggestion, a little bit of a suggestion, that 17 officers may be at risk simply because they have been 18 involved thus far in disrupting the activities of the 19 Eren brothers, and particularly Izzet Eren. 20 In relation to that, there is a sort of revenge but 21 it is not a revenge arising from a desire to avenge the 22 killing of Jermaine Baker. But in relation to that, the 23 difficulty and the weakness of that is that when 24 Izzet Eren was charged in respect of the firearms 25 offences for which he was being sentenced on</p> <p style="text-align: center;">Page 171</p>
<p>1 easier targets and thus far they are almost exclusively 2 the targets of terrorist attack. 3 Why any terrorist would want to go to the trouble of 4 trying to identify these officers, CTSFOs, intelligence 5 officers, who go to such lengths to protect themselves, 6 when there are so many ready targets available is, 7 frankly, incomprehensible. We do see a very, very 8 reactive and poorly considered set of risk assessments 9 in these cases. 10 What it comes down to now, from what Mr Butt has 11 spoken about this afternoon, is the OCN. It is the 12 Tottenham Turks, and other OCNs like them, who are 13 highly dangerous, very, very prepared to use arms, 14 actively engaged in seeking revenge against rival gangs 15 and so forth, and the risks that they pose to these 16 officers. 17 Again, we do not for one moment stand back and seek 18 to argue that these individuals do not pose a very, 19 very, very serious danger to others. Particularly to 20 other rival gang members and anybody else who gets in 21 their way, but it is a very, very, very big step from 22 there to say that the surveillance officers in this 23 case, who might be named in this proceeding, and the 24 CTSFOs who might be named face a risk because of that 25 general danger.</p> <p style="text-align: center;">Page 170</p>	<p>1 11 December, for the October offence, his prosecution 2 included witness statements from officers who were 3 named, the arresting officer who was named, it included 4 witness statements naming covert officers, 5 ie surveillance officers. And a conclusion was clearly 6 drawn that no risk arose to them from so doing. 7 In my submission, it is very difficult to say in 8 those circumstances that there really is, because one 9 certainly would have thought at that particular time 10 when so much was known about the danger of this man that 11 they had captured and his activities over the last 12 however many years, that all necessary care would have 13 been taken at that stage to avert the risks that were 14 directly posed by his arrest, not slightly more 15 indirectly posed by the shooting of Jermaine Baker. 16 Secondly, it is very difficult, just standing back, 17 to understand why, why, this very dangerous gang would 18 want to take up time trying to take out officers who 19 were involved in this particular operation. They didn't 20 do it in relation to the October operation and the 21 arrest, why would they want to do it now. 22 If it was to take out intelligence officers and 23 CTSFOs, well, the answer to that is there will just be 24 others to replace them. 25 This didn't take up the whole pool of CTSFOs and</p> <p style="text-align: center;">Page 172</p>

<p>1 intelligence officers, there will be more who can carry 2 on doing this work, so why would anybody want to do 3 this? 4 That is before you even get on to the question of 5 how they could do it, what a difficult, difficult 6 enterprise it would be, why would they want to? 7 The other way in which it was put was on the basis 8 of operational effectiveness, which is that there is 9 a risk that CTSFOs and surveillance officers would be 10 recognised while undergoing their work, which 11 necessarily depends upon them not being recognised. 12 I am not going to go into whether that was the case for 13 CTSFOs, it unquestionably is with surveillance officers, 14 of course it depends on them not being recognised. 15 One then has to stand back and say: what is the 16 likelihood through their giving evidence in 17 circumstances where they can be seen in the inquiry and 18 named, of that happening? Of their being recognised? 19 We have to take these steps before we can assess the 20 threat. 21 We also have to put into that frame, not just for 22 article 2 purposes, but also to assess the risk, the 23 measures that could be taken to mitigate the risk of 24 recognition. Mr Butt, in all fairness, recognised that 25 there are some very readily available measures that</p> <p style="text-align: center;">Page 173</p>	<p>1 that you can say that is the same person. 2 It is frankly almost impossible to conceive how that 3 could happen but the only other way by which such 4 an identification could take place is if through 5 disclosing the name it would then be possible through 6 the internet footprint, the social media footprint that 7 that officer has, for that name to be put to the 8 individual and a photograph of that individual be 9 located on the internet in some way or another. 10 That is no easy task. The reason it is no easy task 11 is precisely because all these officers are so carefully 12 trained in limiting that footprint and protecting their 13 identity. 14 We can see from Brad Green's statement, 15 PC Brad Green's statement, and this is only in relation 16 to the surveillance officers, just how difficult that 17 is. Precisely because they have limited their internet 18 footprint. The inquiry, I submit, needs to look at each 19 of those officers in order to see how easily 20 identifiable they are. We have done that and we have 21 made concessions. We have made concessions in our 22 written submissions as to which officers might be 23 identifiable should somebody take that enormous trouble 24 to attempt to identify them. 25 Our submission is that those other officers, that we</p> <p style="text-align: center;">Page 175</p>
<p>1 could be taken which will limit the possibility of 2 anybody outside the inquiry ever identifying them. 3 Those are that we can prevent photography of the 4 intelligence officers, that if they come to the inquiry, 5 they can be protected so that nobody will be able to 6 photograph them, so that the only people who will be 7 able to see them are people in the inquiry. 8 We can prevent people in the inquiry having mobile 9 phones, so they cannot take any photographs of them. 10 Before we even get to that point, for somebody in 11 the inquiry to have the benefit of identifying 12 an officer, it has to be the case that somebody from 13 an organised crime group is going to take the trouble to 14 come to the inquiry and capture that image -- they can 15 not do it by mobile phone, how are they going to have to 16 do it? They are going to have to look at the person, 17 building up an image in their head and then going off 18 and relaying that image and from the relaying of that 19 image somehow you are going to identify that individual. 20 Then the identification is such that in the future, 21 when that surveillance officer is on an operation, 22 somebody who he happens to be surveilling is going to be 23 sufficiently clear that that person who was described by 24 the person sitting in the inquiry, who couldn't take 25 a photograph, is in fact giving such a good description</p> <p style="text-align: center;">Page 174</p>	<p>1 haven't made concessions about, simply are not going to 2 be identifiable. 3 It really is very, very difficult, realistically, to 4 put any case forward that by naming these officers, by 5 allowing their image to be seen, by those who are 6 attending the public inquiry, in circumstances where 7 there are very careful steps taken to prevent any 8 photograph of that individual through the attendance at 9 the inquiry being reported. It is very difficult how 10 there is anything other than a fanciful risk to 11 operational effectiveness. 12 Firstly, the difficulty with ever, ever getting 13 an image of that individual. 14 Secondly, the likelihood of anybody identifying such 15 an officer as they are going about their business in the 16 light of day, even if a surveillance officer is out 17 there spying on them, because of the careful steps that 18 those officers also take to protect themselves. 19 That is an assessment you are going to have to make. 20 If you disagree with us, if you think that even if the 21 risk is too low, nonetheless the consequences would be 22 so serious that you will make the order, then so be it. 23 But I do submit that when properly analysed, the 24 evidence is extremely, extremely thin and we are 25 concerned, we are very concerned, that these orders are</p> <p style="text-align: center;">Page 176</p>

<p>1 not made too readily, because it really does impinge on 2 public accountability. 3 While the Grainger inquiry is different -- every 4 inquiry is different -- there are many, many parallel 5 circumstances in that inquiry. It did also concern 6 an OCN, and there was a specific threat to the officers 7 in that case. There is no indication that the 8 disclosure in relation to the officers had put any of 9 them at risk, had threatened their operational 10 effectiveness. 11 When considering the balance we do also ask you to 12 take into account the internal inconsistencies, we do 13 rely upon FE3 and FE6. We have heard Mr Butt's 14 explanation today, but the point is when this 15 application was originally made, no application was made 16 in respect of them and in our submission -- 17 THE CHAIRMAN: They had made statements in 2016. 18 MS KAUFMANN: They had made statements in 2016. 19 THE CHAIRMAN: Yes. 20 MS KAUFMANN: They did express subjective fears in 2016, but 21 no application by the MPS was made on their behalf, so 22 no application was made on the basis that there was 23 an objective risk to them of harm, no application was 24 made on the basis of operational effectiveness. 25 Now if, as Mr Butt says and as counsel to the</p> <p style="text-align: center;">Page 177</p>	<p>1 surveillance officers. 2 If these gangs want to take out any individual 3 because they are a CTSFO or an intelligence officer or 4 involved in catching them and disrupting their 5 operations, then those who operate in a supervisory role 6 are just as much at risk, but the risk assessment for 7 Detective Superintendent Turner was such that no 8 application was ever made and even in relation to FE16, 9 where an application was made, the risk assessment for 10 him was low. The threat was low. 11 So there is inconsistency when the cases are 12 analysed properly. 13 In our submission, what one really is left with when 14 everything is stripped back is the subjective fears. We 15 simply repeat our submission that those subjective 16 fears, they have no reasonable foundation, it is not 17 doing a service to them or to anybody else to encourage 18 those fears. They are not fears which are so extensive 19 as to have resulted in any application being made in 20 reliance upon medical evidence. In those circumstances, 21 we submit that the balance and the need for public 22 accountability in this particular type of inquiry firmly 23 comes down in favour of refusing the applications. 24 Then turning to some of the specific officers, where 25 there are particular reasons in addition, so FE25,</p> <p style="text-align: center;">Page 179</p>
<p>1 inquiry accept, the MPS case is correct, then it applies 2 to all the officers and we would accept that. We submit 3 the very fact that no application was made in their 4 cases is further evidence of why that case is not 5 correct. It was not considered to be correct by the Met 6 at the time that the applications were originally made 7 and why not? Because these were peripheral officers. 8 In our submission, at that time, the way in which the 9 threat was being articulated was much more about revenge 10 attacks and so the view was taken, these were such 11 peripheral officers that they are not at risk of any 12 revenge attack. Whereas the CTSFOs who were much more 13 directly involved were at such risk and they are at the 14 greatest risk, surveillance officers next and then those 15 who were at a further remove. 16 We also make the point in relation to Detective 17 Superintendent Craig Turner and the fact that no 18 anonymity was sought in relation to him, or Keeley 19 Smith, because this is in relation to the risk of 20 physical harm. In relation to operational 21 effectiveness, we understand they are not on the ground 22 and therefore the risk of them being identified and 23 intruding on an operation doesn't arise, but so far as 24 the physical threat they face is concerned, that should 25 be no different than it is for the CTSFOs or the</p> <p style="text-align: center;">Page 178</p>	<p>1 tomorrow, sir, you are going to look at closed material 2 in relation to that. 3 THE CHAIRMAN: Yes. 4 MS KAUFMANN: You have our submissions on what is in open. 5 We obviously cannot comment on what is in closed. We 6 would just simply ask that you look at that with very 7 considerable care. 8 Similarly in relation to EG39, whose situation we 9 have already addressed. 10 In relation to FE16, we maintain our position in 11 relation to him, he is indistinguishable from FE12, his 12 situation, his subjective fears cannot possibly justify 13 granting anonymity, particularly because, as you 14 yourself have observed, he is one of two of the most 15 important witnesses on the part of the police to be 16 giving evidence at this inquiry. 17 In relation to FE12 and FE19, we accept that those 18 two officers fall to be treated in exactly the same way 19 as all the other surveillance officers in light of the 20 update that we have had from the MPS as to their 21 situations. We accept that, but our case remains that 22 the case of the MPS does not establish the need for 23 anonymity for any of them. 24 Required CTSFOs, well, firstly the obvious point, 25 none of the concerns in relation to operational</p> <p style="text-align: center;">Page 180</p>

<p>1 effectiveness arise in relation to any of these</p> <p>2 officers, save where there is something about their new</p> <p>3 employment that gives rise though that risk. Plainly</p> <p>4 they are not at any objective risk of harm, physical</p> <p>5 harm, there is absolutely no basis upon which any</p> <p>6 serious criminal gang would want to seek them out, given</p> <p>7 that they are not actually active in trying to disrupt</p> <p>8 their activities. It really does come down in our</p> <p>9 submission to whether or not a case has been made out in</p> <p>10 respect of the operations that they are now undertaking</p> <p>11 in new employment roles.</p> <p>12 In relation to V64 and S111, we, again are not in</p> <p>13 the position to say anything because it seems that the</p> <p>14 resolution of the risk they face by reason of the</p> <p>15 current employment that they are involved in is all</p> <p>16 dealt with in closed and that is similarly the case with</p> <p>17 F48.</p> <p>18 Again, we would simply ask you, sir, to be very</p> <p>19 careful in looking at whether operational effectiveness</p> <p>20 would really be in any sense hampered should disclosure</p> <p>21 of their identity be made.</p> <p>22 We note in relation to V12 and K78 that the CTI does</p> <p>23 not consider that the threshold has been met and</p> <p>24 obviously we are grateful for that indication.</p> <p>25 We do raise this in relation to applications and</p> <p style="text-align: center;">Page 181</p>	<p>1 vetting process, but I am talking about the public.</p> <p>2 THE CHAIRMAN: You are talking about the public, yes.</p> <p>3 MS KAUFMANN: Turning then to W80, W80 is at no greater risk</p> <p>4 of physical harm than any other officer CTSFO, even</p> <p>5 though he fired the fatal shot, because it is clear from</p> <p>6 the MPS's own assessment from what Mr Butt has said to</p> <p>7 us today that the risk doesn't arise because of any</p> <p>8 desire for reprisals for avenging the death of</p> <p>9 Jermaine Baker. That is not why these organised</p> <p>10 criminal groups pose a threat to the officers. So the</p> <p>11 fact that he fired the fatal shot does not increase his</p> <p>12 risk.</p> <p>13 This is something I would emphasise, because it</p> <p>14 wasn't clear from her submissions earlier that this was</p> <p>15 accepted by counsel to the inquiry. There did seem to</p> <p>16 be an indication, and an acceptance, that he faced</p> <p>17 greater risk from anyone seeking retribution but we</p> <p>18 submit there really is no reliable evidence that anybody</p> <p>19 would seek retribution.</p> <p>20 His position stands and falls in part with whether</p> <p>21 you, sir, agree with us or agree with the</p> <p>22 Metropolitan Police, counsel to the inquiry, as to the</p> <p>23 nature of the risks faced by all the CTSFOs. If you</p> <p>24 conclude there is no physical risk and there is no risk</p> <p>25 to operational effectiveness, then in our submission,</p> <p style="text-align: center;">Page 183</p>
<p>1 orders to grant anonymity. We do raise the question of</p> <p>2 why individuals need to be screened, in the event that</p> <p>3 anonymity is granted, when there are such clear measure</p> <p>4 that can be taken to prevent and protect those officers</p> <p>5 from having their photographs taken and the</p> <p>6 impossibility, as I have just described, of anybody</p> <p>7 meaningfully gathering information from seeing somebody</p> <p>8 in the course of an inquiry that they can use outside</p> <p>9 the inquiry. Of course seeing a witness giving</p> <p>10 evidence, watching their face, their expressions and so</p> <p>11 forth is a very, very important part of the process of</p> <p>12 giving evidence. Unless that really is necessary, we</p> <p>13 would submit there shouldn't be any screens.</p> <p>14 Turning to W80 --</p> <p>15 THE CHAIRMAN: Just a moment, I mean the screens would not</p> <p>16 prevent you or the family or any counsel from being able</p> <p>17 to see the body language, for want of a better</p> <p>18 expression.</p> <p>19 MS KAUFMANN: Yes, I am absolutely not talking about it from</p> <p>20 our point of view. We recognise we will be able to do</p> <p>21 that --</p> <p>22 THE CHAIRMAN: Yes.</p> <p>23 MS KAUFMANN: -- I am talking about it from the public's</p> <p>24 point of view, from those who attend. Also it may be it</p> <p>25 will not stop journalists either if they pass the</p> <p style="text-align: center;">Page 182</p>	<p>1 W80 is an officer who, far less than others, can plead</p> <p>2 in aid his subjective fears, because the importance of</p> <p>3 open accountability in relation to (Inaudible) are far</p> <p>4 greater.</p> <p>5 Yes, he will be, as compared with the other</p> <p>6 officers, an individual of interest to the media, but</p> <p>7 that is a perfectly proper part of the effective</p> <p>8 functioning of the media, that they should be able to</p> <p>9 report on him, seek to interview him. If he doesn't</p> <p>10 want to be interviewed, he can refuse to be interviewed.</p> <p>11 That they should seek to do that is something that is</p> <p>12 entirely proper and appropriate.</p> <p>13 In our submission, if you do not accept the risks of</p> <p>14 physical harm or to operational effectiveness in</p> <p>15 relation to this officer, then there is no justification</p> <p>16 based upon his subjective fears. We do say that if you</p> <p>17 look at his witness statements, he really does not</p> <p>18 assert a great degree of subjective fear in relation to</p> <p>19 (Inaudible), as compared with some of the other</p> <p>20 officers. That is something that falls to be taken into</p> <p>21 account.</p> <p>22 Can I turn then to Serco.</p> <p>23 THE CHAIRMAN: You raised in your skeleton argument the fact</p> <p>24 that if he were facing a criminal charge, he would of</p> <p>25 course be named, unless he was one of that very, very</p> <p style="text-align: center;">Page 184</p>

<p>1 small group whose name was withheld because of national 2 security issues. 3 If he was allowed to preserve anonymity, and the 4 outcome of this inquiry was such that consideration had 5 to be given again to whether or not he should be 6 prosecuted. If he were prosecuted, then of course he 7 would lose his right to anonymity. 8 Is that not something which I can, as it were, put 9 in the balance as one of the factors to take into 10 account, namely that even if he preserved anonymity now, 11 in a worst case scenario he would subsequently have to 12 face a trial in his own name? 13 MS KAUFMANN: In my submission, no, in this sense: that you 14 have to look at the need for openness now. The need for 15 openness is not just because he might have committed 16 a criminal offence, because, for example, the position 17 in relation to police discipline, as matters stand, is 18 that even if he hasn't committed a criminal offence, he 19 might nonetheless have used unlawful force to extent it 20 constitutes a disciplinary offence and even if he has 21 not committed a criminal offence, he might have used 22 force in a way that you consider appropriate to 23 criticise in some shape or form. 24 THE CHAIRMAN: Yes. 25 MS KAUFMANN: The fact that he will lose his anonymity if he</p> <p style="text-align: center;">Page 185</p>	<p>1 anonymity, or lack of, but this inquiry has to look at 2 whether or not, balancing all the factors that you have 3 to balance, it is necessary to grant him anonymity. 4 THE CHAIRMAN: So his status in a criminal trial -- 5 MS KAUFMANN: Is in defence irrelevant. 6 THE CHAIRMAN: Fine, I will not bear it in mind, thank you. 7 MS KAUFMANN: Then Serco, I don't really have any 8 submissions to add to those that have been made by 9 counsel. It is really unclear whether there are 10 subjective fears on the part of those seven officers who 11 are no longer in employment. 12 On the part of those who are in employment, they are 13 unreasonably held and effectively it would simply mean 14 that almost anybody could come along, raise subjective 15 fears and be granted anonymity. And that is a serious 16 undermining of the public nature of an inquiry. 17 THE CHAIRMAN: You end where you began, in agreement with 18 Ms Blackwell? 19 MS KAUFMANN: Indeed. 20 Unless I can assist you further? 21 THE CHAIRMAN: Thank you. 22 Reply submissions by MS BLACKWELL 23 MS BLACKWELL: Sir, may I just respond on one or two points. 24 In answer to the question about my submissions 25 raised in the last few moments by my learned friend,</p> <p style="text-align: center;">Page 187</p>
<p>1 faces criminal charges does not address why he should 2 not be granted anonymity in this particular set of 3 proceedings, which are not concerned to address the 4 question of whether he committed a criminal offence but 5 are concerned to address the questions of state 6 accountability under article 2. 7 THE CHAIRMAN: What then is the relevance of the fact that 8 if he were facing a criminal charge, he would do so in 9 his own name? 10 MS KAUFMANN: It is not an answer, but it was simply given 11 as an instance of how he would -- his anonymity is not 12 something that is a given and therefore -- 13 THE CHAIRMAN: No, but I thought you were saying, well, he 14 shouldn't be allowed to give evidence anonymously 15 because if this was a criminal trial, he wouldn't be 16 able to. 17 The point I was making is, well, if that is your 18 point, it might be an argument to say, well if he is 19 going to lose his anonymity if push comes to shove, for 20 want of a better expression, then there may be a public 21 interest in not, as it were, second guessing the outcome 22 of this inquiry at this stage. 23 MS KAUFMANN: My answer to you is, as I have just given it, 24 that his anonymity does not rest or fall on whether or 25 not he is going to be prosecuted. His right to</p> <p style="text-align: center;">Page 186</p>	<p>1 Ms Kaufmann. We do accept that the level of risk faced 2 by W80 in this inquiry from the Tottenham Turks is the 3 same as that faced by the other police officers. The 4 difference in his case is that his evidence is likely to 5 generate a far greater level of publicity. That, in 6 itself, is something that you can take into account in 7 determining whether that increases the risk of harm that 8 he faces. 9 We anticipate, sir, that you have been greatly 10 assisted by all of the submissions placed before you 11 today and particularly the analysis presented by 12 Ms Kaufmann in relation to the practicalities of why and 13 how the Tottenham Turks may wish to carry out attacks on 14 those whose business it has been and will be to 15 infiltrate and try and bring down their criminal 16 network. 17 The state's potential culpability for the taking of 18 a life, said Ms Kaufmann, is particularly important. We 19 agree with that. It is the focus of this inquiry and so 20 when you go into closed session tomorrow, we urge you to 21 have that statement very much in the forefront of your 22 mind in performing the inevitable balancing exercises 23 which you will have to do in relation to each of these 24 individual applications. 25 THE CHAIRMAN: Yes.</p> <p style="text-align: center;">Page 188</p>

47 (Pages 185 to 188)

<p>1 MS BLACKWELL: May I for the record, and for those who are 2 present and won't be present tomorrow, list now those 3 matters which you will be addressed about in closed 4 session? 5 THE CHAIRMAN: Before you go on to deal with that, 6 Ms Kaufmann raised specifically that when Izzet Eren 7 appeared at the Crown Court in connection with the 8 firearms offences for which he was being sentenced, or 9 for which it was intended that he should be sentenced on 10 the day that the effort was made to spring him, there 11 were witness statements from covert officers who were 12 named. 13 MS BLACKWELL: Yes. 14 THE CHAIRMAN: That is something which clearly I need to 15 take into account and I therefore need some information 16 about it. 17 MS BLACKWELL: That will be provided to you, sir, so that 18 you can assess that in the balance. 19 THE CHAIRMAN: Ms Kaufmann, are you content to -- on the 20 assumption that I will rely -- sorry. 21 MS KAUFMANN: I am so sorry, we were just talking about this 22 because I might have just slightly misled you on 23 which -- so the information -- this my fault, I got it 24 wrong from Ms Murphy. 25 THE CHAIRMAN: Blame the junior.</p> <p style="text-align: center;">Page 189</p>	<p>1 anything in the statements of Stephen Smart, SE11 and 2 witness C which could be and therefore should be 3 summarised or disclosed to the family. 4 (b) the closed intelligence and evidence relating to 5 the Tottenham Turks which it was not possible to provide 6 in open session today. 7 (c) the relevance of the small team's intervention 8 capability tactic in the MPS redaction applications. 9 (d) closed evidence about the following MPS 10 anonymity applications, S111, V64, S48, K78, B112, FE25 11 and EG39. 12 (e) the Serco closed submissions in relation to the 13 redacted parts of the witness statements JBI1 and JBI2. 14 THE CHAIRMAN: Thank you very much. 15 MS BLACKWELL: If there is nothing else from you, sir, then 16 we invite you to adjourn matters until 10.00 tomorrow 17 morning. 18 THE CHAIRMAN: Yes, now we will not be meeting again in open 19 session before the next pre-trial review? 20 MS BLACKWELL: Yes. 21 THE CHAIRMAN: Or the next preliminary hearing? 22 MS BLACKWELL: Yes. 23 THE CHAIRMAN: Is everybody aware as to when that is going 24 to take place? 25 MS BLACKWELL: They were not, but I think you, sir, made</p> <p style="text-align: center;">Page 191</p>
<p>1 MS KAUFMANN: No, it is my fault, I got it wrong, she got it 2 right. 3 I understood that the (Inaudible) was in relation to 4 the October offence. It was actually in relation to the 5 (Inaudible) September offence. 6 THE CHAIRMAN: Right. 7 MS KAUFMANN: In one sense or another it makes no 8 difference, it was the individuals involved on 9 11 December (Inaudible). 10 MS BLACKWELL: We will have that information before you 11 tomorrow. 12 THE CHAIRMAN: Are you content for me to be given that 13 information in your absence and one way or another it 14 will be incorporated to my ruling? 15 MS KAUFMANN: Yes. 16 THE CHAIRMAN: You are content with that? 17 MS KAUFMANN: Yes. 18 THE CHAIRMAN: Thank you. 19 Yes, I am sorry, Ms Blackwell. 20 Housekeeping 21 MS BLACKWELL: Not at all, to tomorrow's session. 22 This is the list of matters which we anticipate that 23 you will consider and you will have submissions made in 24 closed session. 25 (a) the NCA applications including whether there is</p> <p style="text-align: center;">Page 190</p>	<p>1 mention of it before. 2 THE CHAIRMAN: I did. 3 MS BLACKWELL: Yes. 4 THE CHAIRMAN: I don't apologise in the sense -- 5 MS BLACKWELL: Nor should you. 6 THE CHAIRMAN: -- it was simply flagging it up. 7 MS BLACKWELL: Yes. 8 THE CHAIRMAN: Tuesday, 4 May, which is the day after the 9 Bank Holiday. 10 MS BLACKWELL: Yes. 11 THE CHAIRMAN: I think we ought to have that hearing at the 12 IDRC. 13 MS BLACKWELL: Yes. 14 THE CHAIRMAN: Because I don't want the first time that we 15 go there en masse to be the first day of the evidence 16 hearings or the day on which opening statements will be 17 made. 18 MS BLACKWELL: Yes, we are, as you are aware, awaiting 19 a final review of the building to ensure that it is 20 appropriate for our needs but that being a positive 21 response, then the hearings that begin in June are going 22 to be heard at the IDRC. 23 THE CHAIRMAN: Unless somebody tells me to the contrary, 24 I will assume that the hearing will be on 4 May at the 25 IDRC.</p> <p style="text-align: center;">Page 192</p>

<p>1 MS BLACKWELL: Thank you.</p> <p>2 THE CHAIRMAN: Was there a general view as to the time at</p> <p>3 which we should convene?</p> <p>4 MS BLACKWELL: Not so far, but if 10.00 would be convenient</p> <p>5 to you, sir, might I suggest that.</p> <p>6 THE CHAIRMAN: It would be convenient but I bear in mind it</p> <p>7 is the day after the Bank Holiday. How long is it</p> <p>8 thought that hearing will last.</p> <p>9 MS BLACKWELL: I don't think it is going to be of any</p> <p>10 length. It is likely to be an update, there might be</p> <p>11 discussions about outstanding material and, of course,</p> <p>12 if you set a timetable, sir, in relation to the</p> <p>13 application from the press, then that may be determined</p> <p>14 or in part at least at that hearing.</p> <p>15 May I suggest 12.00 then?</p> <p>16 THE CHAIRMAN: Yes, let's go for 12.00.</p> <p>17 MS BLACKWELL: Thank you.</p> <p>18 THE CHAIRMAN: I think we decided that we would deal with</p> <p>19 the press by way of a direction and a timetable, which</p> <p>20 I imagine everybody is content to leave to CTI and me</p> <p>21 and --</p> <p>22 MS BLACKWELL: I think that is somebody outside of the door</p> <p>23 in the corridor, sir.</p> <p>24 THE CHAIRMAN: In which I don't think anybody else would</p> <p>25 require any input?</p> <p style="text-align: center;">Page 193</p>	<p>1 THE CHAIRMAN: Right.</p> <p>2 The only other matter I went to raise is this.</p> <p>3 I would like to think that by the end of the week I will</p> <p>4 be in a position to give a decision on the various</p> <p>5 applications, but it will take me longer to put my</p> <p>6 reasons in writing.</p> <p>7 MS BLACKWELL: Yes.</p> <p>8 THE CHAIRMAN: If I were to say that it is my intention --</p> <p>9 I think the phrase is "minded to", I am minded to give</p> <p>10 my decision by no later than Monday of next week --</p> <p>11 MS BLACKWELL: Yes.</p> <p>12 THE CHAIRMAN: -- and to give my reasons before Easter,</p> <p>13 which would mean by Thursday, 1 April.</p> <p>14 MS BLACKWELL: Thank you.</p> <p>15 THE CHAIRMAN: I don't think that is an unreasonable length</p> <p>16 of time, particularly having read Mr Justice Harman's</p> <p>17 obituary in The Times on Saturday. I think 20 months</p> <p>18 was the period of time which led to his reprimand, his</p> <p>19 resignation, consequent upon the reprimand. He died and</p> <p>20 never got the judgment, so -- I think we can do better</p> <p>21 than that.</p> <p>22 MS BLACKWELL: We certainly hope that is not going to be the</p> <p>23 case in this inquiry, sir.</p> <p>24 THE CHAIRMAN: Thank you very much indeed for those words.</p> <p>25 Thank you all very much indeed for your assistance</p> <p style="text-align: center;">Page 195</p>
<p>1 MS BLACKWELL: I don't think so, no.</p> <p>2 Just to clarify that position, you are intending to</p> <p>3 set a timetable within which the press and media would</p> <p>4 be entitled to apply for permission to see behind the</p> <p>5 screen and those will be determined on paper and if</p> <p>6 there is thereafter the need for oral submissions to be</p> <p>7 made --</p> <p>8 THE CHAIRMAN: I am not anticipating the need.</p> <p>9 MS BLACKWELL: No.</p> <p>10 THE CHAIRMAN: Correct me if I am wrong, but I can regulate</p> <p>11 the conduct of the hearing to the extent of saying:</p> <p>12 I will determine applications by the press on paper?</p> <p>13 MS BLACKWELL: Yes. Yes.</p> <p>14 If a member of the press persuades you of their</p> <p>15 legitimacy, then it is for other core participants to</p> <p>16 persuade you on an individual witness basis as to why</p> <p>17 the press should not be allowed to see behind the</p> <p>18 screen.</p> <p>19 THE CHAIRMAN: Yes. Between us, we will devise a form of</p> <p>20 words to create the timetable.</p> <p>21 MS BLACKWELL: Yes.</p> <p>22 THE CHAIRMAN: That way nobody need worry about its impact</p> <p>23 upon their preparation for the hearings in June.</p> <p>24 MS BLACKWELL: No.</p> <p>25 Thank you.</p> <p style="text-align: center;">Page 194</p>	<p>1 and for the spirit of cooperation, which has continued</p> <p>2 to mark these hearings.</p> <p>3 MS BLACKWELL: Thank you, sir.</p> <p>4 THE CHAIRMAN: Thank you all.</p> <p>5 (4.53 pm)</p> <p>6 (The hearing adjourned until the following day)</p> <p>7</p> <p>8</p> <p>9</p> <p>10</p> <p>11</p> <p>12</p> <p>13</p> <p>14</p> <p>15</p> <p>16</p> <p>17</p> <p>18</p> <p>19</p> <p>20</p> <p>21</p> <p>22</p> <p>23</p> <p>24</p> <p>25</p> <p style="text-align: center;">Page 196</p>

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