

<p>1 Thursday, 22 July 2021 2 (9.45 am) 3 (Proceedings delayed) 4 (10.50 am) 5 Housekeeping 6 THE CHAIRMAN: Ms Blackwell. 7 MS BLACKWELL: Sir, thank you very much for the time that 8 you have allowed. For reasons, of which you are aware, 9 we are operating today both within the inquiry room and 10 also virtually. 11 THE CHAIRMAN: Of course I understand what is happening and 12 why, and I would just like to express my gratitude to 13 those behind the scenes who have ensured that we have 14 been able to continue without any real delay. 15 MS BLACKWELL: Yes, sir. 16 THE CHAIRMAN: And the fact that all the core participants 17 are prepared to cooperate in this way, and to continue 18 without, in some cases, their real presence as opposed 19 to virtual presence is the clearest possible indication 20 of the desire on everybody's part to ensure that there 21 is no delay in the continuation of these hearings. 22 MS BLACKWELL: Yes, thank you very much. 23 THE CHAIRMAN: Thank you. 24 MS BLACKWELL: Sir, you have received rule 10 25 applications --</p> <p style="text-align: center;">Page 1</p>	<p>1 THE CHAIRMAN: I have. 2 MS BLACKWELL: -- on behalf of three core participants. 3 THE CHAIRMAN: I won't say I initiated them, but I suppose 4 in a way I encouraged them. 5 MS BLACKWELL: Yes. 6 THE CHAIRMAN: Is there anything you want to say about them? 7 MS BLACKWELL: Simply to put on record that the core 8 participants making the rule 10 applications this 9 morning are Mr Butt on behalf of the MPS, Mr Penny on 10 behalf of W80 and Ms Kaufmann on behalf of the family. 11 THE CHAIRMAN: Yes. 12 MS BLACKWELL: You have indicated that in the terms in which 13 they are made, and as long as they are confined to the 14 subject matters which are raised within those 15 applications, that you are content to grant them. 16 You have also indicated, sir, that in terms of the 17 order in which those questions should be asked, Mr Butt 18 on behalf of the MPS should go first, followed by 19 Mr Penny and finally Ms Kaufmann, who is appearing 20 virtually over a link. 21 THE CHAIRMAN: Now, I can't see Ms Kaufmann. 22 MS KAUFMANN: Apparently, sir, you can hear me. 23 MS BLACKWELL: Not very well, I am afraid. 24 THE CHAIRMAN: In and out. 25 MS KAUFMANN: That is obviously not very good news.</p> <p style="text-align: center;">Page 2</p>
<p>1 THE CHAIRMAN: I can hear you now. 2 Can you hear me? 3 MS KAUFMANN: I can hear you fine. 4 THE CHAIRMAN: Did you hear what I said before? 5 MS KAUFMANN: I did. 6 THE CHAIRMAN: Very good, thank you. I can hear you very 7 clearly now. 8 MS BLACKWELL: Before we start, I think Mr Butt would like 9 to say something. 10 THE CHAIRMAN: Yes, Mr Butt. 11 MR BUTT: Simply this, I didn't know until very recently 12 there was an application from the family. I literally 13 have just received it and I also didn't know that you 14 had made a determination in relation to the order of 15 questioning that I don't take issue with. 16 THE CHAIRMAN: Good. 17 MR BUTT: As a general rule, those who are being criticised 18 would ask their questions last. 19 I have had an opportunity to see the topics that 20 Ms Kaufmann has proposed and I have heard the indication 21 they are to be confined to those topics. Sir, I am not 22 going to seek to disagree with your decision. 23 THE CHAIRMAN: I am sorry there was a slight breakdown in 24 communication, as you will appreciate -- 25 MR BUTT: It is not a complaint at all.</p> <p style="text-align: center;">Page 3</p>	<p>1 THE CHAIRMAN: I realise it is not a complaint. We have had 2 to deal with matters today as we have -- 3 MR BUTT: Yes. 4 THE CHAIRMAN: -- and if everyone is content, then I think 5 it is a case of least said, soonest mended. 6 Can I just say for the record that my decision to 7 grant the applications, across the board, is accompanied 8 by the caveat that revisiting matters previously covered 9 is only legitimate as a precursor to a question designed 10 to clarify existing evidence or to elicit fresh 11 material, I am sure everybody understands that. 12 Very good. 13 The floor is yours, Mr Butt. 14 MR COLIN BURROWS and MR IAN ARUNDALE (continued) 15 Questions from MR BUTT 16 MR BUTT: Thank you, sir. 17 Mr Arundale, Mr Burrows, as you know I represent the 18 MPS in these proceedings. 19 Can I begin, please with a number of important 20 conclusions that you came to in relation to basics about 21 the planning and implementation of the operation. 22 First of all, at paragraph 45 of your report, it is 23 your opinion, is it not, that the commanders and AFOs 24 were aware of and generally utilised to an acceptable 25 level concepts, considerations, processes and tactical</p> <p style="text-align: center;">Page 4</p>

1 options in armed policing APP?
 2 MR BURROWS: That's correct, sir.
 3 MR ARUNDALE: Yes, sir.
 4 Q. Secondly, that assuming their statements were true and
 5 accurate, and we have heard nothing to undermine that,
 6 the officers performing the key roles were operationally
 7 and occupationally competent, is that correct?
 8 MR ARUNDALE: That's correct.
 9 Q. It goes further than that, doesn't it, because the TFC
 10 and the SFC were extremely experienced and highly
 11 trained, weren't they?
 12 MR ARUNDALE: They were, sir.
 13 Q. As was the TAC adviser?
 14 MR ARUNDALE: Yes, sir.
 15 MR BURROWS: Yes.
 16 Q. The TFC, for instance, had completed his strategic
 17 firearms commander's course, hadn't he?
 18 MR BURROWS: Yes, indeed.
 19 MR ARUNDALE: Yes.
 20 Q. The SFC was both an assessor on the College of Policing
 21 SFC commander's course, suggesting they valued his
 22 expertise, yes?
 23 MR ARUNDALE: Yes.
 24 MR BURROWS: That's correct.
 25 Q. In addition to that, he was also a specialist SFC so

Page 5

1 substantive paragraph that we are agreeing with. We are
 2 not disagreeing with your point, we are just clarifying
 3 that it was reasonable assumptions that we don't take
 4 issues with.
 5 Q. You don't disagree that you agree?
 6 MR BURROWS: Yes.
 7 Q. Thank you very much.
 8 Fourthly, paragraph 416, again this is an agreement
 9 from you, you agree that the tactical advice from S48 as
 10 set out in the FA5 was thoroughly considered, well
 11 recorded and consistent with national training and
 12 guidance?
 13 MR ARUNDALE: Yes, sir. That is a quote obviously from the
 14 IPCC report, which we referred to --
 15 Q. Yes.
 16 MR ARUNDALE: -- but there is a caveat on that, as you will
 17 see when you read forward.
 18 Q. And the caveat is?
 19 MR ARUNDALE: First of all, we make reference to the MASTS
 20 tactic, which we challenge the term "MASTS tactic",
 21 because MASTS is not a tactic.
 22 Q. That is what the IPCC said, isn't it?
 23 MR ARUNDALE: Yes, sir.
 24 Q. Just to pause there, the caveat is you agree with their
 25 opinion about S48, but you disagree with the IPCC when

Page 7

1 a particularly high level of training and qualification,
 2 yes?
 3 MR ARUNDALE: It is, yes.
 4 MR BURROWS: Yes.
 5 Q. Thirdly, at paragraph 427, you agree that the TFC and
 6 the SFC made regular reviews, assessments and plans
 7 throughout the planning phase, using a variety of
 8 sources of information and intelligence, including
 9 working knowledge as part of the unit or department,
 10 yes?
 11 MR ARUNDALE: Yes, sir.
 12 Q. Fourthly, at paragraph --
 13 MR ARUNDALE: Sorry, sir.
 14 THE CHAIRMAN: I think there might be a caveat.
 15 MR ARUNDALE: Yes, what you are quoting is Chief
 16 Superintendent Hartley's report, I believe?
 17 MR BUTT: What I was putting to you was that you agree with
 18 what ACC Hartley said, and that is what you say in your
 19 statement?
 20 MR ARUNDALE: Yes, the terms we have used are, "They are
 21 reasonable observations from Mr Hartley".
 22 Q. Yes.
 23 MR BURROWS: I think the point, sir, just for clarification
 24 is if you read the complete paragraphs it is in relation
 25 to the issues that Mr Hartley addresses within that

Page 6

1 they incorrectly call MASTS a tactic?
 2 MR ARUNDALE: We also go on at the next paragraph to make
 3 a comment, sir, although inspector S48 provided tactical
 4 advice, he did not suggest the MASTS intervention, nor
 5 specify how an intervention would take place.
 6 Again, we do place some caveats and observations
 7 behind that.
 8 Q. Again, I don't think that is a criticism, because
 9 a tactical adviser would provide the range of available
 10 tactical options and the tactical firearms commander
 11 would then decide which one to implement, is that right?
 12 MR ARUNDALE: Yes, sir.
 13 MR BURROWS: That's correct.
 14 Q. So the terms of my question that the tactical advice
 15 from S48 was thoroughly considered, well recorded and
 16 consistent with national training and guidance, you do
 17 agree with?
 18 MR ARUNDALE: Yes.
 19 MR BURROWS: Yes, and that was based on our reading of the
 20 material provided to us.
 21 Q. Absolutely, and that was comprehensive material,
 22 including the FA5 itself?
 23 MR BURROWS: I think we have made some comments during our
 24 evidence regarding the completion of those forms, what
 25 appeared to be the copy and paste issues, and some

Page 8

1 issues that we thought should have been more
 2 operationally specific in terms of selection of those
 3 things, but other than those points, we agree with the
 4 points you make.
 5 Q. I believe those points related to the FA2 and the FA3
 6 and in fact you were complimentary about the FA5 in
 7 using different coloured text to differentiate where
 8 things were generic and things had been cut and pasted?
 9 MR ARUNDALE: Yes, sir.
 10 Q. No disagreement with the tactical advice from S48 being
 11 thoroughly considered, well recorded and consistent with
 12 national training and guidance?
 13 MR ARUNDALE: Indeed.
 14 Q. When looking at the criteria for deployment of AFOs, it
 15 was also your conclusion -- this is paragraphs 304 and
 16 356 -- that the criteria for the deployment was clearly
 17 met on each occasion, both 8 December and also
 18 11 December?
 19 THE CHAIRMAN: They said that in evidence, Mr Butt.
 20 MR BUTT: Yes, sir, thank you.
 21 It would be quite wrong, wouldn't it, to send
 22 unarmed officers to conduct the arrests in this case?
 23 MR ARUNDALE: Absolutely.
 24 MR BURROWS: Absolutely.
 25 Q. If support for that is needed, we can see that for

Page 9

1 access or the ability to research the curriculum.
 2 Q. Because at paragraph 57 what you say is that you have
 3 only made reference to the modules as set out in APP and
 4 not the content of the curriculum; is that right?
 5 MR BURROWS: Yes, there were two reasons for that, sir.
 6 First of all we do have historic knowledge of the
 7 curriculum.
 8 Q. I am going to come to that, obviously.
 9 MR BURROWS: Which is clear.
 10 We work independently as well as occasionally
 11 together and on other cases parts have been disclosed.
 12 However, it is a restricted document and even if we were
 13 aware of the content, we wouldn't have put it into this
 14 document without permission specifically being granted
 15 and that was not so.
 16 Q. Absolutely, and of course you would have a general
 17 working knowledge of the curriculum from your experience
 18 as firearms commanders, but would it be fair to say not
 19 perhaps the same working knowledge that for instance S48
 20 and S105 so clearly had when they gave evidence?
 21 MR BURROWS: Absolutely, sir, and our knowledge of the APP
 22 is very specific because we were involved in drafting so
 23 many parts of it.
 24 Q. Yes.
 25 MR BURROWS: The curriculum, as Mr Arundale I think has

Page 11

1 example in the curriculum --
 2 THE CHAIRMAN: It is not.
 3 MR BUTT: Sir, it is simply to look at how it is expressed
 4 in the curriculum, I will move on if it is not going to
 5 assist you.
 6 THE CHAIRMAN: I don't see how it will.
 7 I did preface my granting your request by indicating
 8 that unless it was to clarify as opposed to emphasise,
 9 eliciting that which has already been said is not going
 10 to assist me.
 11 MR BUTT: Sir, thank you.
 12 THE CHAIRMAN: Thank you.
 13 MR BUTT: Can we move on to look at what information you had
 14 available to you when you wrote your report.
 15 At paragraph 13 of the report, you say that you may
 16 not have seen seminal material that could cause you to
 17 fundamentally change your opinion, yes?
 18 MR BURROWS: That's correct, sir.
 19 MR ARUNDALE: Yes.
 20 Q. At the time of writing your report you didn't have
 21 access to the National Police Firearms Training
 22 Curriculum, did you?
 23 MR BURROWS: We did have.
 24 MR ARUNDALE: Some aspects we had access to, from previous
 25 work that we had done. We did not have unfettered

Page 10

1 expressed, goes on to thousands of pages and is
 2 constantly being updated, so there were many changes
 3 happening all the time.
 4 Q. It was nonetheless your view that it was imperative that
 5 the inquiry legal team obtained the relevant parts which
 6 are certainly MASTS and vehicle tactics?
 7 MR ARUNDALE: Absolutely.
 8 MR BURROWS: Yes.
 9 Q. That happened after you had completed your main report,
 10 yes?
 11 MR ARUNDALE: Yes.
 12 MR BURROWS: Indeed, yes.
 13 Q. As a result of that, in your main 225-page report you do
 14 not include any content from the curriculum, do you?
 15 MR BURROWS: Deliberately not.
 16 Q. You reference the curriculum in your second addendum
 17 report, but that only relates to the small team
 18 intervention capability, is that right?
 19 MR ARUNDALE: Yes.
 20 MR BURROWS: Yes.
 21 Q. It would however have been of real benefit to you,
 22 wouldn't it, if you had the curriculum available to you
 23 when you were writing your report, in particular in
 24 relation to the tactics and how they are described
 25 within the curriculum?

Page 12

1 MR ARUNDALE: It would have added another dimension to our
 2 report, yes.
 3 Q. I don't think yesterday you were taken to any actual
 4 content in the curriculum on the screen, were you?
 5 MR BURROWS: Not that we recall.
 6 Q. You have had access to a huge amount of material when
 7 you have reviewed the case. Including, as you have
 8 referenced already, a number of statements from
 9 Kevin Nicholson of the College of Policing, yes?
 10 MR BURROWS: Yes.
 11 MR ARUNDALE: Yes.
 12 Q. Also ACC Hartley, as he now is, who was the IPCC expert?
 13 MR BURROWS: Indeed, yes.
 14 Q. At paragraph 143 in your report, you say that where you
 15 have come to different conclusions to these
 16 knowledgeable people, you have set out your rationale
 17 for that, yes?
 18 MR BURROWS: Correct.
 19 MR ARUNDALE: Yes.
 20 Q. Can I turn, first, please, to the concept of sustained
 21 public protection. In any operation such as this, there
 22 is going to be a tension between the need to protect the
 23 public from serious criminals, and the need to ensure
 24 that operations such as this are as safe as possible for
 25 those at risk, including the subjects, yes?

Page 13

1 Q. Yes, and the public would expect that the police would
 2 tackle them robustly, wouldn't they?
 3 MR BURROWS: Absolutely, sir.
 4 MR ARUNDALE: Yes.
 5 Q. That public safety is the priority in firearms operation
 6 is stressed throughout APP and the curriculum, isn't it?
 7 MR ARUNDALE: Public safety, the safety of all I would say,
 8 sir.
 9 Q. Can we look then, please, at COP10, page 26.
 10 Does this document note under "Developing a working
 11 strategy":
 12 "Commanders must at the earliest opportunity develop
 13 an effective strategy to direct police action."
 14 MR ARUNDALE: Yes, sir.
 15 Q. Does it also say:
 16 "an effective strategy should recognise public
 17 safety as a priority."
 18 MR BURROWS: It does.
 19 MR ARUNDALE: Yes.
 20 Q. Does it follow that any strategy that does not recognise
 21 public safety as a priority would not be an effective
 22 working strategy?
 23 MR ARUNDALE: Yes, sir.
 24 Q. To state the obvious, criminals pose a risk to the
 25 public generally and their victims specifically and if

Page 15

1 MR ARUNDALE: Yes, sir.
 2 Q. As we will see, the starting point for any working
 3 strategy in a firearms operation is that it must
 4 recognise public safety as the priority, yes?
 5 MR ARUNDALE: Yes, sir.
 6 Q. You of course accept that these are difficult matters
 7 that commanders have to balance?
 8 MR ARUNDALE: We do.
 9 Q. In this case you fairly accept that that difficult
 10 decision must be seen in the context of the very
 11 important role undertaken by SCO7 in disrupting
 12 organised crime, removing weapons and drugs from the
 13 streets of London, investigating organised criminal
 14 activity, arresting suspects and reducing threats of
 15 violence, yes?
 16 MR ARUNDALE: Yes.
 17 MR BURROWS: Absolutely.
 18 Q. That was clearly something that SCO7 were doing with
 19 some success in 2015, weren't they?
 20 MR ARUNDALE: Yes, sir.
 21 Q. It would be fair to say that the criminals under
 22 investigation in Utara are amongst the most dangerous
 23 that police will face, yes?
 24 MR ARUNDALE: Yes, sir, certainly they are up there amongst
 25 the worst.

Page 14

1 they are not stopped, then Article 2 is engaged, every
 2 bit as much as when we are considering the subjects of
 3 an armed operation, would you agree with that?
 4 MR ARUNDALE: Yes, sir.
 5 Q. In an inquest or an inquiry, we quite rightly see the
 6 tragic death from the perspective of the family. And
 7 the victim -- sorry, the family and the person who
 8 died --
 9 MR ARUNDALE: Yes.
 10 Q. -- but the police are required to set a working strategy
 11 which reduces the threat to the public first and then
 12 work down in order of priority, aren't they?
 13 MR ARUNDALE: Yes, sir -- I think one thing to stress is
 14 that there are needs for two strategies here.
 15 One is the strategy which is bespoke to Operation
 16 Ankaa.
 17 There is also the wider sustained public protection,
 18 which would relate to the wider organised crime group.
 19 Q. We will look at that in a moment.
 20 Could we just finally look at the curriculum, COP10,
 21 page 35.
 22 MR BURROWS: Sir, just for benefit, for Mr Butt, this is not
 23 that clear on the screen, so it may be helpful if you
 24 actually lead us through some of the reading so -- that
 25 is better, thank you.

Page 16

1 Q. If we could scroll down a little, please. It just says
 2 here again:
 3 "Along with the primary aim of securing public
 4 safety, consideration should be given as to whether it
 5 is possible to identify, locate and contain the subjects
 6 before appropriate action to mitigate the threat posed."
 7 MR BURROWS: Indeed.
 8 MR ARUNDALE: Yes.
 9 MR BURROWS: Yes.
 10 Q. Again the curriculum says the primary aim is securing
 11 public safety, yes?
 12 MR BURROWS: Yes.
 13 Q. If we could look at another reference to APP, COP18,
 14 page 6, please, the aim is to protect the public by the
 15 most appropriate method, balancing the risk of harm to
 16 the public in both the short and the longer term?
 17 MR BURROWS: That is correct.
 18 Q. In this case, the short term would mean the immediate
 19 escape plot and the longer term would mean consideration
 20 to what would happen, for example, after
 21 11 December 2015 if the plot were merely disrupted,
 22 wouldn't it?
 23 MR ARUNDALE: Yes, sir.
 24 Q. When considering that longer-term risk, there are two
 25 matters to be considered at least, are there not?

Page 17

1 a risk of them controlling plots from prison, there is
 2 a risk of them using their other criminal associates to
 3 carry on the work.
 4 So yes, we accept the point, but we caveat it by
 5 that -- nothing is -- nothing is going to stop,
 6 continuous of the work, after they are imprisoned.
 7 Q. The difference here of course is there was specific
 8 intel of a plot to break Izzet Eren out of custody, yes?
 9 MR BURROWS: Yes.
 10 MR ARUNDALE: I think of course, sir, as we have heard in
 11 evidence, the information that was available should then
 12 be presented to the prison authorities and other
 13 relevant agencies and significant steps could be taken
 14 whilst they were incarcerated to prevent escapes.
 15 Q. The information was presented to the prison authorities,
 16 wasn't it?
 17 MR ARUNDALE: I am talking about in terms of regrading the
 18 prisoners and the selection of the place of
 19 incarceration, which would significantly reduce the
 20 potential for escape attempts.
 21 Q. The prison governor was informed of the escape plot,
 22 wasn't he?
 23 MR ARUNDALE: My understanding was I think there was two,
 24 two governor-grade persons were informed of the escape
 25 attempt.

Page 19

1 First of all, the long-term risk that the Erens and
 2 those working for them posed in north London, yes?
 3 MR ARUNDALE: Indeed, yes, sir.
 4 Q. That was a significant risk, wasn't it?
 5 MR ARUNDALE: Yes, sir, it was.
 6 Q. Secondly, the longer-term threat of a later attempt at
 7 an escape from custody if the 11 December plot was
 8 merely disrupted, yes?
 9 MR ARUNDALE: It is an issue, sir, of course, but I think
 10 there is probably more strategic objectives in terms of
 11 dismantling and disrupting the major organised crime
 12 group. Ankaa seems to be just one operational aspect of
 13 this itself. There is always a danger of high-profile
 14 prisoners escaping, but there should be a far more
 15 strategic approach that is not just following the limbs
 16 of Operation Ankaa.
 17 Q. When looking at the longer-term risk, do you agree that
 18 if the plot was disrupted, a longer-term risk that had
 19 to be considered would be the risk that there would be
 20 another attempt to break Izzet Eren out from custody?
 21 MR BURROWS: Yes, sir, we have considered this and we
 22 realise the point that you are making and, to a certain
 23 extent we agree with it. But we also consider that you
 24 could apply that to every high-risk, high-grade prisoner
 25 who is sentenced, there is a risk of breakout, there is

Page 18

1 Q. A strategic firearms commander would be required in this
 2 regard to consider sustained public protection, wouldn't
 3 he?
 4 MR ARUNDALE: Yes.
 5 MR BURROWS: Yes.
 6 Q. Would you agree that sustained public protection is
 7 an extended duty of care to the public?
 8 MR ARUNDALE: Yes.
 9 Q. If someone is killed by a criminal that the police could
 10 have arrested or imprisoned, that duty of care could be
 11 said to have been breached, couldn't it?
 12 MR ARUNDALE: It could be. It is a very serious and onerous
 13 task to make a decision in relation to sustained public
 14 protection, that should be dealt with in the manner that
 15 we explained yesterday in terms of its documentation,
 16 assessment and decision making.
 17 Q. That reference to a duty of care that obviously comes
 18 from APP means an SFC would be failing in his duty if he
 19 didn't take it into consideration, wouldn't he?
 20 MR ARUNDALE: Yes.
 21 Q. Let's imagine that due to the planning of Ankaa,
 22 Izzet Eren did escape and finished what he started on
 23 13 October 2015, when he was arrested with those
 24 terrifying weapons, the police could be said to have
 25 breached that duty, couldn't they?

Page 20

1 MR ARUNDALE: Yes, that is a scenario that could be applied
2 to all armed policing and many serious crime
3 investigations, there is always the potential for them
4 to go wrong with the subsequent criticism leveled at the
5 police service.
6 Q. If someone was killed, that of course would also engage
7 article 2?
8 MR ARUNDALE: It is a very difficult and dangerous
9 profession for policing commanders to balance these
10 risk.
11 Q. Equally, if there was a later attack on the prison van
12 when the police were not there, that could breach the
13 duty of care if the police could have prevented the
14 attack?
15 MR ARUNDALE: It could have.
16 Q. You explain at paragraphs 437 and 438 of your report how
17 it was the concept of sustained public protection came
18 to be added to APP.
19 You explain that largely as a result of the
20 Azelle Rodney Inquiry, a view was taken that commanders
21 were not afforded enough protection by APP when they
22 weighed up longer-term sustained public protection
23 against short-term deterrent, yes?
24 MR ARUNDALE: That's correct, sir.
25 Q. So the College could have, when they examined this

Page 21

1 resolve the operation, to effectively stop the criminal
2 enterprise.
3 We believe that experience has now shown us that we
4 need to be more professional and more precise in
5 relation to the guidance and the training to the
6 individuals involved, and ensure that these issues,
7 because they are so critical to the Article 2 issues,
8 are properly documented and they are far more precise in
9 relation to their assessment of the potential downside
10 of the decisions and the balance between Article 2 and
11 sustained public protection.
12 Q. To be fair to the commanders in this case, obviously, we
13 can only judge them on what the content was at the time?
14 MR ARUNDALE: Absolutely, absolutely, and we fully accept
15 that. We are saying with hindsight, reflecting not just
16 on this incident but on other incidents, there is scope
17 to make improvements for the future.
18 Q. Mr Burrows, you were about to speak, I am so sorry.
19 MR BURROWS: Just two points for clarification.
20 There appear to be two limbs to your question, if
21 I picked it up right.
22 The first duty is absolutely clear, they had to
23 ensure that Izzet Eren's plot to escape on the 11th
24 could not take place. There are various ways of doing
25 that, but that had to happen, that primarily.

Page 23

1 issue, disagreed with that concern but after no doubt
2 consultation and debate, a decision was made to add this
3 content, yes?
4 MR ARUNDALE: Yes, sir.
5 MR BURROWS: Yes.
6 Q. It is clear from your evidence, isn't it, that you agree
7 with that content being added to APP?
8 MR ARUNDALE: We agree with the concept. With hindsight and
9 reflection, we think there is significant scope to
10 revisit this guidance to make it more appropriate and
11 relevant to today's circumstances.
12 Q. Could you help the chairman with how you think that
13 should be done or is it unfair to spring that on you
14 now?
15 MR ARUNDALE: No, I don't think it's unfair -- I think that
16 the definitions and the tactics which have been applied
17 to it are somewhat polarised and I think certainly from
18 the evidence that we have heard during this particular
19 inquiry, one of the clear things is for the SIO's role
20 to be separate and to be very clear in relation to
21 required evidential outcomes that deliver sustained
22 public protection, and if that is about periods of
23 incarceration, to be absolutely clear so the tactical
24 firearms commanders and the strategic firearms commander
25 can make appropriate balanced decision about when to

Page 22

1 The second one, about the longer sustained public
2 protection, you know, is an issue that they had to
3 address and consider and I think the point they were
4 both making is that that was also a criminal justice
5 issue, because if they were sentenced, there was
6 an issue about their security thereafter, to minimise
7 any chance of them reactivating this in future movements
8 within prison or hospital.
9 Q. Absolutely, and just to be clear, you are not at all
10 averse to operations you consider high risk to be run,
11 are you?
12 MR ARUNDALE: Absolutely not, far from it. But they should
13 be run obviously with the best people, highly trained
14 and for inquiries such as this to ensure that
15 improvements are made and lessons are learnt.
16 Q. You would not want the outcome of this inquiry to have
17 a chilling effect on operations designed to ensure
18 sustained public protection being run in the future,
19 would you?
20 MR ARUNDALE: Not a chilling effect, but hopefully
21 an improvement.
22 Q. Absolutely, and may I make it very clear, I am not for
23 a moment suggesting you are trying to do that, you are
24 both as you have throughout your careers trying to help
25 the police protect the public and my client is very

Page 24

<p>1 grateful for your work.</p> <p>2 Just to be clear, I am not suggesting that is the</p> <p>3 effect of your evidence.</p> <p>4 This content was added to APP in order to protect</p> <p>5 commanders who decide to allow operations to run in</p> <p>6 order to obtain evidence to secure convictions, wasn't</p> <p>7 it?</p> <p>8 MR ARUNDALE: Yes, sir, yes.</p> <p>9 MR BURROWS: Yes.</p> <p>10 Q. You would agree of course it is critical that this</p> <p>11 content from APP is fully taken into consideration when</p> <p>12 commanders do just that, wouldn't you?</p> <p>13 MR BURROWS: Absolutely, sir.</p> <p>14 Q. Given its importance, I would like to examine the</p> <p>15 content. I think you said yesterday "think court" and</p> <p>16 Ms Blackwell said "think public inquiry", this content</p> <p>17 is designed to assist commanders who end up here, isn't</p> <p>18 it?</p> <p>19 MR ARUNDALE: Certainly, the work that the two of us have</p> <p>20 done in relation to the origins of these documents, we</p> <p>21 have always said that, you have to think forward to the</p> <p>22 ultimate consequences and the ultimate forum where you</p> <p>23 are going to be held to account for the words as well as</p> <p>24 the actions of the individuals.</p> <p>25 Q. Thank you very much.</p> <p style="text-align: center;">Page 25</p>	<p>1 Can we look, please at COP24, page 10.</p> <p>2 Do we see here that APP provides that action taken</p> <p>3 to mitigate risk in the short term may only seek to</p> <p>4 displace or delay that risk?</p> <p>5 MR ARUNDALE: Yes, sir.</p> <p>6 Q. In this case, it was obviously a valid consideration</p> <p>7 that if the escape plot was merely disrupted, there</p> <p>8 could be an attempt later, for example during a hospital</p> <p>9 visit?</p> <p>10 MR ARUNDALE: Sir, there could be that or there could be</p> <p>11 a number of hypotheticals which could apply.</p> <p>12 Q. Those concerns were set out, weren't they, in the FA2,</p> <p>13 FA3 and the FA5?</p> <p>14 MR BURROWS: They were, sir. The one thing that we were not</p> <p>15 perhaps as happy as we would like to have been, was that</p> <p>16 while they were set out, other options for perhaps</p> <p>17 disrupting them -- again we are going into the</p> <p>18 hypothetical things -- could have been clearly</p> <p>19 documented.</p> <p>20 We didn't find that detail. Now, we are only</p> <p>21 reflecting on what we were presented with.</p> <p>22 Q. Of course.</p> <p>23 MR BURROWS: That is not to say discussions didn't happen,</p> <p>24 but if they happened our view would always be then they</p> <p>25 should be documented so as you could actually have</p> <p style="text-align: center;">Page 26</p>
<p>1 a record of going back and doing it.</p> <p>2 Q. Examples were given of video-link or for example seizing</p> <p>3 the video, but the reality is that there are an infinite</p> <p>4 number of ways which you could disrupt, aren't there?</p> <p>5 MR ARUNDALE: I think, sir, of course disruption could have</p> <p>6 been a positive, deliberate decision by commanders in</p> <p>7 relation to this.</p> <p>8 Q. Absolutely.</p> <p>9 MR ARUNDALE: But steps could be taken in future to mitigate</p> <p>10 escape attempts. I think there is a bigger picture to</p> <p>11 be considered here, which is the sustained public</p> <p>12 protection issues.</p> <p>13 Q. That is why APP specifically says action to mitigate the</p> <p>14 risk in the short term, disrupting, seizing the car,</p> <p>15 warning Izzet Eren may only serve to displace or delay</p> <p>16 that risk, and I stress "may". Yes?</p> <p>17 MR ARUNDALE: Yes, sir.</p> <p>18 MR BURROWS: Yes.</p> <p>19 Q. It may only be possible to effectively eliminate risk to</p> <p>20 the public through detention, prosecution and lengthy</p> <p>21 imprisonment of subjects, particularly where they are</p> <p>22 committed or recidivist offenders.</p> <p>23 From what you know of the Eren cousins, they were</p> <p>24 clearly committed and recidivist offenders weren't they?</p> <p>25 MR BURROWS: Yes.</p> <p style="text-align: center;">Page 27</p>	<p>1 Q. Do you know in general terms where Izzet Eren is now?</p> <p>2 MR ARUNDALE: No, sir.</p> <p>3 Q. Did you know he has escaped from custody?</p> <p>4 MR ARUNDALE: No, sir.</p> <p>5 Q. Again the TFC, the SFC and the TAC adviser recorded in</p> <p>6 the FA2, the FA3 and the FA5 the need to obtain evidence</p> <p>7 against the Erens to enable their prosecution and</p> <p>8 removal from the streets of London, yes?</p> <p>9 MR ARUNDALE: Yes, sir.</p> <p>10 MR BURROWS: Yes.</p> <p>11 Q. It may not be possible to develop a plan capable of</p> <p>12 securing sufficient evidence and to do so without risk.</p> <p>13 Again, that was the case here, wasn't it, an APP</p> <p>14 recognises the risk inherent in doing so?</p> <p>15 MR ARUNDALE: Yes, sir.</p> <p>16 Q. You will be familiar of course with the risk</p> <p>17 principles --</p> <p>18 MR BURROWS: Yes.</p> <p>19 Q. -- issued by the College of Policing?</p> <p>20 MR BURROWS: Of course.</p> <p>21 Q. Obviously a starting point is the police are in the</p> <p>22 business of managing risk and not of preventing risk?</p> <p>23 MR BURROWS: Yes, sir.</p> <p>24 MR ARUNDALE: And there is a separate APP directly relating</p> <p>25 to risk.</p> <p style="text-align: center;">Page 28</p>

7 (Pages 25 to 28)

1 Q. Absolutely.
 2 You knew, or you know now or you can probably
 3 surmise, that the intelligence in the case was
 4 non-evidential, yes?
 5 MR ARUNDALE: There was a mixture, sir, of evidential --
 6 Q. Before 11 December 2015 the intel was non-evidential?
 7 MR ARUNDALE: Yes, sir.
 8 Q. That would be a factor, applying this part of APP, that
 9 would point towards the operation running, a lack of
 10 evidence pre-deployment and the need to obtain further
 11 evidence in order to secure convictions?
 12 MR BURROWS: Absolutely, sir, and if there was a conspiracy
 13 believed to have been taking place, the police were
 14 under a duty to investigate that conspiracy.
 15 Q. It is appropriate to assess the level of risk to the
 16 public in the short and longer term. This may include
 17 consideration of whether the means by which more
 18 imminent risk is mitigated, may increase risk in the
 19 longer term as a result of reduced police control and
 20 intelligence opportunities, yes?
 21 MR ARUNDALE: Yes, sir.
 22 Q. Without speculating, using your experience would you
 23 agree that if there was a disruption by, for example,
 24 Izzet Eren's cell being searched and his being ghosted
 25 to Belmarsh overnight, this would likely compromise the

Page 29

1 incarcerated prisoners and their security and it becomes
 2 one for the prison service. That is a distinction that
 3 just has to be borne in mind.
 4 Q. Sometimes the prison service will just have to take
 5 prisoners beyond the gates of the prison to hospital,
 6 won't they?
 7 MR BURROWS: They will and they do it with some very
 8 dangerous criminals.
 9 Q. The prison service would not be able to protect
 10 a prisoner from an attack by armed criminals, would
 11 they?
 12 MR BURROWS: Sir, I am not intimate with the procedures
 13 within the prison service. I would suspect that if they
 14 had a concern or police had intelligence that such
 15 a threat was imminent, or possible, that the appropriate
 16 taskings would be made and the appropriate protection
 17 would be put in place.
 18 How that happens is beyond my realm of knowledge and
 19 expertise.
 20 Q. This was something the commanders in Ankaa had to
 21 consider, isn't it?
 22 MR ARUNDALE: Sir --
 23 Q. The risk of an attack later when there was no specific
 24 intel?
 25 MR ARUNDALE: Yes, sir.

Page 31

1 source of police intelligence?
 2 MR ARUNDALE: That could well do, sir.
 3 Q. If an escape plot were then attempted, following for
 4 example a late-night hospital visit, the police would
 5 have fewer opportunities and less control, wouldn't
 6 they?
 7 MR ARUNDALE: Yes, sir, and these are one of many
 8 hypotheticals which could apply in these scenarios.
 9 Q. There would be a risk that the van could be attacked on
 10 a later date with no police presence, wouldn't there?
 11 MR ARUNDALE: Could be, sir.
 12 Q. Even if the police had a special scheme in place, for
 13 example, to deploy resources at 3.00 am, it would
 14 increase the risk that you would only have ARV-trained
 15 officers responding, wouldn't it?
 16 MR BURROWS: Sir, I think our point in this is that if he
 17 was convicted and we realised that he had pleaded
 18 guilty, the grading of the security on him was a matter
 19 for the prison service, to which the police would have
 20 an intelligence input if they believed this was
 21 happening.
 22 I don't say that in any way to take away from the
 23 concept of running it, but there always in these cases
 24 becomes an issue as to when it becomes a matter for the
 25 police service to be concerned regarding lawfully

Page 30

1 The risk is the balance that is there throughout all
 2 these operations and clearly the objectives should have
 3 been an appropriate amount of incarceration.
 4 That always brings with it future risks of escape,
 5 that is a matter of course irrespective of when the
 6 operation is concluded. So this will always apply to
 7 any individual who is subject to this concept of
 8 prosecution and investigation.
 9 Q. Just finally on this increased risk, if there was
 10 an attack on a prison van during, for example, a late
 11 night visit, imagine the police were able to be there to
 12 protect the van, it would increase the risk of
 13 an intervention with victims present, wouldn't it?
 14 MR ARUNDALE: It could well do, sir.
 15 THE CHAIRMAN: Yes.
 16 MR BUTT: APP goes on to state:
 17 "In deciding whether to authorise the activation of
 18 the tactical arrest plan, a commander is therefore
 19 entitled to take into account the strength of the
 20 evidence against the subjects and consider whether there
 21 is sufficient evidence to warrant detention and
 22 prosecution of the subjects, overt police action at
 23 an early stage will reduce the likelihood of
 24 a successful prosecution. Overt police action at
 25 an early stage will notify the subjects of the covert

Page 32

1 police operation and result in reduced control and
 2 intelligence opportunities. The longer-term public
 3 interest would be served by the activation of the
 4 tactical arrest plan at this stage."
 5 Yes.
 6 MR ARUNDALE: Yes, sir.
 7 Q. For the reasons we have just seen, there was no evidence
 8 sufficient to justify an arrest before 11 December, was
 9 there?
 10 THE CHAIRMAN: That is matter for me, isn't it?
 11 MR BUTT: Have you heard of any such evidence in this case?
 12 THE CHAIRMAN: I don't think there has ever been any
 13 suggestion that there was.
 14 MR BUTT: Overt action before the armed deployment would
 15 reduce the likelihood of a successful prosecution,
 16 wouldn't it?
 17 MR ARUNDALE: Yes, it could well do, sir.
 18 Q. It would notify the subjects, resulting in reduced
 19 control and intelligence?
 20 MR ARUNDALE: Obviously, sir, you are reading this but of
 21 course it does need to be read in conjunction with the
 22 obvious legal constraints that are earlier on in APP,
 23 which gives you a much wider umbrella of considerations
 24 rather than just the specifics you are relaying to us at
 25 this point.

Page 33

1 terms of every high-risk prisoner, every terrorist who
 2 is arrested, everyone who presents a threat in the
 3 future, I am not quite sure because it is a matter for
 4 the criminal justice system and is that is as far as
 5 I think we can take that particular point.
 6 Q. Just to ask for clarity on a point, you said it is there
 7 to be considered, it has to be considered, doesn't it,
 8 it is a duty --
 9 MR BURROWS: Absolutely, that is the reason it is there,
 10 yes.
 11 THE CHAIRMAN: Yes.
 12 MR BUTT: Secondly, all high-risk prisoners that would not
 13 be the same as a high-risk prisoner which Izzet Eren
 14 was, in relation to whom there was specific intelligence
 15 of an escape plot.
 16 THE CHAIRMAN: That's a statement or a question?
 17 MR BUTT: Do you see the difference between a high-risk
 18 prisoner and a high-risk prisoner in relation to whom
 19 there is a specific intelligence of a planned escape
 20 plot?
 21 THE CHAIRMAN: It is a factor that has to be taken into
 22 account.
 23 MR BUTT: In your report you say you have noted the
 24 conclusions of ACC Hartley, can we bring up, please,
 25 IPC385, page 14. Where Mr Hartley reviews the detailed

Page 35

1 THE CHAIRMAN: Yes.
 2 MR BUTT: There is nothing in the content in APP concerning
 3 sustained public protection that I have missed out that
 4 puts a different spin on it; is there?
 5 MR ARUNDALE: Perhaps there is, sir, because it is not just
 6 this section, it is the legal powers and policies at the
 7 start which are the umbrella issues which need to be
 8 taken into account for everything that is contained
 9 within APP.
 10 MR BURROWS: Sir, when we gave our evidence yesterday, and
 11 we were asked about the planning meetings, I think it
 12 was my evidence that I would have expected the first
 13 meeting to have been the intelligence brought by the SIO
 14 to his superiors within SCO7, and a discussion about
 15 what are we going to do with this intelligence, what are
 16 the options.
 17 At that stage, all of those issues regarding
 18 sustained public protection would have been a discussion
 19 point, then a decision: are we going to mount
 20 an operation that has a firearms element? And if so
 21 then: what sort of operation would be appropriate?
 22 Would be the next stage.
 23 Linking the two things together I am not sure is
 24 that helpful. It is there for a reason, it is there in
 25 the APP for consideration. How far you can take that in

Page 34

1 considerations of the TFC and concludes:
 2 "The options considered would only mitigate risk in
 3 the very short term and potentially lead to greater harm
 4 in the future, when the police had no control,
 5 an opportunity to intervene to bring the required
 6 sustained public protection."
 7 Finally:
 8 "Advanced opportunities were explored and correct
 9 decisions were made to maintain the current operation as
 10 the best method to achieve strategy. There was no early
 11 intervention option available consistent with strategy."
 12 You saw that and considered that, yes?
 13 MR BURROWS: Yes we did, sir, yes.
 14 MR ARUNDALE: Yes.
 15 Q. You don't express any rationale for disagreement with
 16 that in your report, do you?
 17 MR ARUNDALE: I don't recall referring to that specifically.
 18 MR BURROWS: Do we refer to that -- can you just help us, do
 19 we refer to that particular part of his report in our
 20 report?
 21 Q. No, you say that where you disagree your set out your
 22 rationale and you say nothing about that paragraph in
 23 your report.
 24 MR BURROWS: Yes.
 25 Q. Thank you very much.

Page 36

1 Can we take that down, please, thank you.
 2 Can we look, please, at briefings, and I am going to
 3 confine this really to the intel about imitation
 4 firearms that was not briefed?
 5 MR BURROWS: Yes.
 6 Q. APP and the curriculum both say, and we are familiar
 7 with this, officers conducting the briefing should be
 8 mindful the content of the briefing may directly affect
 9 the response of armed officers to any subsequent
 10 perceived threat from the subject, yes?
 11 MR ARUNDALE: That's correct, sir.
 12 Q. Of course that means you must not overstate the threat,
 13 but it also means you must not say anything that could
 14 understate the threat or give a misleading impression to
 15 the AFOs, yes?
 16 MR BURROWS: Yes, sir. The reason we pause slightly is
 17 I remember the origins of that wording going into and it
 18 goes back beyond the APP, it goes beyond the 19 --
 19 sorry, the 2007 rewrite, it goes back further.
 20 Q. Yes.
 21 MR BURROWS: You are right, it is about making sure you get
 22 the balance of what you present correct. However, the
 23 emphasis was the risk on making statements like, "These
 24 are the most dangerous criminals that exist, they are
 25 armed to the teeth ..." So that was the background and

Page 37

1 that if not briefing this kind of intel is done as
 2 a matter of course, if it becomes the norm in armed
 3 policing, it is going to be quite a complex situation.
 4 You were expressing an obvious concern that the evidence
 5 you have heard in this inquiry could end up being
 6 replicated nationally?
 7 MR ARUNDALE: I think it is the opinions and I think both of
 8 us referred to this in slightly different ways
 9 yesterday.
 10 Q. Yes.
 11 MR ARUNDALE: It is an important question. There has always
 12 been a fundamental principle that intelligence must
 13 inform and all the intelligence must inform the
 14 strategy. It has always been a fundamental principle
 15 that you should properly and effectively brief the
 16 individuals involved in an operation.
 17 Q. Yes.
 18 MR ARUNDALE: Particularly the AFO/CTSFOs.
 19 There are dangers around anecdotal evidence and
 20 sometimes there are difficult questions about how much
 21 you brief, because there can be overload, and how you
 22 contextually present difficult information and I think
 23 that is the point we are coming from.
 24 If the point that was made becomes national policy,
 25 for example, do not brief in relation to intelligence

Page 39

1 there was a particular case, which I can't quite
 2 remember, Post Office robbery I think, where that
 3 applied and that was the background to it.
 4 Alongside that there is the whole issue of not
 5 understating risk.
 6 Q. Absolutely.
 7 MR BURROWS: I think our point, and no doubt you will come
 8 to it, is that we do believe that professionals, and we
 9 highly rate the professionals within SCO19, should be
 10 given the appropriate information that allows them to
 11 make informed decisions.
 12 Q. But you agree don't overstate, don't understate, it is
 13 not controversial?
 14 MR BURROWS: Correct, yes.
 15 Q. Issues relating to imitation weapons, air weapons and
 16 unloaded weapons are obviously not new, are they?
 17 MR BURROWS: No.
 18 MR ARUNDALE: No.
 19 Q. The difficult question of what police officers should do
 20 when they are confronted with an apparent firearm is as
 21 old as armed policing itself, isn't it?
 22 MR BURROWS: Yes, treat it as real until --
 23 MR ARUNDALE: It is, sir, and it is a core of training and
 24 always has been.
 25 Q. Mr Arundale, I think you expressed a concern yesterday

Page 38

1 about replica firearms, we are saying that is
 2 a dangerous path to tread, it needs to be extremely
 3 carefully considered and our opinion at the moment in
 4 this case alone is that it should have been briefed with
 5 appropriate caveats.
 6 Q. Mr Burrows, I think the point you are making,
 7 Mr Arundale, is that you said if it is to become the
 8 policy nationally then it needs to be thought through,
 9 it needs to be clearly articulated, risk based and it
 10 would have to go through all the filters you would
 11 expect the national policy to go through?
 12 MR BURROWS: Absolutely.
 13 MR ARUNDALE: Yes.
 14 Q. Because at the moment there is nothing in APP or the
 15 curriculum that says a word about imitation firearms, is
 16 there?
 17 MR ARUNDALE: I can't say for the curriculum, certainly
 18 can't speak for that because of the volume of material
 19 that is within that.
 20 Q. Nothing that springs to mind, anyway?
 21 MR ARUNDALE: Replica -- it is part of training, these are
 22 regular training scenarios where the subjects or the
 23 term "stooge" has been used, but where the actors, the
 24 role actors playing in there, will use a range of
 25 weaponry, a whole range of weaponry from blunt

Page 40

1 instruments to edged weapons to replicas to real
 2 firearms. The whole part of the training is to allow
 3 the AFOs to make rational risk-based decisions in
 4 relation to this.
 5 I accept the point that the issue we are speaking
 6 about has not been explored in detail in the APP.
 7 I can't speak for the curriculum at this point in time,
 8 but it is potentially an area that is worthy of more
 9 detailed consideration because the views expressed by
 10 one or two of the officers give us cause for concern.
 11 MR BURROWS: Sir, the other point I think to make is we
 12 would accept that you always treat a gun as real,
 13 a number of reasons for that.
 14 Replica guns can be reactivated -- sorry, not
 15 reactivated, can be altered to actually fire live
 16 rounds.
 17 Deactivated guns can be reactivated.
 18 Starter pistols can be bored out and made to fire
 19 cartridges.
 20 Even if it looks like a replica, even if it was
 21 a replica originally, it doesn't mean it is whenever you
 22 make the point.
 23 Just to finish my point, if I may, is I was looking
 24 for some quick Google searches recently because I have
 25 it elsewhere, the percentage of weapons that the police

Page 41

1 MR ARUNDALE: Yes, it was historical, but I wouldn't
 2 necessarily extrapolate that to say it is irrelevant to
 3 brief the officers in relation to it.
 4 Q. I am not suggesting that for a moment, I am just asking
 5 because I am not sure it was clear when you wrote your
 6 report, through no fault of your own.
 7 MR ARUNDALE: Of course "historical" in terms of timescales
 8 is a subjective --
 9 MR BURROWS: As I made it clear --
 10 THE CHAIRMAN: Can we move on, Mr Butt. We seem to be
 11 getting unnecessarily bogged down, I would remind you
 12 that in your original application, whilst I wasn't going
 13 to hold someone of your experience to the minute, you
 14 said that your questions would take no more than
 15 45 minutes. I think that there are some areas in
 16 respect of which you are going a little bit off-piste
 17 and I would rather that the questioning was more
 18 focused.
 19 Thank you.
 20 MR BUTT: Can I finish this area with two questions.
 21 The first is you say you cannot be selective about
 22 briefing intelligence.
 23 MR ARUNDALE: I didn't quite say that, but you have to be
 24 careful and I think to have a principle that you do not
 25 brief certain aspects of intelligence that may reduce

Page 43

1 come across in England and Wales which fall into that
 2 category of reactivated, replica weapons, air weapons,
 3 is high.
 4 THE CHAIRMAN: Can I interrupt, because there is no dispute,
 5 everybody agrees you treat an imitation as real until
 6 the contrary is proved.
 7 So let's proceed.
 8 MR BURROWS: Yes.
 9 MR BUTT: Of course in this case it wasn't an imitation, was
 10 it, it was an air weapon.
 11 MR BURROWS: Well it was a BB gun, which may meet the
 12 categorisation of an airgun.
 13 Q. The point you are making, Mr Burrows, is there is no
 14 standard definition of "imitation firearm". Do we need
 15 deactivated, blank firing, air weapon?
 16 MR BURROWS: Indeed as my colleague made clear yesterday,
 17 and I think the chair re-echoed, the offences in
 18 relation to replica weapons being held for intent is
 19 extremely high.
 20 MR ARUNDALE: Sir, perhaps for clarity, air weapons can be
 21 fatal as well, I know of one fatality at least this year
 22 from an air weapon.
 23 MR BURROWS: Indeed.
 24 Q. Do you know now that that intelligence dated back to the
 25 night before, so to that extent it was historical?

Page 42

1 the perception of threat is a dangerous path to tread.
 2 That needs to be carefully thought through, because
 3 we have heard that if it increases the threat some
 4 officers want to know about it, if it potentially
 5 decreases the perception of threat, they wouldn't.
 6 Q. The intelligence about, for example, shooting the lock
 7 three times was not briefed to the AFOs, was it?
 8 MR ARUNDALE: No.
 9 Q. That would obviously have been intelligence that could
 10 have increased the threat?
 11 MR ARUNDALE: The perception of threat, yes.
 12 MR BURROWS: Absolutely. That morning, that conversation
 13 that was recorded could be interpreted either way.
 14 Q. Absolutely. So it was a difficult balance for the TFC
 15 to come to what of the intelligence he briefed, wasn't
 16 it?
 17 MR ARUNDALE: That is on the assumption that the TFC was in
 18 possession of all the relevant intelligence.
 19 Q. We know he knew about shoot the lock three times, we
 20 know he knew about the imitation intelligence?
 21 THE CHAIRMAN: We also know, Mr Butt, that he didn't know
 22 about that which pointed far less conclusively in favour
 23 of, or in the direction of, live firearms.
 24 The point has been made, I don't think it needs
 25 further establishing.

Page 44

1 MR BUTT: Can I finally ask this.
 2 Do you think there is a risk of confusion or
 3 contradiction if the message is, in effect, treat all
 4 firearms as real and loaded but this one might be
 5 an imitation?
 6 MR BURROWS: We certainly wouldn't advocate that form of
 7 words to be used in a briefing. The form of words that
 8 I would expect to be used if there was information that
 9 they had difficulty obtaining live firearms, is:
 10 "We heard last night ..."
 11 You might not add the "last night" in, depending on
 12 source protection, but you might say:
 13 "Our current information is they are having
 14 difficulty. However, intelligence is imperfect, it may
 15 change, we may not be informed, and you may well face
 16 a live firearm tomorrow."
 17 MR BUTT: Sir, you will be pleased to know I am moving on.
 18 THE CHAIRMAN: Good.
 19 MR BUTT: Can I ask you about "firearms enabled", very
 20 briefly and I would like to take you to your report at
 21 paragraph 616, where you say this:
 22 "In the current case under review we can only
 23 speculate as to whether the use of the term firearms
 24 enabled contributed to the outcome. Nevertheless, we
 25 are of the clear view that the use of term was not

Page 45

1 MR BURROWS: I do, sir, and I think there was a little bit
 2 of confusion as to what we were talking about at that
 3 time particular time, which was clarified --
 4 THE CHAIRMAN: It was probably my fault.
 5 MR BUTT: The main briefing is obviously the briefing with
 6 the TFC when the firearms warnings were given, yes?
 7 MR BURROWS: Yes, sir.
 8 Q. As we saw, the SOP says all main briefings must be
 9 recorded and it is left discretionary -- you have given
 10 your view about how all firearms briefings in your
 11 opinion should be recorded?
 12 MR BURROWS: Yes.
 13 Q. Thank you.
 14 Can I move on, I hope quite briefly, to tactics.
 15 At 613(ii) of the report you stressed the critical
 16 need for discipline-appropriate terminology, yes?
 17 MR BURROWS: Yes.
 18 Q. In your report you refer to form of decisive action that
 19 took place on Bracknell Close as an "intervention",
 20 don't you?
 21 MR BURROWS: Yes, sir.
 22 Sir, before we move on to that point, I realise that
 23 would be a significant point to cover, I think
 24 discipline-appropriate terminology was referring
 25 backwards to the firearms enabled wording which would

Page 47

1 helpful. The use of the term would have reinforced the
 2 view of all involved that those planning the escape
 3 attempt had access to some sort of firearm or firearms
 4 which indeed they had."
 5 Yes.
 6 MR ARUNDALE: Yes, we have heard one witness at least had
 7 a different view of what the term meant, of course,
 8 during the course of this inquiry.
 9 Q. Absolutely, yes.
 10 You also note that the firearms enabled transmission
 11 was at 7.30 in the morning and none of the AFOs queried
 12 what it meant and they could have done so?
 13 MR ARUNDALE: Yes, sir.
 14 Q. In your summary conclusion 10, you say:
 15 "The term firearms enabled, although not recognised
 16 armed policing terminology, does not appear to have
 17 increased the threat assessment of the CTSFOs."
 18 Yes?
 19 MR ARUNDALE: Yes, sir.
 20 Q. In your report you say that is because it really merely
 21 confirmed what they said they believed already?
 22 MR ARUNDALE: Yes.
 23 Q. Very briefly on briefings, you said you would consider
 24 the tactical briefing the main briefing when you were
 25 taken to the MPS SOP, do you recall that yesterday?

Page 46

1 not be recognised by firearms officers.
 2 Q. Absolutely.
 3 MR BURROWS: So that is what that is referring back to.
 4 Q. Generally in firearms operations would you agree
 5 discipline-appropriate terminology is important?
 6 MR ARUNDALE: Yes.
 7 Q. Mr Burrows, I think you were very assiduous yesterday to
 8 ensure the correct phrases are used all the time, yes?
 9 MR BURROWS: Yes.
 10 Q. You also, in addition to calling it an "intervention",
 11 refer to what took place as a "dynamic intervention"?
 12 MR BURROWS: Yes.
 13 Q. Do you agree that intervention is a higher risk form of
 14 decisive action than interception?
 15 MR BURROWS: Sir, we could get into discussion regarding the
 16 terms intervention and interception, and we will if you
 17 so wish.
 18 However, the important bit that we heard in evidence
 19 while we were here was that the tactical response in
 20 either case was going to be the same. Now, we do accept
 21 that clearly if a person is present when you are
 22 intervening, ie a victim in the meaning of what I think
 23 you are referring to, then of course the risks are going
 24 to be increased, as it will be if there are members of
 25 the public around as well.

Page 48

1 Q. Do you agree, we can look at the curriculum if
 2 necessary, that intervention is specifically stated to
 3 be a higher risk form of decisive action than
 4 interception?
 5 MR BURROWS: Not necessarily. I think the risks involved
 6 for everyone are high because of the nature and type of
 7 the response that is taking place.
 8 Q. Mr Arundale, do you agree that intervention is a higher
 9 risk form than interception generally?
 10 MR ARUNDALE: That is the way it was written, yes, I do
 11 understand, sir.
 12 Q. In the curriculum?
 13 MR ARUNDALE: Yes, in the curriculum but the caveat is it
 14 all depends on the nature and the incident of the event
 15 that you are relating those words to, but yes.
 16 Q. You agree, and we can look at it if necessary, the
 17 curriculum specifically says intervention is higher risk
 18 than interception, yes?
 19 MR ARUNDALE: Yes.
 20 Q. The curriculum also stresses the need to be very clear
 21 in not to confuse intervention with interception,
 22 doesn't it?
 23 MR ARUNDALE: It does.
 24 Q. It would be very dangerous if AFOs thought that they
 25 were going to wait to intervene rather than to

Page 49

1 shoot, then the risks of course go up for all concerned.
 2 So that point we thoroughly accept and agree on.
 3 Q. It is not the updated curriculum, is it, it has always
 4 been the case that intervention is defined as police
 5 decisive action when victims -- described as anyone at
 6 potential risk of harm from the subjects -- are present,
 7 yes?
 8 MR ARUNDALE: In relation to interception?
 9 Q. Intervention has always been described as decisive
 10 action --
 11 MR ARUNDALE: Yes, intervention, yes.
 12 Q. That is not a new thing, is it?
 13 MR ARUNDALE: No, it is not.
 14 I think the point is we do agree with your point
 15 that's coming in relation to terminology, what we have
 16 identified particularly is that definition is polarised
 17 and what it doesn't do, it is not helpful in relation to
 18 sustained public protection, because it almost infers
 19 that you have two polarised ends of tactical responses
 20 to consider. As we have heard, in many conspiracies,
 21 inchoate offences, the point of resolution could be at
 22 a different point on that continuum, and perhaps it
 23 should be a continuum rather than two words which infer
 24 wholly different types of action.
 25 But we do agree with your point as written and we do

Page 51

1 intercept, wouldn't it?
 2 MR BURROWS: Sir, we are both pausing, because we have
 3 considered this at great detail, particularly since the
 4 MPS response in terms of pointing out the distinction.
 5 There are two things.
 6 First of all, when we used the words in our reports
 7 not having sight of the updated curriculum, we used the
 8 words in the ordinary sense of the meaning.
 9 Certainly I agree that when Izzet Eren and his
 10 compatriot were intercepted, they were intercepted.
 11 There is no doubt whatsoever in ordinary meaning of the
 12 word, without referring to the curriculum, they were
 13 travelling somewhere to commit a crime and the police
 14 intercepted them before they committed it.
 15 So we recognise that. However, even at the point of
 16 interception, and I'm not getting into the definition as
 17 set out in the curriculum, we can address that, even at
 18 the point of interception, the police decide that we are
 19 moving forward to intervene and do something, and it was
 20 that meaning of "intervene" that we used in our report
 21 and the nature of that response was dynamic.
 22 I do understand the point that you are coming to,
 23 but I just think it is important to set that bit out in
 24 advance. Yes, if there is a person, a hostage, or they
 25 are in contact with the victim that they are about to

Page 50

1 accept that we have used ordinary language in some of
 2 the descriptors that we have used without reference to
 3 the curriculum.
 4 Q. What you described then is completely different to what
 5 is in the curriculum, isn't it?
 6 MR ARUNDALE: It absolutely is, but it is back to our
 7 earlier point. This is down to the fact that we have
 8 applied our minds to considering this in some depth in
 9 relation to how relevant that section of the curriculum
 10 is to this incident and future incidents. We think that
 11 needs revision. It needs revisiting to make more
 12 relevant. That was something which was written at
 13 a different time of course and we think this incident
 14 and others indicate that it does need revisiting.
 15 MR BURROWS: Sir, when we were involved closely in the
 16 redrafting of the manuals, that became the APP
 17 eventually, we were very deliberate in setting out the
 18 concept that words should be used as far as possible in
 19 their ordinary meaning so that when he got into
 20 environments like this, we didn't get into
 21 technicalities and many of the definitions that
 22 previously existed were removed.
 23 We have looked at these definitions, the two
 24 definitions, in detail. We could come close to actually
 25 trying to argue -- but it would become an academic

Page 52

1 argument, we don't think it is worthwhile -- that you
 2 could have defined the events that took place in
 3 Bracknell Close close to one or the other. The big
 4 issue is whether the victim was present. At one stage,
 5 sir, you said the victim was the state, but I realise
 6 the state is not a person.
 7 THE CHAIRMAN: I don't think I did, but somebody may have.
 8 MR BURROWS: Apologies if I picked that up wrong.
 9 THE CHAIRMAN: That is all right.
 10 MR BURROWS: However, you then get into the issue of the
 11 victim in terms of proximity and immediacy. I do
 12 realise the tipping point here was how close the van was
 13 going to get and certainly it was decided it was not
 14 going to get close and I applaud the MPS and the TFC and
 15 SFC for ensuring it wouldn't get close.
 16 But had it got close, there would have been
 17 a victim.
 18 Q. Mr Burrows, you have just said that what happened could
 19 be argued to be close to an intervention. Can I invite
 20 you to consider whether that is in fact wrong, because
 21 what the curriculum says:
 22 "Intervention: dealing with a subject whilst they
 23 are in the act of committing an offence, where potential
 24 victims are present at the location and the subject is
 25 physically in a position to carry out the threat ..."

Page 53

1 that that, as written, presents two different scenarios.
 2 We are saying to you that we think that should be
 3 revisited and we are also saying that we think that the
 4 method of resolution is where the risk should be
 5 assessed, not on the basis of the words but on the basis
 6 of the actions that the officers are directed to take.
 7 That that should define risk rather than the words
 8 that you are labouring with us at this point in time.
 9 MR BURROWS: Sir, if we were writing this again, to avoid
 10 this discussion, we would probably have used the term
 11 "dynamic tactical response" --
 12 THE CHAIRMAN: Yes.
 13 MR BURROWS: -- in terms of what happened when the officers
 14 went forward.
 15 THE CHAIRMAN: Thank you.
 16 MR BUTT: Equally with "dynamic intervention", in a number
 17 of occasions you say what took place was dynamic
 18 intervention. That is just wrong, isn't it?
 19 MR ARUNDALE: It is dynamic action.
 20 Q. Dynamic intervention is specifically defined in module
 21 D9, isn't it?
 22 MR BURROWS: Yes, sir, but as we have heard the response,
 23 what happened when they moved forward would have been
 24 the same in either case. That was the evidence that we
 25 heard being given here.

Page 55

1 THE CHAIRMAN: I think what is happening, Mr Butt, if I may
 2 say so, is that these two gentlemen are highlighting
 3 what might be a potential difficulty because of the use
 4 of the two words in such close proximity to one another.
 5 Yes, it was an interception, but having intercepted,
 6 they then intervene, in the literal sense of the word,
 7 and that is how I understand the use of the word
 8 "intervene" to be used in this exercise.
 9 MR BUTT: Mr Arundale, would you accept it was a mistake
 10 that in your report in over 100 occasions you describe
 11 what took place in Bracknell Close as an intervention?
 12 MR ARUNDALE: You will note from documentation that has been
 13 submitted by the MPS, by the NPCC, that many people use
 14 the ordinary language to put into this. I can accept
 15 that with hindsight we could have extrapolated the
 16 argument we are putting in there now, but we didn't.
 17 Yes, it could have been written slightly differently.
 18 In terms of being a mistake, I think possibly if
 19 anything what we have done is we have applied our minds
 20 in a considered manner in relation to what happened. We
 21 have very much focused on the fact is that you could
 22 argue that a substantive offence was committed at that
 23 stage, which could meet a sustained public protection
 24 criteria. The victim is not present in terms of the
 25 description of a physical victim, but we do fully accept

Page 54

1 Q. Dynamic intervention is subject to an extremism test when
 2 life is in danger, isn't it?
 3 MR ARUNDALE: It is, and as you have seen that we have said
 4 is that certain tactics we think carry with them such
 5 an elevated level of risk that they should be associated
 6 with such a test.
 7 Again, it should be the actual threat and risk which
 8 defines the decision making, not a word which has the
 9 potential to be interpreted in different ways, because
 10 they are not incident specific.
 11 MR BURROWS: We use the term in extremism in relation to in
 12 the face of death from the dictionary, or between a rock
 13 and a hard place. We would submit that at the point
 14 where the officers move forward, as did happen, it
 15 actually ended up a situation where death was
 16 a possibility, the officer could have been shot, the
 17 officers could have been shot had the intelligence --
 18 had the belief been real, and the police were at that
 19 point between a rock and a hard place: what do we do at
 20 this point in time?
 21 Q. Can we look, please, at extraction and containment and
 22 call out and what your recommendations are for these
 23 tactics going forward?
 24 THE CHAIRMAN: Thank you.
 25 MR BUTT: At paragraph 686 you say:

Page 56

1 "We are of the opinion that when an armed
 2 intervention tactic considered high risk is employed,
 3 the Article 2 test of absolute necessity or absolutely
 4 necessary should be applied."
 5 Is it your view that extraction should be considered
 6 a high-risk tactic to which that test should be applied?
 7 MR BURROWS: Yes, sir.
 8 Q. How is extraction described in the National Police
 9 Firearms Training Curriculum?
 10 MR BURROWS: Sir, I know -- I believe we have seen that on
 11 one of the slides yesterday, if I recall right, and
 12 I don't want to try and do it from memory, so if you
 13 want to --
 14 Q. Of course.
 15 Do you think it describes it in any way as
 16 a high-risk tactic?
 17 MR BURROWS: Sir, I think I described quite clearly in our
 18 evidence why we believed that moving forward to
 19 a vehicle where you believe that someone has a weapon
 20 such as a Skorpion, which can fire 10 to 12 rounds in
 21 one second, that's always going to be high risk, if you
 22 are moving forward with the idea of laying hands on
 23 them, and pulling them from a vehicle, which you do not
 24 know whether it is locked from the inside or is not
 25 locked from the inside and one with which is steamed up,

Page 57

1 belief is, what they have been briefed, all incidents
 2 will have different variables and different dimensions
 3 to them. It is just a common sense issue when you
 4 compare some options, such as contain call out for
 5 example, or disruption, to actually asking officers to
 6 run forward to a vehicle that is steamed up when they
 7 believe there are desperate criminals in there with
 8 automatic weapons is obviously going to be higher risk
 9 than other options, and that is what we ask the
 10 commanders to assess.
 11 MR BURROWS: Sir, if there is a vehicle travelling through
 12 London or some other part of the country where someone
 13 had a knife to the throat of someone within that
 14 vehicle, it might be, it might be, minimising risk to
 15 run forward and pulling them out of the vehicle, it
 16 might be. But that applies to all tactics, including
 17 intervention in hostage situations where dynamic
 18 intervention would take place. It might be the safest
 19 way to minimise the risk, otherwise you wouldn't go into
 20 the building, you would play the long game to get them
 21 out.
 22 Q. Do you think the curriculum should be revised in order
 23 to make it clear in your opinion that this is
 24 a high-risk tactic?
 25 MR ARUNDALE: It is accepted that the curriculum needs

Page 59

1 that was operation specific, has high risk.
 2 THE CHAIRMAN: Yes.
 3 MR BUTT: Let's look please at COP4, page 26.
 4 This content is reproduced in many different places,
 5 but it is always expressed in the same way:
 6 "An extraction is a tactical option whereby the
 7 subjects are removed from the vehicle by officers who
 8 move forward and physically take hold of them. The
 9 purpose of the extraction is to minimise risk to both
 10 the subject and the officers, preserve evidence and
 11 rapidly gain control, thereby neutralising any threat."
 12 What the curriculum says in terms is that this
 13 tactic minimises risk, not that it is high risk.
 14 THE CHAIRMAN: No, the purpose is to minimise. It does not
 15 say that it is not high risk. It says the purpose is to
 16 minimise risk.
 17 MR BUTT: I'm so sorry, sir --
 18 THE CHAIRMAN: It doesn't say whether the risk is low,
 19 medium or high, it says, quite rightly, that the purpose
 20 is to minimise risk.
 21 MR BUTT: All it says in relation to risk is the purpose is
 22 to minimise risk, yes?
 23 MR ARUNDALE: Yes, sir, it says the purpose, and of course
 24 the issue of whether something is high risk has to take
 25 account of the actual circumstances, what the officers'

Page 58

1 revision, full stop, it has not been subject to the same
 2 rigour as APP. One of the benefits of the APP being in
 3 the public domain is that anybody can challenge it and
 4 that is a really healthy situation to be in. There are
 5 reasons why, as we have covered, that this is not in
 6 there.
 7 Yes, my understanding is the whole of the curriculum
 8 is being revisited and hopefully that will take into
 9 account lessons from coroner's courts, this inquiry and
 10 other issues.
 11 We are not saying that this is not a valid tactic.
 12 It is absolutely essential in certain circumstances,
 13 particularly hostage rescue, particularly in certain
 14 terrorist situations and clearly when there are other
 15 methods, other requirements to rapidly dominate.
 16 What we are saying is that there a strong body of
 17 evidence worldwide as well that police officers running
 18 towards vehicles where there is automatic weapons and
 19 desperate criminals in them is not a good thing to do.
 20 There needs to be a really strong case for them to do
 21 that and those risks must be taken into account.
 22 Q. Can we look at the alternative of contain and call out.
 23 Can we begin, please, with COP4, page 7.
 24 This is the content relating to MASTS.
 25 Can you see in the section:

Page 60

1 "Generally before a tactical option to intercept or
 2 intervene is instigated [this is in relation to a MASTS
 3 deployment] the officers should endeavour to deploy from
 4 a vehicle without being seen or drawing attention from
 5 a third eye."
 6 That is obviously essential, isn't it, if you are
 7 going to be putting in place either a containment and
 8 call out or an extraction in a case such as this?
 9 MR ARUNDALE: Yes, sir.
 10 Q. We know in this case, in Bracknell Close, there were
 11 concerns about a third eye, weren't there?
 12 MR ARUNDALE: There were.
 13 Q. Obviously there would have been no opportunity to
 14 evacuate the houses or clear the public before the ARVs
 15 pulled up without risking a compromise, yes?
 16 MR BURROWS: Sir, I think at the point -- I was going to say
 17 the point of intervention, I meant that in the literal
 18 sense of the word not the technical one. The decision
 19 was made that they would go overt with the prison van in
 20 any case. So at the point where the police decide to
 21 intervene and step out in the road with guns and police
 22 caps on, it would go very quickly.
 23 The question is, can you do that before the third
 24 eye could send a message to the people in the car, not
 25 about the compromise to the wider operation.

Page 61

1 necessitate, it doesn't say this must, this will, and
 2 I am not sure to what extent those words are defined in
 3 the curriculum, but they are defined in the APP, so when
 4 the APP says must, it is a must, and when it says may,
 5 it is a may.
 6 MR ARUNDALE: Discretionary.
 7 Q. You should ensure the vehicle is sufficiently contained,
 8 and you have given your view on that, and it may
 9 necessitate a sterile area front and rear, yes?
 10 MR ARUNDALE: Yes.
 11 Q. There would clearly be some drawbacks to contain and
 12 call out in Bracknell Close, wouldn't there?
 13 MR ARUNDALE: Yes.
 14 Q. I am not going to repeat the ones we looked at
 15 yesterday, I want to ask you about a few more.
 16 First of all, it would be impossible to create
 17 a sterile area behind the vehicle, wouldn't it?
 18 MR ARUNDALE: You use an interesting term there, sterile
 19 area, containment is a wider concept in terms of
 20 containment can be visual, it can be partial in areas.
 21 No venue is perfect, I would suggest. Every area
 22 such as Bracknell Close, which we have seen, does bring
 23 its challenges but that doesn't mean to say it is not
 24 appropriate nor impossible.
 25 Q. Well, there is a garden behind with gates, someone could

Page 63

1 Q. That is not what I am talking about, I am talking
 2 about -- I don't think you are disagreeing with me, you
 3 wouldn't be able to evacuate the houses and clear
 4 everyone off Bracknell Close without alerting the
 5 occupants of the car?
 6 MR BURROWS: Of course not, no, yes.
 7 Q. You would have to pull out in fast time whatever the
 8 tactic, yes?
 9 MR BURROWS: Yes.
 10 THE CHAIRMAN: Yes.
 11 MR BUTT: Can we look at the curriculum content on contain
 12 and call out, COP14, page 9:
 13 "Prior to any communication with the subject,
 14 officers should ensure the vehicle is sufficiently
 15 contained. This may necessitate police resources being
 16 deployed to create a sterile area by preventing traffic
 17 and members of the public approaching from the front or
 18 rear of the stationary vehicle."
 19 Yes?
 20 MR ARUNDALE: Yes, sir.
 21 Obviously that is a concept contained, it doesn't
 22 necessarily mean truly and physically contained, it can
 23 mean visually contained, it is a bit like the
 24 surveillance concept of "control".
 25 MR BURROWS: Yes, sir, and an important word is this may

Page 62

1 have walked out?
 2 MR ARUNDALE: Yes, but there are still ways of visually
 3 containing that area or positioning officers in
 4 different positions.
 5 If you like on this particular issue, the risks from
 6 extraction are exactly the same in those areas, because
 7 you cannot necessarily control everybody at the same
 8 time, and there are risks if weapons are being fired,
 9 which would be apparent in either tactic.
 10 Q. Although the curriculum says in relation to MASTS there
 11 is an ability because of the training of the officers to
 12 deal with multiple subjects at the same time?
 13 MR ARUNDALE: Yes, and as you have heard, the officers have
 14 the ability to work dynamically and make decisions on
 15 the ground and that is where they can actually make the
 16 best job they can of a containment in these
 17 circumstances.
 18 Q. You mentioned the ability to use less-lethal options
 19 during containment and call out, obviously a problem you
 20 would have if the officers are as they must be behind
 21 the armed response vehicle, and the subjects are getting
 22 out of doors of their car, you could be beyond the
 23 operational range of the device, couldn't you?
 24 MR ARUNDALE: Sir, I think you are starting to make a lot of
 25 assumptions there, we haven't necessarily said they must

Page 64

1 be behind the vehicle. For example, you can move
 2 forward towards a vehicle and not extract but you can
 3 contain and call out, officers can actually put
 4 themselves in a range of different locations. Clearly
 5 it is better to be behind cover but contain and call out
 6 is a wider concept, the same as extraction is, it does
 7 give officers some leeway to make the best of
 8 circumstances and any barriers or cover that is there.
 9 MR BURROWS: Sir, unless you want us to get into the
 10 hypothetical how you may have deployed in that
 11 particular case, there were two other vehicles parked
 12 alongside, one restricting anyone either entering or
 13 leaving the mission car with ease, and there were two
 14 other cars parked alongside.
 15 One of which was a Land Rover, and again you have
 16 the ability to use that as cover, so you don't have to
 17 use your police vehicles, you can use other things in
 18 the street for cover as well.
 19 We have not really looked at the videos, which were
 20 in public media, and the photographs, we visited the
 21 scene and if I had been in those cars, or I had been the
 22 TFC or the OFC or the tactical firearms commander, and
 23 I knew that vehicle was in that position, with those
 24 other cars beforehand, I would want to consider could
 25 I do a safer option, given that there may be weapons of

Page 65

1 the view of the NPCC that the curriculum is in need of
 2 a review, and perhaps some of the issues we talked about
 3 today might inform part of that review.
 4 Q. Thank you.
 5 You have read, Mr Nicholson's statement, haven't
 6 you, Kevin Nicholson?
 7 MR ARUNDALE: Yes, sir.
 8 MR BURROWS: Yes, we have.
 9 Q. You summarise parts of it at paragraphs 700 and 704 of
 10 your report.
 11 You don't mention his conclusion based on what he
 12 saw, which was limited, but his conclusion was that in
 13 the situation at Bracknell Close, extraction was the
 14 appropriate tactic and containment and call out would
 15 clearly be inappropriate?
 16 MR BURROWS: The reason we don't comment on that is because
 17 we noted his caveat that he had been provided with
 18 limited information, and that is the reason why we
 19 didn't comment on his conclusion.
 20 Q. Equally, that was the view of Mr Hartley, wasn't it, who
 21 said at IPC385, page 24:
 22 "The MASTS platform allows both a static vehicle
 23 interception or moving vehicle and allows for
 24 containment extraction at the point of contact.
 25 Extraction brings the benefit of immediately

Page 67

1 the type that we are told in the vehicle, and given that
 2 I did not know whether there were two, three or four
 3 people or who they were in the ...
 4 I suppose our biggest concern is, when we came here
 5 and heard that it never happens in London, that was
 6 a major concern to us. Because we do know it happens
 7 all throughout the country elsewhere.
 8 Clearly every situation where police have a vehicle
 9 stopped with people in it will require risks. Sometimes
 10 the options have to be hybrid ones, not necessarily
 11 module A or module B. That is why the word "dynamic" is
 12 often used in how the police respond. I think we are in
 13 danger here of us being asked to justify why the
 14 curriculum has the words in it that it does. We accept
 15 it has gone through, many years of very skilled and
 16 operationally specific issues. We are simply being
 17 asked to give our advice.
 18 Q. Of course.
 19 MR BURROWS: Our advice, our opinion, on options and that is
 20 what we have done and --
 21 Q. And we are grateful for your advice, but the difficulty
 22 is, of course, that the officers have to implement the
 23 curriculum in their own training, so if the curriculum
 24 needs to change, that is the problem.
 25 MR BURROWS: Our view, and I think we understand that it is

Page 66

1 overwhelming the occupants of the vehicle, removes any
 2 ability to try and escape in the car, leading to
 3 pursuit, and removes any decision making by the subjects
 4 for flight or flee. In short, they are overwhelmed and
 5 detained."
 6 Yes.
 7 MR ARUNDALE: Yes, sir, and I think we have very much
 8 covered why we disagree with those assertions.
 9 MR BURROWS: Similarly, sir, we were aware that Mr Hartley
 10 had had limited information available to him as well.
 11 Q. But rather more extensive than Mr Nicholson?
 12 THE CHAIRMAN: Yes.
 13 MR BUTT: It is clear that a large number of highly
 14 knowledgeable individuals are firmly of the view, aren't
 15 they, that extraction was the appropriate tactic?
 16 MR ARUNDALE: Yes, sir.
 17 Q. Can I finally suggest on this topic that there was no
 18 outright rejection of containment and call out. It was
 19 considered in the FA5, wasn't it?
 20 MR ARUNDALE: The document indicates it was a potential
 21 option, but what we have said is that the evidence that
 22 we have seen tends to indicate that it was
 23 a pre-determined outcome.
 24 MR BURROWS: So, our concern before coming here and in
 25 writing our report, and I hope it does come through in

Page 68

1 our reports, that we tried to be balanced and fair and
 2 we do stress that we can only base our observations on
 3 what we read in them.
 4 The indication that came through every time we read
 5 the forms was that there seemed to be one outcome always
 6 on the table. But you are quite right in saying that
 7 there are other ones referenced.
 8 Q. The important part to reference them would be the FA5,
 9 wouldn't it?
 10 MR BURROWS: The FA5, indeed.
 11 What --
 12 Q. The evidence -- I'm so sorry, Mr Burrows.
 13 MR BURROWS: What concerned us was that when we arrived and
 14 listened to the evidence, everyone appeared to be saying
 15 that the only option that they ever believed was going
 16 to take place was extraction.
 17 Q. They all said that containment and call out remained
 18 an option but in the circumstances of this case it was
 19 ruled out as not being an appropriate option.
 20 MR ARUNDALE: I think I have heard some different evidence,
 21 for example that it would never be an option in London.
 22 So I think the evidence I heard was slightly different
 23 to that.
 24 Our point is that it should have been truly and
 25 properly considered. We did not see evidence that it

Page 69

1 deemed to be an inappropriate option.
 2 I just want, Mr Burrows, to ask you something,
 3 genuinely to help you with this. You said yesterday you
 4 could not think of any reason why that would not be
 5 done. Can I just suggest what could be a reason and it
 6 is this.
 7 If you replaced the Serco driver with an undercover
 8 AFO, and a criminal is therefore induced to think he is
 9 just a Serco driver, and that criminal either points
 10 a gun at him, real or imitation, or intimates he is
 11 about to do that, there is only going to be one option
 12 open to that undercover police officer, isn't it, and it
 13 is going to be to shoot him.
 14 MR BURROWS: Sir, I was aware of that argument. I am not
 15 quite sure where I picked that out, but I am aware of
 16 that argument.
 17 I need to link my answer straight back to the
 18 sustained public protection. I can understand why this
 19 operation was mounted. I can understand all the reasons
 20 why we would go for the conspiracy, the big picture
 21 arrests if possible. I can understand why the two MASTS
 22 teams, the surveillance, et cetera, was there.
 23 All I can do is give the answer that I probably gave
 24 yesterday, which was if I was in command, if the option
 25 was we can replace them with police officers and we will

Page 71

1 was truly and properly considered for that deployment.
 2 Q. Although it clearly was by the tactical adviser?
 3 MR ARUNDALE: It was laid out by the tactical adviser, of
 4 course what we are saying is the decision as you have
 5 rightly said yourself was a matter for the TFC in
 6 conjunction with the SFC. We have not seen that
 7 evidence.
 8 MR BURROWS: There is no weighting within the curriculum
 9 that we are aware of one option over the other option.
 10 We are also aware that they are both trained and trained
 11 by the Metropolitan Police Service as they are trained
 12 up and down the country as well.
 13 Considerable time and money is put into both sets of
 14 training. Yet what we have heard is that it would never
 15 be appropriate in London. We consider that needs to be
 16 balanced somewhere.
 17 Q. The chairman of course will review all the evidence and
 18 I have asked you my questions on that topic.
 19 THE CHAIRMAN: Thank you.
 20 MR BUTT: I am moving on as swiftly as I can and I am
 21 nearing the end.
 22 Can I raise a discrete issue, which concerns
 23 replacing the Serco guards with undercover police
 24 officers. You have both heard this discussed by
 25 commanders and the tactical adviser, who said it was

Page 70

1 have to work out how to do it, I would have considered
 2 it a possibility.
 3 Q. We know that was considered, don't we?
 4 MR BURROWS: If I was told we can't do that without
 5 compromising the operation -- and I am only giving
 6 a personal view, Mr Arundale can give his -- my view
 7 would be I would not allow it to run.
 8 Q. Just thinking of McCann, there is a real risk, isn't
 9 there, if you have the undercover police officer with
 10 a gun in that Serco van, and he or she is in -- he or
 11 she induces the criminal to think that is just a Serco
 12 guard, if they point a gun or intimate they are going to
 13 do it, that leaves the AFO with no choice but to shoot
 14 them doesn't it?
 15 MR BURROWS: Yes, sir, but at least there is an informed
 16 issue going on there. We have no idea how the Serco
 17 drivers would behave. They might go from being zero to
 18 hero within a few seconds.
 19 Q. I am talking about the AFO and the Article 2 problem.
 20 MR BURROWS: The AFO first of all, and we are getting into
 21 a sort of detailed area, the AFO first of all would have
 22 body armour, they would have someone with them, they
 23 would be in contact with their colleagues, they would
 24 know what the response would be, they would know the
 25 actions on, if that was to occur, those actions on would

Page 72

1 be well worked through.
 2 Indeed, if I was confident enough to say that we are
 3 going to ensure that it will never happen anyhow, which
 4 I think was what they were saying by deployment of the
 5 MASTS teams, it would be a controlled risk.
 6 What I am saying is by putting police officers in,
 7 there would be a controlled risk, in -- to a greater
 8 extent than there would be by going with the Serco
 9 drivers.
 10 Q. You can see the consideration about the McCann issue?
 11 MR BURROWS: I can see the consideration.
 12 MR ARUNDALE: Sir, we did scenario plan this and we very
 13 much looked at the basis that a police officer has been
 14 employed and trained to deal with that situation. If
 15 a criminal presents that risk to a member of Serco,
 16 there is a responsibility of the police service to deal
 17 with that threat.
 18 If it so happens, I will use the term "covert"
 19 rather than undercover AFO is in there, quite rightly
 20 they will deal with the threat that is presented to
 21 them. But the consequences of not doing that could well
 22 be that the Serco individual is shot. My guess is it
 23 would be a matter for law, but I think that the
 24 protection of the public, the innocent Serco driver,
 25 clearly would be a significant priority.

Page 73

1 a threshold for sustained public protection which is
 2 acceptable to the main OCG and let it run until
 3 potentially there is a real firearm to take off the
 4 streets. It is a difficult thing to deal with
 5 hypothetically.
 6 Q. Although nothing that you have seen on the transcript
 7 would have allowed in terms of how the operation ran the
 8 commander to come to that view?
 9 MR ARUNDALE: No, but it should be scenario planned, sir.
 10 MR BUTT: I have a very small number of discrete topics,
 11 sir, and then I will be finished.
 12 Risk assessments, it was suggested to you yesterday
 13 that FEI's risk assessment was universally low and was
 14 assessed when she was in the meeting room, do you recall
 15 that?
 16 THE CHAIRMAN: Keely Smith.
 17 MR BUTT: Yes, you said that was meaningless, presumably
 18 because of the level of risk in the briefing room was
 19 neither here nor there?
 20 MR ARUNDALE: Yes.
 21 Q. In fact FEI's evidence was it was low at the point of
 22 deployment, she said when we got out on the streets and
 23 then it would rise to medium at the point of
 24 interception.
 25 Would that be better than meaningless --

Page 75

1 Q. Finally on tactics, and very briefly, in your report and
 2 in evidence you talk about the possibility of letting
 3 the Audi drive away and then taking decisive action at
 4 a later point. To be fair, you make it very clear you
 5 are not saying that should have happened, just that it
 6 could have been considered.
 7 I don't need to, do I, run through the obvious
 8 problems that could arise, such as for example
 9 a pursuit?
 10 MR ARUNDALE: Sir, what we have said is there is a basic
 11 principle that all potentially viable options should be
 12 properly considered and that is our point in relation to
 13 this, because in some incidents, with a slight
 14 variation, I think a reasonable cohort of commanders
 15 could and would have made different decisions.
 16 Q. You accept there would be real problems with allowing
 17 that to happen?
 18 MR ARUNDALE: Potentially, sir, yes.
 19 MR BURROWS: Potentially they may have been eased, you might
 20 actually get the chatter over the probe about the status
 21 of the gun.
 22 Q. Of course, yes.
 23 MR ARUNDALE: I think one of the things we scenario plan,
 24 particularly, if the intelligence about the replica
 25 firearms was that good, you may article it doesn't reach

Page 74

1 MR ARUNDALE: I do recall the evidence particularly. It is
 2 better than low and applying a low to the entire
 3 operation, multidimensional threat assessment should
 4 mean exactly what it says on the tin, it should look at
 5 all the potential scenarios that could pan out.
 6 Q. Let's look at the subjects and the armed police. When
 7 the occupants of the Audi are just driving around north
 8 London and the armed police are in McDonald's or
 9 whenever, the risk assessment is low to armed police and
 10 the subjects, isn't it?
 11 MR ARUNDALE: Not necessarily when firearms are on the
 12 street and subjects. Again you have to be incident
 13 specific. Low is an extremely -- when you use your
 14 categories, it would be unusual to see low being applied
 15 to everybody and all scenarios. I would expect that
 16 from experience I have seen that you normally get
 17 a variation in pattern.
 18 Q. I am just dealing with the armed police and the subjects
 19 at around about 7.00 am. Let's imagine the armed police
 20 are in McDonalds and the subjects are picking people up
 21 and driving around their residential areas of north
 22 London, at that point the risk to both, just those two,
 23 would be low, wouldn't it?
 24 THE CHAIRMAN: That is why it is said to be meaningless.
 25 MR BUTT: Except it is important to assess the risk at those

Page 76

1 different stages, isn't it?
 2 MR BURROWS: We have heard about the traffic light system.
 3 At that stage, it was green. In other words there was
 4 no need to be deciding to do anything great. But they
 5 did know they were going to go from green to red, and we
 6 would argue as you go from green to red you are going to
 7 be going into high risk.
 8 Q. Absolutely.
 9 That is your opinion, the difference is Keely Smith
 10 and DCI Williams said it was medium at the point of
 11 interception, you say it was high at the point of
 12 interception?
 13 MR ARUNDALE: Yes, sir.
 14 MR BURROWS: Given the knowledge of the guns, yes.
 15 Q. Of course there is for the TFC no very high, is there,
 16 the options are low, medium and high?
 17 THE CHAIRMAN: Yes.
 18 MR ARUNDALE: Yes, sir, sometimes with a narrative, as
 19 I said in evidence, you quite often get some context in
 20 relation to this to add additional balance.
 21 Q. Thank you.
 22 MR BUTT: Thank you, firearms officers conducting dynamic
 23 risk assessments are very, very different, aren't they,
 24 to TFCs and SFCs conducting structured threat and risk
 25 assessments within the FA2 and FA3 forms?

Page 77

1 equipment was listed in the 2003 code, wasn't it, yes?
 2 MR ARUNDALE: Yes, sir.
 3 Q. It didn't include torches, strobes or lasers, did it?
 4 MR ARUNDALE: Not that I recall.
 5 Q. They are not listed in the 2020 guidance either?
 6 MR ARUNDALE: No.
 7 Q. Did you know that the Defence Science and Technology
 8 Laboratory has never been asked to evaluate any torch,
 9 strobe or laser from any police force in the country?
 10 MR BURROWS: Yes, that would be -- sorry, that would be my
 11 understanding.
 12 Q. Yes, do you also know that many forces in fact do have
 13 torches or strobes or lasers mounted on their weapons?
 14 MR ARUNDALE: We do, and I think this is our point, because
 15 we had carried out some enquiries to establish this.
 16 What we think has happened is that, for some reason, the
 17 risk associated with the deployment of additions to
 18 a weapons system that could have an impact upon
 19 a person's actions, or indeed their health, should be
 20 formally assessed. We thought it was very relevant to
 21 raise, because there could be an issue coming out of
 22 this inquiry that needs to be looked at and addressed.
 23 But I am aware of other forces that have got the torches
 24 and I am aware of other forces that have got lasers.
 25 MR BURROWS: Sir, torches and lasers have been around for

Page 79

1 MR ARUNDALE: They are very different, but they should
 2 reflect the element of the multidimensional threat and
 3 risk assessment which applies to the actual resolution
 4 when the armed officers are deployed.
 5 Q. Did you note a number of the firearms officers said,
 6 "I consider all firearms operations to be high risk"?
 7 MR ARUNDALE: Yes.
 8 MR BURROWS: We did, yes.
 9 Q. That, of course, would be relevant to comparing their
 10 risk assessment to that of the TFC, wouldn't it?
 11 If they consider all firearms operations high risk,
 12 it really wouldn't be comparing like for like?
 13 MR ARUNDALE: Yes, I think it is their words -- I am not
 14 challenging their words, but all firearms operations
 15 carry risk. Of course the elevation of that risk would
 16 vary according to the operation.
 17 Q. Can I move on please to equipment and I am just going to
 18 deal with the torch, with the strobe light and the
 19 laser.
 20 THE CHAIRMAN: Is that on your list?
 21 MR BUTT: Sir, it was on the email that I sent to my learned
 22 friends this morning, because it came up in evidence as
 23 a new issue.
 24 THE CHAIRMAN: Right.
 25 MR BUTT: A long non-exhaustive list of weapons and tactical

Page 78

1 a long time, they are referenced in the APP, they were
 2 referenced in the previous documents, both of which
 3 said, "The police services should evaluate and ensure
 4 they are fit for purpose".
 5 That has happened. Our particular issue, and it is
 6 an issue that we are not being critical about in terms
 7 of this particular case, but we believe it is a national
 8 issue, is that the strobe lighting has health
 9 implications, and strobe lighting featured in the issues
 10 regarding less-lethal weaponry, because it has
 11 a distraction and disruption case. And it does fall,
 12 and we are both of a very solid view in this, within the
 13 concept of a weapons system, which we believe does not
 14 just apply to less lethal, but applies to all weapons.
 15 We therefore believe that if it is going to continue
 16 in use in the police service, and we are not saying it
 17 shouldn't, we are not saying for one moment it
 18 shouldn't, that it should be evaluated and our
 19 recommendation would be that it goes back to NPCC and
 20 ask them to evaluate it.
 21 THE CHAIRMAN: Got the point.
 22 MR BUTT: Did you know that the college say it is a matter
 23 for local evaluation, were you aware of that?
 24 THE CHAIRMAN: I've got the point, Mr Butt.
 25 MR BUTT: I will move on.

Page 80

1 THE CHAIRMAN: Please.
 2 I am going to say this, making every allowance for
 3 long answers and two experts, we have now been more than
 4 double the time that you said you would be.
 5 MR BUTT: I apologise, sir.
 6 THE CHAIRMAN: I believe I have been quite patient --
 7 MR BUTT: You have.
 8 THE CHAIRMAN: -- but it is running a little thin.
 9 I am going to give you five more minutes.
 10 MR BUTT: That would be more time than I need, sir.
 11 THE CHAIRMAN: Don't take it then.
 12 MR BUTT: I regret having saying that already.
 13 Armoured cars, would you agree that is a very
 14 complex issue?
 15 MR ARUNDALE: Yes.
 16 Q. For example, the windows of an armoured car can't be
 17 wound down?
 18 MR BURROWS: Sir, that is why we caveated it, there are
 19 different levels of armouring.
 20 Q. I am going to move on.
 21 Finally the strategic firearms commander, do you
 22 agree first of all that there is no need for the SFC to
 23 be present in the operations room on the plot or in
 24 a control vehicle?
 25 MR ARUNDALE: The APP is very clear and what we said is

Page 81

1 MR ARUNDALE: Yes, sir.
 2 Q. Did you hear in the SFC's evidence that he also reviewed
 3 the FA2 and proposed changes to it, both in relation to
 4 intelligence updates and in relation to correcting the
 5 mistake on the face of it?
 6 MR ARUNDALE: Yes.
 7 MR BURROWS: Yes.
 8 Q. Again, that is an example of intrusive supervision by
 9 the SFC?
 10 MR BURROWS: Yes.
 11 MR ARUNDALE: Yes, sir.
 12 Q. I am not here to put a case at all, but can I just on
 13 behalf of my client suggest that you have been unfair
 14 or -- I take that word back, that you have gone too far
 15 in your criticism of the strategic firearms commander?
 16 MR ARUNDALE: We have really tried very hard not to counsel
 17 perfection throughout in relation to that, but we felt
 18 we could not but make those observations. But they are
 19 our opinions, obviously.
 20 MR BUTT: Can I have a brief moment, sir, to check and
 21 I appreciate how difficulty it might be to say.
 22 Sir, thank you very much, those are my questions.
 23 THE CHAIRMAN: Very good, we are going to take a break.
 24 MS BLACKWELL: Yes, thank you.
 25 THE CHAIRMAN: Mr Penny, how long do you reckon you will be?

Page 83

1 there needs to be an effective and immediate
 2 communication with each other, they don't necessarily
 3 have to be standing next to each other and in many
 4 instances they can not be, for a range of reasons.
 5 Q. That would be norm, wouldn't it, because sometimes the
 6 chief constable is going to the SFC in other forces and
 7 they simply couldn't be present?
 8 THE CHAIRMAN: It is about effective leadership and
 9 communication, not so much the location of the person
 10 who is providing it.
 11 MR BUTT: Thank you, sir.
 12 You mentioned tactical parameters within the FA3 and
 13 I think you said the only one listed was in relation to
 14 entry into buildings. If you look at the FA3, would you
 15 take it from me that there are other additional tactical
 16 parameters.
 17 MR BURROWS: Yes.
 18 Q. What the SFC has done is he has looked at the FA2 and
 19 the parameters the TFC has proposed and he has clearly
 20 added parameters of his own, hasn't he?
 21 MR BURROWS: They have and --
 22 Q. They are bespoke to the operation, aren't they?
 23 MR ARUNDALE: Yes.
 24 Q. That is an example of appropriate control and
 25 supervision by the SFC, isn't it?

Page 82

1 MR PENNY: Maximum 15 minutes.
 2 THE CHAIRMAN: What I would like to do, I would like to give
 3 the shorthand writer now a break because they have been
 4 taking notes, and the witnesses giving evidence, for
 5 an hour and three-quarters. If we return at 12.45,
 6 clearly we will hear you before lunch.
 7 In the meantime, Ms Kaufmann how long do you think
 8 you will be?
 9 MS KAUFMANN: Can you hear me, sir?
 10 THE CHAIRMAN: Most certainly.
 11 MS KAUFMANN: I'm pleased to hear that.
 12 I imagine I also will not be more than about 15 to
 13 20 minutes.
 14 THE CHAIRMAN: Then what I would like to do, if everybody is
 15 in agreement, is to take the 15-minute break now, and to
 16 allow the evidence of Mr Arundale and Mr Burrows to be
 17 concluded before we break, which will then be for the
 18 day.
 19 Does anybody have difficulty that with that? Then
 20 it looks as though we will finish by about 1.30.
 21 I will take silence as agreement. Thank you.
 22 (12.31 pm)
 23 (A short adjournment)
 24 (12.47 pm)
 25 THE CHAIRMAN: Please sit down, thank you.

Page 84

1 Yes, Mr Penny.
 2 Questions from MR PENNY
 3 MR PENNY: Gentlemen, I just want to ask you a number of
 4 questions, please, based upon the content of your
 5 report.
 6 To tease out a little more detail in respect of some
 7 of the issues that you were asked questions about
 8 yesterday.
 9 Would you be kind enough to go to page 209 of the
 10 written report.
 11 MR ARUNDALE: Yes, sir.
 12 Q. There will not be any need for me to read vast tracts of
 13 this report into the record, because of course the
 14 chairman has the report but I just want to touch on one
 15 or two aspects of other areas that you dealt with in the
 16 report.
 17 In relation to some topics that you were asked
 18 about, you were asked yesterday about the concept or
 19 maxim of action and reaction in life-threatening
 20 situations. You deal with that, including setting out
 21 the passage, Mr Arundale, to which you referred from the
 22 Grainger report at paragraphs 910 through to 914.
 23 Then at 916, in connection with the reasoning please
 24 of the IPCC in its recommendation, I think you set out
 25 the opinion of the IOPC investigator at paragraph 1095,

Page 85

1 Thirdly, that more time, albeit fractions of
 2 a second, should have been taken by W80.
 3 In seeking to analyse those propositions of fact,
 4 you drew the reader to the attention of three topics in
 5 particular at paragraph 918.
 6 Those paragraphs being -- you have them on bulleted
 7 points:
 8 The time required by an untrained person to
 9 discharge a firearm.
 10 Contextual cuing.
 11 The bag worn by Mr Baker.
 12 In respect of the first, the time required by
 13 an untrained person to discharge a firearm, you deal
 14 with that at 919 through 922.
 15 MR BURROWS: That's correct.
 16 MR ARUNDALE: Yes.
 17 Q. At 920 in particular draw attention to a study, which
 18 you give the reference for, as to timings, essentially,
 19 as to untrained persons discharging a firearm. There is
 20 no need for me to ask you anything further about that.
 21 At 923 to 926 you deal with the concept of
 22 contextual cuing. Can I draw your attention in
 23 particular to the final clause in paragraph 925, I will
 24 just read the whole paragraph, if I may:
 25 "This contextual cuing will include conscious and

Page 87

1 at paragraph 916 of your report in terms of criticism as
 2 to W80 in respect of timing in particular?
 3 MR ARUNDALE: Yes, sir.
 4 Q. You set out there, and embolden, certain propositions of
 5 fact which you then go on to consider in the course of
 6 the report.
 7 In other words:
 8 "A reasonable disciplinary tribunal can take into
 9 account that Mr Baker would have had to open the bag
 10 and/or place his hand into it before he could withdraw,
 11 raise and level a weapon."
 12 The investigator of the IOPC went on to say:
 13 "It is therefore the lead investigator's opinion
 14 that a tribunal could conclude that shooting Mr Baker at
 15 that moment was not necessary, reasonable or
 16 proportionate, that more time, albeit seconds or
 17 fractions of them should have been taken to identify
 18 what Mr Baker was actually doing with his hands."
 19 Then, gentlemen, I think you go on thereafter at
 20 paragraph 917 to identify three propositions of fact
 21 which you felt required examination about that analysis.
 22 Firstly, the assertion that the bag needed to be
 23 opened.
 24 Secondly, the assertion that Mr Baker would have had
 25 to withdraw and level a weapon before discharging it.

Page 86

1 subconscious triggers based on previous experiences both
 2 operationally and in training, as well as information
 3 related to the situation they are dealing with,
 4 including briefing and intelligence updates."
 5 MR ARUNDALE: Yes, sir.
 6 MR BURROWS: Yes.
 7 Q. Thirdly, in connection with the bag worn by Mr Baker you
 8 make the following factual observations from your
 9 analysis of the evidence with which you had been
 10 provided, namely that Izzet Eren as we know was carrying
 11 a loaded 9mm Tokarev pistol in a man bag when he was
 12 arrested back in October.
 13 Secondly, that the photograph to which counsel to
 14 the inquiry took you yesterday, of Ozcan Eren, of course
 15 one of the subjects of this operation, referring to him
 16 as a criminal armourer, was a photograph of him wearing
 17 a man bag. That that photograph, that image, was
 18 contained in the PowerPoint briefing, prepared by SCD7.
 19 Not by SCO19 but prepared by SCD7, and that PowerPoint
 20 briefing was shown, insofar as W80 is concerned, both at
 21 the briefing on 10 December, at which he was present, as
 22 the only firearms officer, as we have been through, and
 23 also at 5.00 in the morning on 11 December, at Lincoln
 24 Road.
 25 In point of fact, that photograph itself was also

Page 88

1 contained within an email containing 111 pages of
 2 intelligence profiles, which was distributed or cascaded
 3 down I think, really, from the senior SCD7 officers
 4 reaching W80 on the evening of 8 February 2015. So that
 5 image was contained within those intelligence profiles
 6 as to the nature of the subjects in respect of whom the
 7 intelligence existed.
 8 Can I then take you, please, to paragraph 938, that
 9 is straight to your conclusion, if I may, once you
 10 considered the suggestion that more time, albeit
 11 fractions of a second, should have been taken. You say
 12 this in your report:
 13 "Waiting fractions of a second in a situation where
 14 W80 was locked in a small corridor between two vehicles
 15 would, for the reasons we have explained above, have
 16 placed him a very vulnerable position."
 17 MR BURROWS: That's correct.
 18 MR ARUNDALE: Yes, sir.
 19 Q. May I then go on to deal with the next topic in your
 20 report, namely the circumstances of the discharge
 21 itself. That is at paragraphs 940 onwards.
 22 I can take you straight, I think, to 944. In 944
 23 your comment is:
 24 "It is of note that W80 only fires one round. This
 25 appears to be because the effect of being struck with

Page 89

1 "However, having decided to discharge his weapon, he
 2 did, in accordance with the guidance, point his firearm
 3 towards the torso of Mr Baker. As soon as W80 realised
 4 that Mr Baker no longer presented a threat he
 5 immediately ceased to use force and assisted with
 6 ensuring that medical aid was provided."
 7 MR BURROWS: That's correct.
 8 MR ARUNDALE: Yes, sir.
 9 Q. That, of course, would be in accordance with his
 10 training?
 11 MR BURROWS: Indeed, sir.
 12 Q. I just want to ask you about one further matter.
 13 Mr Burrows, you drew an analogy yesterday or used
 14 a description of that which confronted the officers
 15 exiting those armed vehicles in Bracknell Close to
 16 approach the mission vehicle, as it has been called, as
 17 being a frightening proposition?
 18 MR BURROWS: I did.
 19 Q. You explained all the reasons why you regarded it as
 20 being a frightening proposition, given that, on your
 21 assessment, the officers had good reason to believe that
 22 there was a high-powered weapon in the vehicle?
 23 MR BURROWS: Indeed.
 24 Sorry, sir, when I say high powered, if I use that
 25 normally, I would be referring to a very high velocity

Page 91

1 the round had immediate effect. This is not always the
 2 case."
 3 Why, gentlemen, is it of note that only one round
 4 was discharged?
 5 MR BURROWS: Sir, we have done a number of these -- sorry,
 6 I say "we", there is only two we have done together,
 7 most of them we have done individually and I have done
 8 a huge number of them. In many of them, two, three,
 9 five and seven rounds were fired. It is not uncommon --
 10 the APP has been revised numerous times, it doesn't
 11 actually say fire one shot, I think that sort of was
 12 paraphrased somewhat in the last few days. It says
 13 continuously review and the wording is very deliberate.
 14 In other words, there may be occasions when I fire,
 15 I see no response and I keep firing within milliseconds
 16 of squeezing the trigger, so that often happens. But
 17 quite clearly here the officer fired the one and did not
 18 feel any need to fire any other and it was of note to
 19 us.
 20 Q. Thank you, that I think you reflected in your comments
 21 at 947 to 948, where you rightly pointed out, of course,
 22 from your perspective:
 23 "It is not possible to speculate as to what visual
 24 or auditory cues W80 may or may not have detected which
 25 made him fear for his life or the life of his colleague.

Page 90

1 rifle, I am talking about high powered in terms of the
 2 number of rounds it could fire and the capability of
 3 going through the skin of the vehicle.
 4 Q. Of course, I am going to ask you a little bit about
 5 weaponry, if you don't mind, but in terms of weapons on
 6 the streets of London are concerned, this is at the very
 7 highest range, isn't it, of dangerousness, these sorts
 8 of semi-automatic weapons?
 9 MR BURROWS: For two reasons.
 10 One being that they are fully automatic. Ie, as
 11 I have explained, you squeeze the trigger and it will
 12 fire a number of rounds and I have explained probably
 13 about 10 or 12 of the sort of rounds, of the sort of
 14 guns we have talked about.
 15 Secondly, they are not just sub-machine guns, which
 16 you normally would come across, which are
 17 shoulder-control weapons, these are referred to as
 18 pistols, so you are controlling them with one hand.
 19 I have fired nearly all of these guns and I have been
 20 involved in training involving these sort of weapons
 21 from different perspectives, and they are extremely hard
 22 to control.
 23 So once you fire them, typically -- typically
 24 an untrained firer, in fact I would even say as far as
 25 trained firers, firing one of them with one hand, the

Page 92

1 gun if I may describe it, is likely to go like that
 2 (indicates) in that timescale.
 3 So 10 to 12 rounds going like that.
 4 Q. Hence the phrase that is used "spray and pray"?
 5 MR BURROWS: Spray and pray.
 6 Q. Just as far as --
 7 MR BURROWS: Sorry, just to say, that's a gangster term, not
 8 a police term.
 9 Q. Quite so.
 10 Nonetheless, the capabilities or the features of
 11 that sort of weaponry would be known to armed firearms
 12 officers?
 13 MR BURROWS: Absolutely, absolutely.
 14 Q. Because all of it is relevant to the risk assessment of
 15 what they are coming up against?
 16 MR BURROWS: Yes.
 17 Q. Of course, in the case of these officers, counter
 18 terrorism specialist firearms officers in London, these
 19 are the group of officers who are deployed during the
 20 situation of recent terrorist attacks or similar events?
 21 MR BURROWS: Yes.
 22 That is why I used words like frightening and
 23 terrifying.
 24 Q. This is the unit which was deployed to London Bridge or
 25 which was deployed to Borough Market just down the road,

Page 93

1 Police Complaints Authority and the Association of Chief
 2 Police Officers, as it then was, into 23 incidents where
 3 the police had discharged firearms in England and Wales
 4 between 1991 and 1993. Including a retrospective
 5 examination of all the statements made by the officers
 6 involved in those armed situations?
 7 MR BURROWS: Yes.
 8 Q. You have also been published and are published on
 9 a number of articles in respect of the use of force and
 10 firearms, perhaps most pertinently your article of 2007
 11 entitled, "Critical decision making by police firearms
 12 officers: a review of officer perception, response and
 13 reaction", is that right?
 14 MR BURROWS: That's correct, sir.
 15 MR PENNY: Thank you very much indeed, gentlemen.
 16 THE CHAIRMAN: Thank you Mr Penny.
 17 Ms Kaufmann.
 18 MS BLACKWELL: Sir, would you invite Ms Kaufmann, please --
 19 she is there. Thank you.
 20 THE CHAIRMAN: Hello, Ms Kaufmann, can you see and hear us?
 21 MS KAUFMANN: Can you hear and see me?
 22 THE CHAIRMAN: We can, can you hear and see us?
 23 MS KAUFMANN: Yes, I can.
 24 THE CHAIRMAN: Very good, are you in a position to proceed?
 25 MS KAUFMANN: I certainly am, yes.

Page 95

1 just within the last few years?
 2 MR BURROWS: Yes.
 3 Q. Can I just ask you then, Mr Burrows, just to put that
 4 slightly in context, just a little bit about your own
 5 experience, just to try and delve into that a little
 6 bit. I appreciate this is all dealt with in the
 7 appendix to the report, but the fact of the matter is
 8 that you were the chief firearms instructor in the Royal
 9 Ulster Constabulary between 1985 and 1992?
 10 MR BURROWS: Yes.
 11 Q. That, of course, would have been at a time when the use
 12 of semi-automatic and automatic weapons was not unknown
 13 on the streets of Northern Ireland, sadly?
 14 MR BURROWS: Unfortunately, sir.
 15 Q. Insofar as the evidence that you have given on the topic
 16 of perceptual phenomena is concerned, is it right that
 17 in 1992 you were awarded a master of philosophy degree
 18 in respect of your thesis, which was entitled "The use
 19 of lethal force by police"?
 20 MR BURROWS: That's correct, sir.
 21 Q. That reviewed material dealing with how officers
 22 perceive critical information and react in
 23 life-threatening situations?
 24 MR BURROWS: And it was quite seminal at the time.
 25 Q. I think in 1996 you completed a review on behalf of the

Page 94

1 THE CHAIRMAN: Very good, thank you very much.
 2 Questions from MS KAUFMANN
 3 MS KAUFMANN: Gentlemen, I am going to start by asking you
 4 some questions about planning and the importance of
 5 planning.
 6 You talked about in your evidence yesterday that if
 7 a decision is taken in the interests of sustained public
 8 protection, such that on one side of the balance, as
 9 happened here, a decision is taken to allow an operation
 10 to proceed, because it is in the interests of long-term
 11 sustained public protection, but that the operation
 12 itself gives rise to risks in the short term, it is the
 13 duty of those commanding the operation to minimise the
 14 risks arising from the decision to let the operation
 15 run?
 16 MR BURROWS: That's correct, sir.
 17 Q. That is true. Thank you.
 18 You emphasised yesterday the importance of planning
 19 at all stages of the decision-making process.
 20 Am I right in thinking that you consider, consistent
 21 with that duty to minimise the risks of the operation
 22 that is being allowed to run, that planning is also
 23 required with respect to the appropriate tactic that is
 24 to be used, in this particular case in relation to the
 25 occupants of the mission vehicle?

Page 96

1 MR ARUNDALE: Absolutely, yes, sir.
 2 MR BURROWS: Not necessarily tactic, but tactics because
 3 they may vary and change on the day depending on how
 4 things pan out.
 5 Q. Yes, which is why I was making the point with respect to
 6 the appropriate tactic, because am I right in thinking
 7 that it is only when you have gathered as much
 8 intelligence or information as you can about matters
 9 relevant to the deployment of any particular tactic that
 10 you can decide upon what tactic will be most
 11 appropriate?
 12 MR ARUNDALE: Yes, and of course those tactics, as my
 13 colleague has referred to, can vary across the operation
 14 in terms of their utility and their benefits and
 15 limitations according to the threat that is presented at
 16 the time of resolution. But it is as important as the
 17 strategic planning.
 18 MR BURROWS: When we mention --
 19 Q. I'm sorry.
 20 MR BURROWS: Sorry, apologies. When we mention, sir,
 21 planning for the what ifs and the actions on, the
 22 actions on for each what if might differ in terms of the
 23 tactic, but they should all be planned out in advance.
 24 For foreseeable outcomes.
 25 Q. Foreseeable outcomes.

Page 97

1 they went in?
 2 MR BURROWS: I would have expected the surveillance officers
 3 at the scene would have been conveying that information
 4 to the officers in the cars.
 5 Q. As you are aware, those surveillance officers did not go
 6 in until about 8.56, literally just before the vehicles
 7 went in. So it was a very, very late opportunity that
 8 was taken, was it not, to go in?
 9 I was asking a question there. They went in at
 10 8.56, the car had been situated there for almost an hour
 11 by the point that they first went in to surveil the area
 12 and feed back information on the location.
 13 MR BURROWS: Sir, surveillance is a particular art and
 14 craft. It is certainly not my speciality, although I am
 15 aware of it and have worked with it. It would have been
 16 ideal the surveillance was there as early as possible
 17 and that information was conveyed back to the scene.
 18 There may be reasons why it wasn't. I don't want to
 19 speculate regarding those reasons, but ideally early
 20 information would be anticipated.
 21 Q. We are going to have a little look at some of the
 22 reasons why in fact the surveillance team didn't go in
 23 or FE11 didn't go in any earlier, but there was another
 24 source of information, wasn't there, about possible
 25 matters relevant to the interception, and that was the

Page 99

1 If we focus on the fact that at 8.00 in the morning,
 2 on 11 December, the mission vehicle settled in Bracknell
 3 Close, over an hour before the interception took place,
 4 that it was apparent to many of those who became aware
 5 of it having settled there that that was its likely
 6 resting place before it moved off to effect the escape.
 7 If we take that as a given, would it, in your view, have
 8 been important to begin to plan around Bracknell Close
 9 as a possible site of interception of that mission
 10 vehicle?
 11 MR ARUNDALE: Yes, sir.
 12 Q. For example, one of the issues that you have expressed
 13 concern about is that it was not known at the time that
 14 the vehicles went in, the police vehicles went in to
 15 mount their interception, that on the nearside of the
 16 Audi, there was a BMW that was a mere 18 inches away,
 17 which constituted a significant obstacle and hazard.
 18 That was a matter of concern that you expressed in terms
 19 of an absence of intelligence or information, was it
 20 not?
 21 MR ARUNDALE: We did.
 22 MR BURROWS: That's correct, sir, and that was information,
 23 it didn't need to be evaluated, it was a point of fact.
 24 Q. It was a point of fact, but it was a point of fact that
 25 literally was not known about by any of the officers as

Page 98

1 probe itself that was in the vehicle?
 2 MR BURROWS: Indeed.
 3 Q. Would you agree that the probe was something that in
 4 principle was capable of providing valuable information
 5 with respect to minimising the risk of the operation, as
 6 well as in respect of evidence of the offence?
 7 MR ARUNDALE: Absolutely, sir, because we have heard of the
 8 technical difficulties in relation to properly assessing
 9 the feed into the probe, from the probe into C3000.
 10 Q. I am sorry, I am not clear I understand your answer
 11 there. What I am asking is, as matters stood --
 12 THE CHAIRMAN: I think what you are suggesting, Ms Kaufmann,
 13 is that it had two purposes, not simply to provide
 14 intelligence but to provide information which would
 15 enable the decision makers to measure the risk?
 16 MS KAUFMANN: And to minimise the risk as well, that is
 17 exactly what I am suggesting. It was a source of
 18 information that those in command, that DCI Williams had
 19 available to him to use not simply to follow the
 20 evidence and gather evidence in relation to the
 21 commission of the offences in respect of the evidential
 22 tipping point. But as importantly, if not more
 23 importantly, in order to minimise the risks around the
 24 armed operation?
 25 THE CHAIRMAN: Do you agree, gentlemen?

Page 100

1 MR ARUNDALE: Yes, we do.
 2 THE CHAIRMAN: Thank you.
 3 MS KAUFMANN: Coming on to why it is that the surveillance
 4 team didn't go in, we know that, in fact, S105 asked for
 5 information in relation to Bracknell Close very, very
 6 close to 8.00 am that morning. He wanted that
 7 information early, early on after it had settled there.
 8 He was told by the surveillance team that they
 9 didn't want to go in because they thought the occupants
 10 of the Audi were jumpy and the reason they thought that
 11 was because they thought they had been engaging in
 12 anti-surveillance tactics.
 13 My question to you, gentlemen, is would you have
 14 expected the probe to have been used to clarify whether
 15 those assumptions made by the surveillance team based
 16 upon their limited observations of the driving, were
 17 correct or were in fact mistaken?
 18 MR ARUNDALE: I think it is a reasonable assumption that all
 19 the information and intelligence should be used by the
 20 commanders to make rational judgments. If that was
 21 available at that particular time, it really depends on
 22 who was making those decisions in relation to
 23 surveillance. If it was done at the OFC level, of
 24 course there is difficulty in receiving that
 25 information, because that was being fed into C3000, but

Page 101

1 discussed between the TFC and the surveillance
 2 commander.
 3 MR BURROWS: Sorry, and the other point I would just make in
 4 relation to the probe, it had the potential, I think
 5 I said more than the potential, to determine how many
 6 people may have been speaking in the vehicle.
 7 Now that is not conclusive, someone could be silent
 8 and I accept if it's difficult to actually distinguish
 9 voices, but sometimes you can actually determine there
 10 are at least two, there are three, and we haven't heard
 11 a fourth voice.
 12 Q. Mr Burrows, the critical question here, is it not, is
 13 that an effort should have been made to identify how
 14 many people were in the vehicle, given that there was
 15 over three hours or near on three hours of opportunity
 16 for those listening to it to clarify that, whether or
 17 not they would have been able to is a different matter,
 18 and that is something for the chair to resolve, but they
 19 should have been asked?
 20 MR BURROWS: Yes, we believe that that is down to briefing
 21 of the people who were listening. We have heard the
 22 evidence, "Don't tell them what they are listening for
 23 because you want to have open minds". We have both sat
 24 through this hearing for the last four weeks, we have
 25 been involved in active listening, if we hadn't been

Page 103

1 in principle, I would say that certainly I agree with
 2 your suggestion that all the information should be used
 3 and the probe was a valuable source.
 4 Whether that could be --
 5 Q. Should it not have been the case, and in fact I think it
 6 was the case -- I will be corrected if I am wrong --
 7 that all the information that the surveillance team were
 8 relaying was coming into C3000. So it would have been
 9 known by DCI Williams that they believed that the
 10 occupants were jumpy, that they were being subjected to
 11 anti-surveillance techniques. As I understand it, he
 12 was also told by somebody listening to the probe that in
 13 fact the occupants were not jumpy, but in fact had just
 14 got lost.
 15 So that information reached him. But there appears
 16 to have been a failure to connect the two and correct
 17 the surveillance team's misunderstanding of the
 18 situation?
 19 MR ARUNDALE: Yes --
 20 Q. My question to you is: is that something that ought to
 21 have been corrected, given that DCI Williams had the
 22 information?
 23 MR ARUNDALE: Ideally, yes, it should, and of course the
 24 surveillance commander was present at C3000 and that
 25 should have been an issue that should have been

Page 102

1 involved in active listening, because we knew the themes
 2 that were coming up, we would have missed vital
 3 information. So engaging people in active listening is
 4 important and telling them of things that you want to
 5 determine is important.
 6 I would include in that how many people are in the
 7 vehicle, as well as information I want regarding
 8 intention, weaponry, et cetera.
 9 Q. If, in the course of the events as they unfold, it
 10 becomes clear that it would be beneficial to obtain some
 11 information from those who are listening to the probe
 12 that was not part of their original briefing, then what
 13 you would expect, would you not, is for somebody to be
 14 sent into the room and to ask whether they have already
 15 gathered the relevant information or if not could they
 16 listen out for it?
 17 MR BURROWS: Yes, sir.
 18 MR ARUNDALE: Yes, sir.
 19 Q. Another matter that caused surveillance to be anxious
 20 about going back in was the presence of a third eye and
 21 concern that somebody had got out of the vehicle, the
 22 Audi.
 23 Again, would you expect -- and I think your answer
 24 is going to be yes, in light of what you have just
 25 said -- the probe and those who are listening to it to

Page 104

1 be used in order to seek clarification or confirmation,
 2 as to whether anybody had ever got out of the vehicle or
 3 in the vehicle after it had originally set off?
 4 MR ARUNDALE: Sir, I would say we agree the principle that
 5 all of these valid questions could have been tasked or
 6 requested of the individuals listening to the product
 7 from the probe.
 8 Again this is dialogue, dialogue at C3000, actively
 9 assessing the operation, the desire to get surveillance
 10 officers on the ground as soon as possible, it should
 11 have been part of the active discussion, with the
 12 back-up information from the probe filling in gaps as
 13 much as possible.
 14 Q. If, in fact, surveillance had gone in earlier, and had
 15 a longer opportunity to gather evidence, potentially
 16 over a very considerable period of time during the
 17 course of that hour, would you have considered that the
 18 command would have been in a better position to make
 19 an informed decision about whether or not containment
 20 and call out would have been a viable option or whether
 21 in fact an armed extraction would be the better option?
 22 MR ARUNDALE: Any additional surveillance, any additional
 23 information would, yes, clearly inform any decision
 24 around tactics.
 25 Q. Can I then move on to the role of the SIO, and the

Page 105

1 pursuing an investigation, as opposed to somebody who is
 2 only discharging a command function in relation to the
 3 firearms operation?
 4 MR BURROWS: Sir, it is one of those themes that emerged
 5 throughout our reports. It emerged simply because of
 6 the way things were articulated and roles were described
 7 in the material that we were provided.
 8 Had it not have been evident to us that there was
 9 an issue which perhaps needed to be drawn out further,
 10 we would not have been including those things in our
 11 report.
 12 So we had concerns -- it was not clear to us that
 13 that distinction was being maintained the whole way
 14 through. Also, in terms of the language that both the
 15 TFC and the SIO have used at different times, appears to
 16 be the language more appropriate to a discipline that
 17 they were not actually engaged in at the time.
 18 Q. The MPS SOP, which is at IPC79 on page 25 at
 19 paragraph 6.17, describes the firearms command unit
 20 within the MPS, which was set up in November 2009, and
 21 this was following the implementation of recommendations
 22 from the Stockwell shooting report.
 23 MR BURROWS: Yes.
 24 Q. "SC19 MPS firearms command unit was established to have
 25 a pan-London responsibility for providing specialist

Page 107

1 guidance in the APP and in the Met's own SOP replicating
 2 the APP guidance that the SIO must not be the TFC.
 3 Could I ask you, again, just to identify for us what
 4 is the mischief that this prohibition is targeted at?
 5 MR ARUNDALE: The spirit of including this originally was to
 6 ensure an appropriate balance between the desired
 7 evidential or criminal justice outcome, and the balance
 8 of the Article 2 rights. It was found from experience
 9 in many incidents that the natural tendency of the SIO
 10 particularly, but I would rather say the investigative
 11 function itself, would be to pursue evidence sometimes
 12 at the expense of the Article 2 considerations.
 13 The whole spirit of this was to make sure there was
 14 an effective balance, to bring in an element of
 15 independence and to ensure that the overriding
 16 consideration was Article 2 and safety issues, rather
 17 than necessarily the relentless pursuit of evidence when
 18 balance had been passed.
 19 Q. Looking at the operation as a whole, from the moment on
 20 11 November when DCI Williams came in as tactical
 21 firearms commander, right through to the way in which he
 22 handled the operation itself on 11 December, would you
 23 agree that what one sees in relation to DCI Williams
 24 himself is an individual who is unquestionably wearing,
 25 at the very least in part, a hat of somebody who is

Page 106

1 command capability for planned firearms operations and
 2 support to OCUs in managing spontaneous operations."
 3 As you know I am reading from this:
 4 "The unit also provides corporate oversight of MPS
 5 firearms resources and supports the tasking of these
 6 assets to corporate priorities."
 7 We have here, within the MPS, a highly specialised
 8 command unit which, if it is used, will unquestionably
 9 not carry the risk of the individuals who are taking up
 10 command positions inadvertently engaging in functions
 11 that are not firearms related, but are in fact
 12 investigative.
 13 MR BURROWS: Yes.
 14 Q. My question to you is whether or not you consider that
 15 there is a potential structural problem that this
 16 particular case exemplifies in allowing the MPS to have
 17 tactical firearms commanders and strategic firearms
 18 commanders drawn from divisions such as SCO7 or any
 19 other investigatory division of the MPS, and whether in
 20 fact in your view if that structural problem is one that
 21 you do discern, whether you consider that what ought to
 22 happen at the very least in complex cases, such as this,
 23 is that the TFC and SFC should be selected either from
 24 an entirely different division or, better still, from
 25 the firearms command unit?

Page 108

1 MR ARUNDALE: I think what I would say is that we have been
 2 very clear in relation to the objective that we think
 3 needs to be achieved in accordance with the APP. That
 4 is the separation of roles and responsibilities and to
 5 ensure that the investigative outcomes do not trump the
 6 Article 2 considerations.
 7 I think it is a matter for the Metropolitan Police
 8 how that is delivered. I am aware this is something
 9 they have wrestled with for decades, but it may well be
 10 that this incident, this event, puts further emphasis on
 11 the Met's need to ensure that separation of roles and
 12 responsibilities.
 13 I would suggest it is for them to determine how that
 14 is delivered, but we can absolutely say that there does
 15 need to be the separation, no blurred lines of
 16 responsibility and no double hatting.
 17 THE CHAIRMAN: Does your experience tell you, and I don't
 18 know the answer to this question, so it is not a loaded
 19 question, that this is a perennial problem or is this is
 20 an exceptional situation as you see it?
 21 MR ARUNDALE: It is a long-term issue for the
 22 Metropolitan Police and it has been recognised, because
 23 there has been criticisms over decades about the balance
 24 between the roles of investigators --
 25 THE CHAIRMAN: About the double hat.

Page 109

1 I am inviting you to agree that in fact the way you
 2 portrayed that yesterday was not entirely accurate.
 3 MR BURROWS: That was not our intention, sir. If it came
 4 across that way, it was not intentional.
 5 MR ARUNDALE: I think it was a question of the -- it feels
 6 the overall emphasis was on the officer who pulled the
 7 trigger, rather than a holistic analysis of all of those
 8 involved in the command and planning of the operation
 9 was the point, but certainly we fully accept your point.
 10 THE CHAIRMAN: Thank you.
 11 MS KAUFMANN: Yes, and I am not sure whether you are aware
 12 that the reason FE16 was able to avoid the disciplinary
 13 proceedings that the IOPC found he had a case to meet
 14 was that after the investigation notice was served he
 15 was permitted by the Metropolitan Police to retire and
 16 it was then left to the family to try, albeit
 17 unsuccessfully, to challenge that decision to permit him
 18 to retire by way of judicial review. Is that something
 19 you were aware of?
 20 MR BURROWS: I think from media releases.
 21 THE CHAIRMAN: I am not sure how it could have impacted upon
 22 their report, Ms Kaufmann.
 23 MS KAUFMANN: No, I understand that, sir, but it was
 24 something the family were very upset about.
 25 THE CHAIRMAN: I understand the family were concerned about

Page 111

1 MR ARUNDALE: -- and armed policing commanders. So it has
 2 been a long-term consideration for the Met, it
 3 doesn't --
 4 THE CHAIRMAN: What you are saying is if the only way to
 5 address it is to have the two tasks to outside the
 6 particular unit, then that is something that they should
 7 consider?
 8 MR ARUNDALE: They should consider it. I think there may
 9 well be other solutions to it, but I think my point is
 10 we know exactly what the outcome is that should be
 11 delivered, there may be alternatives --
 12 THE CHAIRMAN: How it is achieved is another matter?
 13 MR ARUNDALE: That is a matter for the Met itself, rather
 14 than perhaps unfairly without the knowledge of the
 15 internal Met mechanisms make an arbitrary
 16 representation.
 17 THE CHAIRMAN: Thank you.
 18 MS KAUFMANN: I am going to turn to some comments you made
 19 yesterday about the IOPC's report, and you suggested
 20 that the criticisms that the IOPC made of this operation
 21 were all directed at W80. I just want to put it to you,
 22 gentlemen, that that really is not correct. That in
 23 fact the IOPC was also very critical of FE16, it issued
 24 him with an investigation notice and it ultimately found
 25 that there was a case to answer against him.

Page 110

1 it, but it is something which in fairness to these
 2 witnesses we have already heard significant evidence
 3 about and it is something of which I am conscious.
 4 MS KAUFMANN: Moving on, I want to just discuss the
 5 monitoring of discrimination very briefly with you
 6 gentlemen.
 7 Mr Burrows, yesterday you mentioned the UN guidance
 8 on less-lethal weapons in law enforcement. One of its
 9 provisions relates to monitoring the use of force, and
 10 it says:
 11 "Monitoring the use of force, including with
 12 reference to appropriate information about those against
 13 whom force is used, is a critical element in efforts to
 14 ensure that force is not used in a discriminatory
 15 manner."
 16 MR BURROWS: Yes.
 17 Q. Given the very, very great importance that you have
 18 already attached to record keeping in respect of these
 19 operations, I assume that you are both also of the view
 20 that monitoring the use of force to understand how it is
 21 used and to try and ensure that it is only used when
 22 absolutely necessary and in a non-discriminatory manner,
 23 is also very important --
 24 MR BURROWS: Indeed, sir. Sorry, did I --
 25 Q. I was only asking whether you agreed.

Page 112

<p>1 MR BURROWS: A lot of work has taken place nationally about 2 use of force reporting, the police service and both 3 Mr Arundale and myself have pushed that for many, many 4 years, and we are now beginning to get more collective, 5 properly organised use of force reporting across the 6 police service as a whole in the UK.</p> <p>7 The extent to which that has been successful, I am 8 not sure, but at least they are on the road to being 9 able to map out when, who, what, why and sort of force 10 used, which may provide some degree of evidence towards 11 the issues that you are referring to.</p> <p>12 Q. Some of that evidence will be in the form of generic 13 evidence, statistics, trends and so forth, but would you 14 also agree that some valuable evidence can also be 15 obtained by targeting question of officers themselves 16 who have used force and that also merits feeding into 17 the equation and the evaluation of the evidence for 18 monitoring purposes?</p> <p>19 MR ARUNDALE: I think what is fair to say, you heard my 20 colleague refer to the research and analysis that he had 21 done previously in relation to collating a series of 22 fatal shootings. I think it is fair to say there is 23 a gap in the academic research and I think certainly the 24 UK would benefit from a revisit of certainly the last 25 two decades of all incidents to see what lessons could</p> <p style="text-align: center;">Page 113</p>	<p>1 be drawn out of them. Because, as we have referred to, 2 there are emerging themes coming out of a number of the 3 incidents that we have personally reviewed, and we 4 haven't reviewed all of the incidents by any means.</p> <p>5 Q. But very specifically, because one of the things that 6 was notable about this investigation, is that the 7 information provided by the officers in response to any 8 attempts to give targeted questioning was met without 9 any success, because the officers chose only to put in 10 voluntary statements.</p> <p>11 My question is as to one possible source of 12 evidence, and whether you agree that targeted 13 questioning in the course of an investigation of the 14 officers themselves who use force is a valuable means by 15 which an attempt can be made to secure evidence for 16 monitoring purposes?</p> <p>17 MR BURROWS: Sir, we wouldn't rule it out.</p> <p>18 However, I think, as Mr Arundale has alluded to, if 19 you do that in a wider range of cases, when officers are 20 not under investigation or facing legal proceedings, you 21 are more likely to get good information.</p> <p>22 In respect of the operation that are the ones that 23 Mr Arundale refers to that I reviewed, they had all been 24 through PCA, as it was then, reviews. I was not looking 25 to challenge or place officers before courts or</p> <p style="text-align: center;">Page 114</p>
<p>1 inquiries, I was able to draw out statistics, 2 information and trends.</p> <p>3 I understand the point that you are making, but 4 I also understand why you may not get the information 5 you are looking for, if officers feel they are under 6 investigation and I wouldn't want to make any 7 (Inaudible).</p> <p>8 Q. You wouldn't want then to say, "No, one shouldn't do 9 this", it nonetheless remains a means by which one can 10 seek to obtain material that will be valuable for 11 monitoring purposes?</p> <p>12 MR ARUNDALE: Yes, but I think it is that strong point that 13 officers subject to criminal or potential gross 14 misconduct proceedings will be advised in accordance 15 with the law and the regulations and that is going to 16 limit the information you may get at the early stages of 17 post-incident investigation.</p> <p>18 THE CHAIRMAN: That, I suppose, is going to be the case in 19 most of the situations which we are discussing --</p> <p>20 MR ARUNDALE: Yes.</p> <p>21 THE CHAIRMAN: -- by definition.</p> <p>22 MR ARUNDALE: Yes, sir, but they may well be after, as the 23 previous research was done, I think there might be 24 benefit in revisiting that.</p> <p>25 THE CHAIRMAN: There is no reason why it shouldn't be</p> <p style="text-align: center;">Page 115</p>	<p>1 an option which can be considered and used. What it 2 achieves is going to depend upon the facts of each case?</p> <p>3 MR ARUNDALE: Yes, sir.</p> <p>4 THE CHAIRMAN: Yes.</p> <p>5 MS KAUFMANN: I am going to move on now to W80.</p> <p>6 First of all, gentlemen, you agree, I think this 7 almost came out clearly yesterday but I am not sure you 8 quite clearly answered it, that it is not your job to 9 determine what W80 did or did not say to Jermaine in the 10 vehicle, would you agree?</p> <p>11 MR BURROWS: Yes, indeed.</p> <p>12 MR ARUNDALE: Yes, sir.</p> <p>13 Q. It is not your job to determine what W80 did or did not 14 believe about Jermaine, the movement of Jermaine's hands 15 and whether or not he believed he was moving them 16 towards a man bag, would you agree?</p> <p>17 MR BURROWS: That's correct.</p> <p>18 MR ARUNDALE: Yes, sir.</p> <p>19 Q. And it is not your job to determine what W80 did or did 20 not believe about whether Jermaine was going for a gun?</p> <p>21 MR BURROWS: That's correct.</p> <p>22 MR ARUNDALE: Yes.</p> <p>23 Q. In respect of perceptual phenomenon, Mr Penny has 24 taken you, Mr Burrows, to some of the work you have done 25 in relation to this phenomenon, but it is right, isn't</p> <p style="text-align: center;">Page 116</p>

1 it, that the work you have done has been based upon
 2 research literature produced by psychologists, as
 3 opposed to being direct research that you have done
 4 yourself?
 5 MR BURROWS: No, in terms of the MPhil study that I did in
 6 1992, this already was in its infancy. There was
 7 seminal research that took place during that MPhil study
 8 and then it was backed up by the Home Office award
 9 scheme that I undertook in relation to officer trauma,
 10 because part of the trauma issue was that what the --
 11 I am not talking about necessarily in fatal shooting
 12 incidents where we have ended up in inquiries or
 13 inquests, et cetera but even more broadly. What they
 14 perceived to have happened, didn't match the facts of
 15 what did happen. That added to their own personal
 16 trauma.
 17 It was in that issue that I set off along with
 18 another colleague on that international research, which
 19 fed into reasons why in particular cases people
 20 experience auditory exclusion, at other times they have
 21 auditory amplification and the same with all the
 22 over-sensory ones. In doing that, I actually went and
 23 met with many of the primary researchers internationally
 24 that had been involved in it. In fact the first one
 25 I went to see was one in London, who was party to

Page 117

1 One reason for that may be that he did not feel
 2 under any continued threat. He had seen the result of
 3 what happened and didn't feel the requirement to fire
 4 more. But, as you say, there could be other reasons.
 5 We cannot enter -- we cannot enter, which is the point
 6 you are making, W80's mind, nor would we seek to do so.
 7 In fact, I think we have caveated that in our --
 8 THE CHAIRMAN: In fairness, as you indicated that it was
 9 consistent, so Ms Kaufmann asks you to acknowledge that
 10 just as it is consistent with the actions of a man who
 11 concludes that he is no longer under threat, so it is
 12 consistent with the actions of a man who realises that
 13 he has made a mistake?
 14 MR BURROWS: Absolutely, sir, yes.
 15 THE CHAIRMAN: Does that assist you, Ms Kaufmann?
 16 MS KAUFMANN: That does, indeed. Thank you very much. Sir.
 17 If I can just have one moment, please --
 18 THE CHAIRMAN: Of course, you may.
 19 MS KAUFMANN: -- to see whether or not there is anything
 20 else I am being asked.
 21 I just had confirmation that there is not anything
 22 further, so those then are the questions on behalf of
 23 the family, thank you very much.
 24 THE CHAIRMAN: Thank you very much.
 25

Page 119

1 a major review at the time, who immediately says, "You
 2 should go to the world conference in Toronto and present
 3 your findings", and I said, "No, we will go and listen"
 4 and from that we went on to -- so it was seminal, it was
 5 informed, but like all research it took account of what
 6 was known at the time, the literature reviews and built
 7 on it, but parts of it were actually quite
 8 groundbreaking, at the time.
 9 Q. Can I turn finally to something you were taken to
 10 earlier on by Mr Penny. That was what you had noted in
 11 relation to W80 having only fired one round.
 12 MR BURROWS: Yes.
 13 Q. You made comments about what this was consistent with.
 14 MR BURROWS: Yes.
 15 Q. The fact that W80 only fired one round is also entirely
 16 consistent, is it not, with his realising, having fired
 17 that round, that he had made a terrible mistake?
 18 MR BURROWS: We can't speculate on that. Mistaken facts,
 19 certainly, in terms of what we now know.
 20 Q. You did speculate, didn't you, on why he had only shot
 21 one round. What I am putting to you is that there is
 22 more than one possible explanation as to why he only
 23 shot one round?
 24 MR BURROWS: There could be. We noted that he had only
 25 fired one round.

Page 118

1 Housekeeping
 2 THE CHAIRMAN: Ms Blackwell --
 3 MS BLACKWELL: Yes.
 4 THE CHAIRMAN: -- that is going to conclude the proceedings
 5 for today.
 6 MS BLACKWELL: It does.
 7 THE CHAIRMAN: We will resume tomorrow with two more
 8 experts.
 9 MS BLACKWELL: Yes.
 10 THE CHAIRMAN: These remarks are directed specifically for
 11 Ms Kaufmann, who I can no longer see but who I assume
 12 can still hear me -- now I can see you again.
 13 How you participate tomorrow, either by virtual or
 14 real presence, is obviously a matter for you and those
 15 who you represent.
 16 Either way, we will continue tomorrow and I think we
 17 are intending to start again at 10.00, is that right?
 18 MS BLACKWELL: 10.00, please, yes, thank you, sir.
 19 MS KAUFMANN: Can I just clarify with you sir, sorry to
 20 interrupt, what you mean by that.
 21 If, for example, we all took tests and had PCRs or
 22 lateral flow tests that showed that we were negative,
 23 would you be content, sir, and the other participants
 24 for us to be in the room or do you mean we could be here
 25 virtually as in in the room we are in at the moment or

Page 120

1 virtually from our homes?
 2 It is not clear to me what you are --
 3 THE CHAIRMAN: To be honest with you, I don't think it is
 4 for me to lay down any rules.
 5 If the Government hasn't, I don't believe I can or
 6 should.
 7 What is at the key of the Government's advice is
 8 responsibility, in other words to behave responsibly.
 9 As far as virtual presence is concerned, I am perfectly
 10 content for that to be from home or fireside or
 11 wherever -- fireside at the moment, highly unlikely, but
 12 wherever you want to be and that applies equally to the
 13 family, as long as the equipment can be compatible with
 14 such an arrangement.
 15 MS BLACKWELL: Thank you, sir.
 16 We will also continue to check the Government
 17 guidance and we will have a discussion with Ms Kaufmann
 18 and her team once you rise.
 19 THE CHAIRMAN: Yes.
 20 Can I take it any further, Ms Kaufmann?
 21 MS KAUFMANN: No, sir, thank you.
 22 THE CHAIRMAN: I trust that everybody in your room is well.
 23 MS BLACKWELL: Thank you, sir.
 24 MS KAUFMANN: We are, thank you.
 25 MS BLACKWELL: Could I invite you to release our experts?

Page 121

1 THE CHAIRMAN: Thank you very much, gentlemen.
 2 MS BLACKWELL: And to adjourn until 10.00 am tomorrow.
 3 THE CHAIRMAN: I can, and will.
 4 MS BLACKWELL: Thank you.
 5 THE CHAIRMAN: Very good, please feel free to go, don't wait
 6 for me.
 7 (1.40 pm)
 8 (The Inquiry adjourned until 10.00 am the following day)
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 12
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 15
 16
 17
 18
 19
 20
 21
 22
 23
 24
 25

Page 122

1
 2
 3 I N D E X
 4
 5 Housekeeping1
 6 MR COLIN BURROWS and MR IAN ARUNDALE4
 (continued)
 7
 Questions from MR BUTT4
 8
 Questions from MR PENNY85
 9
 Questions from MS KAUFMANN96
 10
 Housekeeping120
 11
 12
 13
 14
 15
 16
 17
 18
 19
 20
 21
 22
 23
 24
 25

Page 123

1
 2
 3
 4
 5
 6
 7
 8
 9
 10
 11
 12
 13
 14
 15
 16
 17
 18
 19
 20
 21
 22
 23
 24
 25

<p style="text-align: center;">A</p> <p>ability 11:1 64:11,14,18 65:16 68:2</p> <p>able 1:14 31:9 32:11 62:3 103:17 111:12 113:9 115:1</p> <p>absence 98:19</p> <p>absolute 57:3</p> <p>absolutely 8:21 9:23,24 11:16 11:21 12:7 14:17 15:3 22:23 23:14,14 23:22 24:9,12 24:22 25:13 27:8 29:1,12 35:9 38:6 40:12 44:12,14 46:9 48:2 52:6 57:3 60:12 77:8 93:13,13 97:1 100:7 109:14 112:22 119:14</p> <p>academic 52:25 113:23</p> <p>ACC 6:18 13:12 35:24</p> <p>accept 14:6,9 19:4 23:14 41:5,12 48:20 51:2 52:1 54:9 54:14,25 66:14 74:16 103:8 111:9</p> <p>acceptable 4:24 75:2</p> <p>accepted 59:25</p> <p>access 10:21,24 11:1 13:6 46:3</p> <p>accompanied 4:7</p> <p>account 25:23 32:19 34:8</p>	<p>35:22 58:25 60:9,21 86:9 118:5</p> <p>accurate 5:5 111:2</p> <p>achieve 36:10</p> <p>achieved 109:3 110:12</p> <p>achieves 116:2</p> <p>acknowledge 119:9</p> <p>act 53:23</p> <p>action 15:13 17:6 26:2 27:13 32:22,24 33:14 47:18 48:14 49:3 51:5,10,24 55:19 74:3 85:19</p> <p>actions 25:24 55:6 72:25,25 79:19 97:21,22 119:10,12</p> <p>activation 32:17 33:3</p> <p>active 103:25 104:1,3 105:11</p> <p>actively 105:8</p> <p>activity 14:14</p> <p>actors 40:23,24</p> <p>actual 13:3 56:7 58:25 78:3</p> <p>add 22:2 45:11 77:20</p> <p>added 13:1 21:18 22:7 25:4 82:20 117:15</p> <p>addendum 12:16</p> <p>addition 5:25 48:10</p> <p>additional 77:20 82:15 105:22 105:22</p> <p>additions 79:17</p>	<p>address 24:3 50:17 110:5</p> <p>addressed 79:22</p> <p>addresses 6:25</p> <p>adjourn 122:2</p> <p>adjourned 122:8</p> <p>adjournment 84:23</p> <p>advance 50:24 97:23</p> <p>Advanced 36:8</p> <p>advice 7:9 8:4 8:14 9:10 66:17,19,21 121:7</p> <p>advised 115:14</p> <p>adviser 5:13 8:9 28:5 70:2,3,25</p> <p>advocate 45:6</p> <p>affect 37:8</p> <p>afforded 21:21</p> <p>AFO 71:8 72:13 72:19,20,21 73:19</p> <p>AFO/CTSFOs 39:18</p> <p>AFOs 4:23 9:14 37:15 41:3 44:7 46:11 49:24</p> <p>afraid 2:23</p> <p>agencies 19:13</p> <p>agree 6:5,17 7:5 7:9,24 8:17 9:3 16:3 18:17,23 20:6 22:6,8 25:10 29:23 38:12 48:4,13 49:1,8,16 50:9 51:2,14,25 81:13,22 100:3 100:25 102:1 105:4 106:23 111:1 113:14 114:12 116:6 116:10,16</p>	<p>agreed 112:25</p> <p>agreeing 7:1</p> <p>agreement 7:8 84:15,21</p> <p>agrees 42:5</p> <p>aid 91:6</p> <p>aim 17:3,10,14</p> <p>air 38:15 42:2 42:10,15,20,22</p> <p>airgun 42:12</p> <p>albeit 86:16 87:1 89:10 111:16</p> <p>alerting 62:4</p> <p>allow 25:5 41:2 72:7 84:16 96:9</p> <p>allowance 81:2</p> <p>allowed 1:8 75:7 96:22</p> <p>allowing 74:16 108:16</p> <p>allows 38:10 67:22,23</p> <p>alluded 114:18</p> <p>alongside 38:4 65:12,14</p> <p>altered 41:15</p> <p>alternative 60:22</p> <p>alternatives 110:11</p> <p>amount 13:6 32:3</p> <p>amplification 117:21</p> <p>analogy 91:13</p> <p>analyse 87:3</p> <p>analysis 86:21 88:9 111:7 113:20</p> <p>and/or 86:10</p> <p>anecdotal 39:19</p> <p>Ankaa 16:16 18:12,16 20:21 31:20</p> <p>answer 71:17,23 100:10 104:23</p>	<p>109:18 110:25</p> <p>answered 116:8</p> <p>answers 81:3</p> <p>anti-surveilla... 101:12 102:11</p> <p>anticipated 99:20</p> <p>anxious 104:19</p> <p>anybody 60:3 84:19 105:2</p> <p>anyway 40:20</p> <p>apologies 53:8 97:20</p> <p>apologise 81:5</p> <p>APP 5:1 11:3,21 15:6 17:13 20:18 21:18,21 22:7 25:4,11 26:2 27:13 28:13,24 29:8 32:16 33:22 34:2,9,25 37:6 37:18 40:14 41:6 52:16 60:2,2 63:3,4 80:1 81:25 90:10 106:1,2 109:3</p> <p>apparent 38:20 64:9 98:4</p> <p>Apparently 2:22</p> <p>appear 23:20 46:16</p> <p>appeared 8:25 69:14</p> <p>appearing 2:19</p> <p>appears 89:25 102:15 107:15</p> <p>appendix 94:7</p> <p>applaud 53:14</p> <p>application 3:12 43:12</p> <p>applications 1:25 2:8,15 4:7</p> <p>applied 21:1 22:16 38:3 52:8 54:19</p>
--	---	--	--	--

57:4,6 76:14 applies 59:16 78:3 80:14 121:12 apply 18:24 26:11 30:8 32:6 80:14 applying 29:8 76:2 appreciate 3:24 83:21 94:6 approach 18:15 91:16 approaching 62:17 appropriate 17:6,15 22:10 22:25 29:15 31:15,16 32:3 34:21 38:10 40:5 63:24 67:14 68:15 69:19 70:15 82:24 96:23 97:6,11 106:6 107:16 112:12 arbitrary 110:15 area 41:8 43:20 62:16 63:9,17 63:19,21 64:3 72:21 99:11 areas 43:15 63:20 64:6 76:21 85:15 argue 52:25 54:22 77:6 argued 53:19 argument 53:1 54:16 71:14,16 arising 96:14 armed 5:1 16:3 21:2 31:10 33:14 37:9,25 38:21 39:2 46:16 57:1 64:21 76:6,8,9	76:18,19 78:4 91:15 93:11 95:6 100:24 105:21 110:1 armour 72:22 armoured 81:13 81:16 armourer 88:16 armouring 81:19 arrangement 121:14 arrest 32:18 33:4,8 arrested 20:10 20:23 35:2 88:12 arresting 14:14 arrests 9:22 71:21 arrived 69:13 art 99:13 article 16:1 21:7 23:7,10 57:3 72:19 74:25 95:10 106:8,12 106:16 109:6 articles 95:9 articulated 40:9 107:6 Arundale 4:14 4:17 5:3,8,12 5:14,19,23 6:3 6:11,13,15,20 7:13,16,19,23 8:2,12,18 9:9 9:13,23 10:19 10:24 11:25 12:7,11,19 13:1,11,19 14:1,5,8,16,20 14:24 15:4,7 15:14,19,23 16:4,9,13 17:8 17:23 18:3,5,9 19:10,17,23 20:4,8,12,20	21:1,8,15,24 22:4,8,15 23:14 24:12,20 25:8,19 26:5 26:10 27:5,9 27:17 28:2,4,9 28:15,24 29:5 29:7,21 30:2,7 30:11 31:22,25 32:14 33:6,17 33:20 34:5 36:14,17 37:11 38:18,23,25 39:7,11,18 40:7,13,17,21 42:20 43:1,7 43:23 44:8,11 44:17 46:6,13 46:19,22 48:6 49:8,10,13,19 49:23 51:8,11 51:13 52:6 54:9,12 55:19 56:3 58:23 59:25 61:9,12 62:20 63:6,10 63:13,18 64:2 64:13,24 67:7 68:7,16,20 69:20 70:3 72:6 73:12 74:10,18,23 75:9,20 76:1 76:11 77:13,18 78:1,7,13 79:2 79:4,6,14 81:15,25 82:23 83:1,6,11,16 84:16 85:11,21 86:3 87:16 88:5 89:18 91:8 97:1,12 98:11,21 100:7 101:1,18 102:19,23 104:18 105:4 105:22 106:5	109:1,21 110:1 110:8,13 111:5 113:3,19 114:18,23 115:12,20,22 116:3,12,18,22 123:6 ARV-trained 30:14 ARVs 61:14 asked 2:17 34:11 66:13,17 70:18 79:8 85:7,17,18 101:4 103:19 119:20 asking 43:4 59:5 96:3 99:9 100:11 112:25 asks 119:9 aspect 18:12 aspects 10:24 43:25 85:15 assertion 86:22 86:24 assertions 68:8 assess 29:15 59:10 76:25 assessed 55:5 75:14 79:20 assessing 100:8 105:9 assessment 20:16 23:9 46:17 75:13 76:3,9 78:3,10 91:21 93:14 assessments 6:6 75:12 77:23,25 assessor 5:20 assets 108:6 assiduous 48:7 assist 10:5,10 25:17 119:15 assisted 91:5 associated 56:5 79:17	associates 19:2 Association 95:1 assume 112:19 120:11 assuming 5:4 assumption 44:17 101:18 assumptions 7:3 64:25 101:15 attached 112:18 attack 21:11,14 31:10,23 32:10 attacked 30:9 attacks 93:20 attempt 18:6,20 19:25 26:8 46:3 114:15 attempted 30:3 attempts 19:20 27:10 114:8 attention 61:4 87:4,17,22 Audi 74:3 76:7 98:16 101:10 104:22 auditory 90:24 117:20,21 authorise 32:17 authorities 19:12,15 Authority 95:1 automatic 59:8 60:18 92:10 94:12 available 8:9 10:14 12:22 19:11 36:11 68:10 100:19 101:21 averse 24:10 avoid 55:9 111:12 award 117:8 awarded 94:17 aware 1:8 4:24 11:13 68:9 70:9,10 71:14
---	--	--	---	---

71:15 79:23,24 80:23 98:4 99:5,15 109:8 111:11,19 Azelle 21:20	BB 42:11 beginning 113:4 behalf 2:2,9,10 2:10,18 83:13 94:25 119:22 behave 72:17 121:8 belief 56:18 59:1 believe 6:16 9:5 23:3 38:8 57:10,19 59:7 80:7,13,15 81:6 91:21 103:20 116:14 116:20 121:5 believed 29:13 30:20 46:21 57:18 69:15 102:9 116:15 Belmarsh 29:25 beneficial 104:10 benefit 12:21 16:22 67:25 113:24 115:24 benefits 60:2 97:14 bespoke 16:15 82:22 best 24:13 36:10 64:16 65:7 better 16:25 65:5 75:25 76:2 105:18,21 108:24 beyond 31:5,18 37:18,18 64:22 big 53:3 71:20 bigger 27:10 biggest 66:4 bit 16:2 43:16 47:1 48:18 50:23 62:23 92:4 94:4,6 Blackwell 1:6,7 1:15,22,24 2:2 2:5,7,12,23 3:8	25:16 83:24 95:18 120:2,3 120:6,9,18 121:15,23,25 122:2,4 blank 42:15 blunt 40:25 blurred 109:15 BMW 98:16 board 4:7 body 60:16 72:22 bogged 43:11 bored 41:18 borne 31:3 Borough 93:25 Bracknell 47:19 53:3 54:11 61:10 62:4 63:12,22 67:13 91:15 98:2,8 101:5 breach 21:12 breached 20:11 20:25 break 18:20 19:8 83:23 84:3,15,17 breakdown 3:23 breakout 18:25 Bridge 93:24 brief 39:15,21 39:25 43:3,25 83:20 briefed 37:4 40:4 44:7,15 59:1 briefing 37:7,8 39:1 43:22 45:7 46:24,24 47:5,5 75:18 88:4,18,20,21 103:20 104:12 briefings 37:2 46:23 47:8,10 briefly 45:20 46:23 47:14	74:1 112:5 bring 35:24 36:5 63:22 106:14 brings 32:4 67:25 broadly 117:13 brought 34:13 building 59:20 buildings 82:14 built 118:6 bulleted 87:6 Burrows 4:14 4:17 5:2,15,18 5:24 6:4,23 7:6 8:13,19,23 9:24 10:18,23 11:5,9,21,25 12:8,12,15,20 13:5,10,13,18 14:17 15:3,18 16:22 17:7,9 17:12,17 18:21 19:9 20:5 22:5 23:18,19 25:9 25:13 26:14,23 27:18,25 28:10 28:18,20,23 29:12 30:16 31:7,12 34:10 35:9 36:13,18 36:24 37:5,16 37:21 38:7,14 38:17,22 40:6 40:12 41:11 42:8,11,13,16 42:23 43:9 44:12 45:6 47:1,7,12,17 47:21 48:3,7,9 48:12,15 49:5 50:2 52:15 53:8,10,18 55:9,13,22 56:11 57:7,10 57:17 59:11 61:16 62:6,9 62:25 65:9	66:19,25 67:8 67:16 68:9,24 69:10,12,13 70:8 71:2,14 72:4,15,20 73:11 74:19 77:2,14 78:8 79:10,25 81:18 82:17,21 83:7 83:10 84:16 87:15 88:6 89:17 90:5 91:7,11,13,18 91:23 92:9 93:5,7,13,16 93:21 94:2,3 94:10,14,20,24 95:7,14 96:16 97:2,18,20 98:22 99:2,13 100:2 103:3,12 103:20 104:17 107:4,23 108:13 111:3 111:20 112:7 112:16,24 113:1 114:17 116:11,17,21 116:24 117:5 118:12,14,18 118:24 119:14 123:6 business 28:22 Butt 2:9,17 3:8 3:10,11,17,25 4:3,13,15,16 6:17 9:19,20 10:3,11,13 16:22 32:16 33:11,14 34:2 35:12,17,23 42:9 43:10,20 44:21 45:1,17 45:19 47:5 54:1,9 55:16 56:25 58:3,17 58:21 62:11
---	---	---	---	--

68:13 70:20 75:10,17 76:25 77:22 78:21,25 80:22,24,25 81:5,7,10,12 82:11 83:20 123:7	case 4:5 9:22 13:7 14:9 17:18 23:12 26:6 28:13 29:3 33:11 38:1 40:4 42:9 45:22 48:20 51:4 55:24 60:20 61:8,10 61:20 65:11 69:18 80:7,11 83:12 90:2 93:17 96:24 102:5,6 108:16 110:25 111:13 115:18 116:2 cases 1:18 11:11 30:23 108:22 114:19 117:19 categories 76:14 categorisation 42:12 category 42:2 cause 10:16 41:10 caused 104:19 caveat 4:8 6:14 7:16,18,24 19:4 49:13 67:17 caveated 81:18 119:7 caveats 8:6 40:5 ceased 91:5 cell 29:24 certain 18:22 43:25 56:4 60:12,13 86:4 certainly 12:6 14:24 22:17 25:19 40:17 45:6 50:9 53:13 84:10 95:25 99:14 102:1 111:9 113:23,24 118:19	cetera 71:22 104:8 117:13 chair 42:17 103:18 chairman 1:6,11 1:16,23 2:1,3,6 2:11,21,24 3:1 3:4,6,10,16,23 4:1,4 6:14 9:19 10:2,6,12 22:12 32:15 33:10,12 34:1 35:11,16,21 42:4 43:10 44:21 45:18 47:4 53:7,9 54:1 55:12,15 56:24 58:2,14 58:18 62:10 68:12 70:17,19 75:16 76:24 77:17 78:20,24 80:21,24 81:1 81:6,8,11 82:8 83:23,25 84:2 84:10,14,25 85:14 95:16,20 95:22,24 96:1 100:12,25 101:2 109:17 109:25 110:4 110:12,17 111:10,21,25 115:18,21,25 116:4 119:8,15 119:18,24 120:2,4,7,10 121:3,19,22 122:1,3,5 challenge 7:20 60:3 111:17 114:25 challenges 63:23 challenging 78:14 chance 24:7 change 10:17	45:15 66:24 97:3 changes 12:2 83:3 chatter 74:20 check 83:20 121:16 chief 6:15 82:6 94:8 95:1 chilling 24:17,20 choice 72:13 chose 114:9 circumstances 22:11 58:25 60:12 64:17 65:8 69:18 89:20 clarification 6:23 23:19 105:1 clarified 47:3 clarify 4:10 10:8 101:14 103:16 120:19 clarifying 7:2 clarity 35:6 42:20 clause 87:23 clear 11:9 16:23 22:6,19,20,23 23:22 24:9,22 25:2 42:16 43:5,9 45:25 49:20 59:23 61:14 62:3 68:13 74:4 81:25 100:10 104:10 107:12 109:2 121:2 clearest 1:19 clearly 3:7 9:16 11:20 14:18 26:18 27:24 32:2 40:9 48:21 57:17 60:14 63:11 65:4 66:8	67:15 70:2 73:25 82:19 84:6 90:17 105:23 116:7,8 client 24:25 83:13 close 47:19 52:24 53:3,3 53:12,14,15,16 53:19 54:4,11 61:10 62:4 63:12,22 67:13 91:15 98:3,8 101:5,6 closely 52:15 code 79:1 cohort 74:14 COLIN 4:14 123:6 collating 113:21 colleague 42:16 90:25 97:13 113:20 117:18 colleagues 72:23 collective 113:4 college 5:20 13:9 21:25 28:19 80:22 coloured 9:7 come 11:8 13:15 38:7 42:1 44:15 52:24 68:25 75:8 92:16 comes 20:17 coming 39:23 50:22 51:15 68:24 79:21 93:15 101:3 102:8 104:2 114:2 command 71:24 100:18 105:18 107:2,19,24 108:1,8,10,25 111:8 commander
C				
C3000 100:9 101:25 102:8 102:24 105:8 call 8:1 56:22 59:4 60:22 61:8 62:12 63:12 64:19 65:3,5 67:14 68:18 69:17 105:20 called 91:16 calling 48:10 capabilities 93:10 capability 12:18 92:2 108:1 capable 28:11 100:4 caps 61:22 car 27:14 61:24 62:5 64:22 65:13 68:2 81:16 99:10 care 20:7,10,17 21:13 careers 24:24 careful 43:24 carefully 40:3 44:2 carried 79:15 carry 19:3 53:25 56:4 78:15 108:9 carrying 88:10 cars 65:14,21,24 81:13 99:4 cartridges 41:19 cascaded 89:2				

8:10 20:1 22:24 32:18 65:22 75:8 81:21 83:15 102:24 103:2 106:21 commander's 5:17,21 commanders 4:23 11:18 14:7 15:12 21:9,20 22:24 23:12 25:5,12 25:17 27:6 31:20 59:10 70:25 74:14 101:20 108:17 108:18 110:1 commanding 96:13 comment 8:3 67:16,19 89:23 comments 8:23 90:20 110:18 118:13 commission 100:21 commit 50:13 committed 27:22,24 50:14 54:22 committing 53:23 common 59:3 communication 3:24 62:13 82:2,9 compare 59:4 comparing 78:9 78:12 compatible 121:13 compatriot 50:10 competent 5:7 complaint 3:25 4:1	Complaints 95:1 complete 6:24 completed 5:16 12:9 94:25 completely 52:4 completion 8:24 complex 39:3 81:14 108:22 complimentary 9:6 comprehensive 8:21 compromise 29:25 61:15,25 compromising 72:5 concept 13:20 21:17 22:8 30:23 32:7 52:18 62:21,24 63:19 65:6 80:13 85:18 87:21 concepts 4:25 concern 22:1 31:14 38:25 39:4 41:10 66:4,6 68:24 98:13,18 104:21 concerned 30:25 51:1 69:13 88:20 92:6 94:16 111:25 121:9 concerning 34:2 concerns 26:12 61:11 70:22 107:12 conclude 86:14 120:4 concluded 32:6 84:17 concludes 36:1 119:11 conclusion 9:15	46:14 67:11,12 67:19 89:9 conclusions 4:20 13:15 35:24 conclusive 103:7 conclusively 44:22 conduct 9:22 conducting 37:7 77:22,24 conference 118:2 confident 73:2 confine 37:3 confined 2:13 3:21 confirmation 105:1 119:21 confirmed 46:21 confronted 38:20 91:14 confuse 49:21 confusion 45:2 47:2 conjunction 33:21 70:6 connect 102:16 connection 85:23 88:7 conscious 87:25 112:3 consequences 25:22 73:21 consider 18:23 20:2 24:3,10 31:21 32:20 46:23 51:20 53:20 65:24 70:15 78:6,11 86:5 96:20 108:14,21 110:7,8 considerable 70:13 105:16 consideration 17:4,19 20:19 25:11 26:6	29:17 34:25 41:9 73:10,11 106:16 110:2 considerations 4:25 33:23 36:1 106:12 109:6 considered 7:10 8:15 9:11 17:25 18:19,21 27:11 35:7,7 36:2,12 40:3 50:3 54:20 57:2,5 68:19 69:25 70:1 72:1,3 74:6,12 89:10 105:17 116:1 considering 16:2 17:24 52:8 consistent 7:11 8:16 9:11 36:11 96:20 118:13,16 119:9,10,12 conspiracies 51:20 conspiracy 29:12,14 71:20 constable 82:6 Constabulary 94:9 constantly 12:2 constituted 98:17 constraints 33:22 consultation 22:2 contact 50:25 67:24 72:23 contain 17:5 59:4 60:22 62:11 63:11 65:3,5 contained 34:8	62:15,21,22,23 63:7 88:18 89:1,5 containing 64:3 89:1 containment 56:21 61:7 63:19,20 64:16 64:19 67:14,24 68:18 69:17 105:19 content 2:15 4:4 11:4,13 12:14 13:4 22:3,7 23:13 25:4,11 25:15,16 34:2 37:8 58:4 60:24 62:11 85:4 120:23 121:10 context 14:10 77:19 94:4 contextual 87:10,22,25 contextually 39:22 continuation 1:21 continue 1:14,17 80:15 120:16 121:16 continued 4:14 119:2 123:6 continuous 19:6 continuously 90:13 continuum 51:22,23 contradiction 45:3 contrary 42:6 contributed 45:24 control 29:19 30:5 33:1,19 36:4 58:11 62:24 64:7
---	--	--	---	--

92:22 controlled 73:5 73:7 controlling 19:1 92:18 controversial 38:13 conversation 44:12 conveyed 99:17 conveying 99:3 convicted 30:17 convictions 25:6 29:11 cooperate 1:17 COP10 15:9 16:20 COP14 62:12 COP18 17:13 COP24 26:1 COP4 58:3 60:23 copy 8:25 core 1:16 2:2,7 38:23 coroner's 60:9 corporate 108:4 108:6 correct 5:2,7,8 5:24 8:13 10:18 13:18 17:17 21:24 36:8 37:11,22 38:14 48:8 87:15 89:17 91:7 94:20 95:14 96:16 98:22 101:17 102:16 110:22 116:17,21 corrected 102:6 102:21 correcting 83:4 corridor 89:14 counsel 83:16 88:13 counter 93:17	country 59:12 66:7 70:12 79:9 course 1:11 5:17 5:21 11:16 14:6 18:9 19:7 19:10 21:6 25:10 26:22 27:5 28:16,20 32:5 33:21 37:12 39:2 42:9 43:7 46:7 46:8 48:23 51:1 52:13 57:14 58:23 62:6 66:18,22 70:4,17 74:22 77:15 78:9,15 85:13 86:5 88:14 90:21 91:9 92:4 93:17 94:11 97:12 101:24 102:23 104:9 105:17 114:13 119:18 court 25:15 courts 60:9 114:25 cousins 27:23 cover 47:23 65:5 65:8,16,18 covered 4:8 60:5 68:8 covert 32:25 73:18 craft 99:14 create 62:16 63:16 crime 14:12 16:18 18:11 21:2 50:13 criminal 14:13 19:2 20:9 23:1 24:4 35:4 71:8 71:9 72:11 73:15 88:16	106:7 115:13 criminals 13:23 14:21 15:24 31:8,10 37:24 59:7 60:19 criteria 9:14,16 54:24 critical 23:7 25:10 47:15 80:6 94:22 95:11 103:12 110:23 112:13 criticised 3:17 criticism 8:8 21:4 83:15 86:1 criticisms 109:23 110:20 CTSFOs 46:17 cues 90:24 cuing 87:10,22 87:25 current 36:9 45:13,22 curriculum 10:1 10:4,22 11:1,4 11:7,17,25 12:14,16,22,25 13:4 15:6 16:20 17:10 37:6 40:15,17 41:7 49:1,12 49:13,17,20 50:7,12,17 51:3 52:3,5,9 53:21 57:9 58:12 59:22,25 60:7 62:11 63:3 64:10 66:14,23,23 67:1 70:8 custody 18:7,20 19:8 28:3 cut 9:8 <hr/> D D 123:3	D9 55:21 danger 18:13 56:2 66:13 dangerous 14:22 21:8 31:8 37:24 40:2 44:1 49:24 dangerousness 92:7 dangers 39:19 date 30:10 dated 42:24 day 84:18 97:3 122:8 days 90:12 DCI 77:10 100:18 102:9 102:21 106:20 106:23 deactivated 41:17 42:15 deal 4:2 64:12 73:14,16,20 75:4 78:18 85:20 87:13,21 89:19 dealing 53:22 76:18 88:3 94:21 dealt 20:14 85:15 94:6 death 16:6 56:12 56:15 debate 22:2 decades 109:9 109:23 113:25 December 9:17 9:18 17:21 18:7 29:6 33:8 88:21,23 98:2 106:22 decide 8:11 25:5 50:18 61:20 97:10 decided 53:13 91:1	deciding 32:17 77:4 decision 3:22 4:6 14:10 20:13,16 22:2 22:25 27:6 34:19 56:8 61:18 68:3 70:4 95:11 96:7,9,14 100:15 105:19 105:23 111:17 decision-maki... 96:19 decisions 23:10 36:9 38:11 41:3 64:14 74:15 101:22 decisive 47:18 48:14 49:3 51:5,9 74:3 decreases 44:5 deemed 71:1 Defence 79:7 define 55:7 defined 51:4 53:2 55:20 63:2,3 defines 56:8 definition 42:14 50:16 51:16 115:21 definitions 22:16 52:21,23 52:24 degree 94:17 113:10 delay 1:14,21 26:4 27:15 delayed 1:3 deliberate 27:6 52:17 90:13 Deliberately 12:15 deliver 22:21 delivered 109:8 109:14 110:11
--	--	---	---	--

delve 94:5	103:9 104:5	directly 28:24	displace 26:4	63:11
department 6:9	109:13 116:9	37:8	27:15	drawing 61:4
depend 116:2	116:13,19	disagree 3:22	dispute 42:4	drawn 107:9
depending	deterrent 21:23	7:5,25 36:21	disrupt 27:4	108:18 114:1
45:11 97:3	develop 15:12	68:8	disrupted 17:21	drew 87:4 91:13
depends 49:14	28:11	disagreed 22:1	18:8,18 26:7	drive 74:3
101:21	Developing	disagreeing 7:2	disrupting	driver 71:7,9
deploy 30:13	15:10	62:2	14:11 18:11	73:24
61:3	device 64:23	disagreement	26:17 27:14	drivers 72:17
deployed 62:16	dialogue 105:8,8	9:10 36:15	disruption 27:5	73:9
65:10 78:4	dictionary 56:12	discern 108:21	29:23 59:5	driving 76:7,21
93:19,24,25	died 16:8	discharge 87:9	80:11	101:16
deployment	differ 97:22	87:13 89:20	distinction 31:2	drugs 14:12
9:14,16 33:14	difference 19:7	91:1	50:4 107:13	due 20:21
61:3 70:1 73:4	35:17 77:9	discharged 90:4	distinguish	duty 20:7,10,17
75:22 79:17	different 9:7	95:3	103:8	20:18,25 21:13
97:9	13:15 34:4	discharging	distraction	23:22 29:14
depth 52:8	39:8 46:7	86:25 87:19	80:11	35:8 96:13,21
describe 54:10	51:22,24 52:4	107:2	distributed 89:2	dynamic 48:11
93:1	52:13 55:1	disciplinary	division 108:19	50:21 55:11,16
described 12:24	56:9 58:4 59:2	86:8 111:12	108:24	55:17,19,20
51:5,9 52:4	59:2 64:4 65:4	discipline	divisions 108:18	56:1 59:17
57:8,17 107:6	69:20,22 74:15	107:16	document 11:12	66:11 77:22
describes 57:15	77:1,23 78:1	discipline-app...	11:14 15:10	dynamically
107:19	81:19 92:21	47:16,24 48:5	68:20	64:14
description	103:17 107:15	disclosed 11:11	documentation	
54:25 91:14	108:24	discrete 70:22	20:15 54:12	<hr/> E <hr/>
descriptors 52:2	differentiate 9:7	75:10	documented	E 123:3
designed 4:9	differently	discretionary	23:8 26:19,25	earlier 33:22
24:17 25:17	54:17	47:9 63:6	documents	52:7 99:23
desire 1:20	difficult 14:6,9	discrimination	25:20 80:2	105:14 118:10
105:9	21:8 38:19	112:5	doing 14:18	earliest 15:12
desired 106:6	39:20,22 44:14	discriminatory	23:24 27:1	early 32:23,25
desperate 59:7	75:4 103:8	112:14	28:14 73:21	36:10 99:16,19
60:19	difficulties	discuss 112:4	86:18 117:22	101:7,7 115:16
detail 26:20 41:6	100:8	discussed 70:24	domain 60:3	ease 65:13
50:3 52:24	difficulty 45:9	103:1	dominate 60:15	eased 74:19
85:6	45:14 54:3	discussing	doors 64:22	edged 41:1
detailed 35:25	66:21 83:21	115:19	double 81:4	effect 24:17,20
41:9 72:21	84:19 101:24	discussion 34:14	109:16,25	25:3 45:3
detained 68:5	dimension 13:1	34:18 48:15	doubt 22:1 38:7	89:25 90:1
detected 90:24	dimensions 59:2	55:10 105:11	50:11	98:6
detention 27:20	direct 15:13	121:17	downside 23:9	effective 15:13
32:21	117:3	discussions	drafting 11:22	15:16,21 82:1
determination	directed 55:6	26:23	draw 87:17,22	82:8 106:14
3:14	110:21 120:10	dismantling	115:1	effectively 23:1
determine 103:5	direction 44:23	18:11	drawbacks	27:19 39:15

effort 103:13	ensure 1:20	61:6	100:6,20,20	expense 106:12
efforts 112:13	13:23 23:6,23	essentially 87:18	103:22 105:15	experience
either 44:13	24:14,17 48:8	establish 79:15	106:11,17	11:17 23:3
48:20 55:24	62:14 63:7	established	112:2 113:10	29:22 43:13
61:7 64:9	73:3 80:3	107:24	113:12,13,14	76:16 94:5
65:12 71:9	106:6,15 109:5	establishing	113:17 114:12	106:8 109:17
79:5 108:23	109:11 112:14	44:25	114:15	117:20
120:13,16	112:21	et 71:22 104:8	evident 107:8	experienced
element 34:20	ensured 1:13	117:13	evidential 22:21	5:10
78:2 106:14	ensuring 53:15	evacuate 61:14	29:5 100:21	experiences
112:13	91:6	62:3	106:7	88:1
elevated 56:5	enter 119:5,5	evaluate 79:8	exactly 64:6	expert 13:12
elevation 78:15	entering 65:12	80:3,20	76:4 100:17	expertise 5:22
elicit 4:10	enterprise 23:2	evaluated 80:18	110:10	31:19
eliciting 10:9	entire 76:2	98:23	examination	experts 81:3
eliminate 27:19	entirely 108:24	evaluation	86:21 95:5	120:8 121:25
email 78:21 89:1	111:2 118:15	80:23 113:17	examine 25:14	explain 21:16,19
embolden 86:4	entitled 32:19	evening 89:4	examined 21:25	explained 20:15
emerged 107:4,5	94:18 95:11	event 49:14	example 10:1	89:15 91:19
emerging 114:2	entry 82:14	109:10	17:20 26:8	92:11,12
emphasis 37:23	environments	events 53:2	27:2 29:23	explanation
109:10 111:6	52:20	93:20 104:9	30:4,13 32:10	118:22
emphasise 10:8	equally 21:11	eventually 52:17	39:25 44:6	explored 36:8
emphasised	55:16 67:20	everybody 4:11	59:5 65:1	41:6
96:18	121:12	42:5 64:7	69:21 74:8	express 1:12
employed 57:2	equation 113:17	76:15 84:14	81:16 82:24	36:15
73:14	equipment	121:22	83:8 98:12	expressed 10:3
enable 28:7	78:17 79:1	everybody's	120:21	12:1 38:25
100:15	121:13	1:20	Examples 27:2	41:9 58:5
enabled 45:19	Eren 18:20 19:8	evidence 4:10	exceptional	98:12,18
45:24 46:10,15	20:22 27:15,23	8:24 9:19	109:20	expressing 39:4
47:25	28:1 35:13	11:20 19:11	exclusion	extended 20:7
encouraged 2:4	50:9 88:10,14	22:6,18 25:3,6	117:20	extensive 68:11
endeavour 61:3	Eren's 23:23	28:6,12 29:10	exemplifies	extent 18:23
ended 56:15	29:24	29:11 32:20,21	108:16	42:25 63:2
117:12	Erens 18:1 28:7	33:7,11 34:10	exercise 54:8	73:8 113:7
ends 51:19	escape 17:19	34:12 39:4,19	exist 37:24	extract 65:2
enforcement	18:7 19:20,21	48:18 55:24	existed 52:22	extraction 56:21
112:8	19:24 20:22	57:18 58:10	89:7	57:5,8 58:6,9
engage 21:6	23:23 26:7	60:17 68:21	existing 4:10	61:8 64:6 65:6
engaged 16:1	27:10 30:3	69:12,14,20,22	exiting 91:15	67:13,24,25
107:17	32:4 35:15,19	69:25 70:7,17	expect 15:1	68:15 69:16
engaging 101:11	46:2 68:2 98:6	74:2 75:21	40:11 45:8	105:21
104:3 108:10	escaped 28:3	76:1 77:19	76:15 104:13	extrapolate 43:2
England 42:1	escapes 19:14	78:22 83:2	104:23	extrapolated
95:3	escaping 18:14	84:4,16 88:9	expected 34:12	54:15
enquiries 79:15	essential 60:12	94:15 96:6	99:2 101:14	extremely 5:10

40:2 42:19 76:13 92:21 extremis 56:1,11 eye 61:5,11,24 104:20	familiar 28:16 37:6 family 2:10 3:12 16:6,7 111:16 111:24,25 119:23 121:13 far 18:14 23:8 24:12 34:25 35:4 44:22 52:18 83:14 92:24 93:6 121:9 fast 62:7 fatal 42:21 113:22 117:11 fatality 42:21 fault 43:6 47:4 favour 44:22 FE1's 75:13,21 FE11 99:23 FE16 110:23 111:12 fear 90:25 featured 80:9 features 93:10 February 89:4 fed 101:25 117:19 feed 99:12 100:9 feeding 113:16 feel 90:18 115:5 119:1,3 122:5 feels 111:5 felt 83:17 86:21 fewer 30:5 filling 105:12 filters 40:10 final 87:23 finally 2:19 16:20 32:9 36:7 45:1 68:17 74:1 81:21 118:9 find 26:20 findings 118:3 fine 3:3 finish 41:23	43:20 84:20 finished 20:22 75:11 fire 41:15,18 57:20 90:11,14 90:18 92:2,12 92:23 119:3 firearm 38:20 42:14 45:16 46:3 75:3 87:9 87:13,19 91:2 firearms 5:17 8:10 10:21 11:18 14:3 15:5 20:1 22:24,24 34:20 37:4 40:1,15 41:2 44:23 45:4,9,19,23 46:3,10,15 47:6,10,25 48:1,4 57:9 65:22 74:25 76:11 77:22 78:5,6,11,14 81:21 83:15 88:22 93:11,18 94:8 95:3,10 95:11 106:21 107:3,19,24 108:1,5,11,17 108:17,25 fired 64:8 90:9 90:17 92:19 118:11,15,16 118:25 firer 92:24 firers 92:25 fires 89:24 fireside 121:10 121:11 firing 42:15 90:15 92:25 firmly 68:14 first 2:18 4:22 7:19 11:6 13:20 16:11	18:1 23:22 34:12 43:21 50:6 63:16 72:20,21 81:22 87:12 99:11 116:6 117:24 Firstly 86:22 fit 80:4 five 81:9 90:9 flee 68:4 flight 68:4 floor 4:13 flow 120:22 focus 98:1 focused 43:18 54:21 follow 15:20 100:19 followed 2:18 following 18:15 30:3 88:8 107:21 122:8 force 79:9 91:5 94:19 95:9 112:9,11,13,14 112:20 113:2,5 113:9,16 114:14 forces 79:12,23 79:24 82:6 foreseeable 97:24,25 form 45:6,7 47:18 48:13 49:3,9 113:12 formally 79:20 forms 8:24 69:5 77:25 forth 113:13 forum 25:22 forward 7:17 25:21 50:19 55:14,23 56:14 56:23 57:18,22 58:8 59:6,15 65:2 found 106:8	110:24 111:13 four 66:2 103:24 fourth 103:11 Fourthly 6:12 7:8 fractions 86:17 87:1 89:11,13 free 122:5 fresh 4:10 friends 78:22 frightening 91:17,20 93:22 front 62:17 63:9 full 60:1 fully 23:14 25:11 54:25 92:10 111:9 function 106:11 107:2 functions 108:10 fundamental 39:12,14 fundamentally 10:17 further 5:9 29:10 37:19 44:25 87:20 91:12 107:9 109:10 119:22 121:20 future 23:17 24:7,18 27:9 32:4 35:3 36:4 52:10
<hr/> F <hr/>				<hr/> G <hr/>
FA2 9:5 26:12 28:6 77:25 82:18 83:3 FA3 9:5 26:13 28:6 77:25 82:12,14 FA5 7:10 8:22 9:6 26:13 28:6 68:19 69:8,10 face 14:23 45:15 56:12 83:5 facing 114:20 fact 1:16 9:6 52:7 53:20 54:21 75:21 79:12 86:5,20 87:3 88:25 92:24 94:7 98:1,23,24,24 99:22 101:4,17 102:5,13,13 105:14,21 108:11,20 110:23 111:1 117:24 118:15 119:7 factor 29:8 35:21 facts 116:2 117:14 118:18 factual 88:8 failing 20:18 failure 102:16 fair 11:18 14:21 23:12 69:1 74:4 113:19,22 fairly 14:9 fairness 112:1 119:8 fall 42:1 80:11				gain 58:11 game 59:20 gangster 93:7 gap 113:23 gaps 105:12 garden 63:25 gates 31:5 63:25 gather 100:20 105:15 gathered 97:7

104:15	37:19 80:19	112:17	12:3 30:21	51:17
general 3:17	going 3:22 10:4	greater 36:3	54:1	hero 72:18
11:16 28:1	10:9 11:8	73:7	happens 31:18	high 6:1 24:10
generally 4:24	13:22 19:5	green 77:3,5,6	66:5,6 73:18	42:3,19 49:6
15:25 48:4	25:23 26:17	gross 115:13	90:16	57:2,21 58:1
49:9 61:1	27:1 34:15,19	ground 64:15	happy 26:15	58:13,15,19,24
generic 9:8	37:2,17 39:3	105:10	hard 56:13,19	77:7,11,15,16
113:12	43:12,16 48:20	groundbreaki...	83:16 92:21	78:6,11 91:24
gentlemen 54:2	48:23 49:25	118:8	harm 17:15 36:3	91:25 92:1
85:3 86:19	53:13,14 56:23	group 16:18	51:6	high-grade
90:3 95:15	57:21 59:8	18:12 93:19	Hartley 6:18,21	18:24
96:3 100:25	61:7,16 63:14	guard 72:12	6:25 13:12	high-powered
101:13 110:22	69:15 71:11,13	guards 70:23	35:24,25 67:20	91:22
112:6 116:6	72:12,16 73:3	guess 73:22	68:9	high-profile
122:1	73:8 77:5,6,7	guidance 7:12	Hartley's 6:16	18:13
genuinely 71:3	78:17 80:15	8:16 9:12	hat 106:25	high-risk 18:24
getting 43:11	81:2,9,20 82:6	22:10 23:5	109:25	35:1,12,13,17
50:16 64:21	83:23 92:3,4	79:5 91:2	hatting 109:16	35:18 57:6,16
72:20	93:3 96:3	106:1,2 112:7	hazard 98:17	59:24
ghosted 29:24	99:21 104:20	121:17	health 79:19	higher 48:13
give 37:14 41:10	104:24 110:18	guilty 30:18	80:8	49:3,8,17 59:8
65:7 66:17	115:15,18	gun 41:12 42:11	healthy 60:4	highest 92:7
71:23 72:6	116:2,5,20	71:10 72:10,12	hear 2:22 3:1,2	highlighting
81:9 84:2	120:4	74:21 93:1	3:3,4,6 83:2	54:2
87:18 114:8	good 2:25 3:6,16	116:20	84:6,9,11	highly 5:10
given 17:4 25:14	4:12 45:18	guns 41:14,17	95:20,21,22	24:13 38:9
27:2 38:10	60:19 74:25	61:21 77:14	120:12	68:13 108:7
47:6,9 55:25	83:23 91:21	92:14,15,19	heard 3:20 5:5	121:11
63:8 65:25	95:24 96:1		19:10 22:18	hindsight 22:8
66:1 77:14	114:21 122:5	H	33:11 39:5	23:15 54:15
91:20 94:15	Google 41:24	hand 86:10	44:3 45:10	historic 11:6
98:7 102:21	Government	92:18,25	46:6 48:18	historical 42:25
103:14 112:17	121:5,16	handled 106:22	51:20 55:22,25	43:1,7
gives 33:23	Government's	hands 57:22	64:13 66:5	hive 110:5
96:12	121:7	86:18 116:14	69:20,22 70:14	hold 43:13 58:8
giving 72:5 84:4	governor 19:21	happen 17:20	70:24 77:2	holistic 111:7
go 2:18 8:2 21:4	governor-grade	23:25 26:23	100:7 103:10	home 117:8
40:10,11 51:1	19:24	56:14 73:3	103:21 112:2	121:10
59:19 61:19,22	grading 30:18	74:17 108:22	113:19	homes 121:1
71:20 72:17	Grainger 85:22	117:15	hearing 103:24	honest 121:3
77:5,6 85:9	grant 2:15 4:7	happened 12:9	hearings 1:21	hope 47:14
86:5,19 89:19	granted 11:14	26:24 53:18	held 25:23 42:18	68:25
93:1 99:5,8,22	granting 10:7	54:20 55:13,23	Hello 95:20	hopefully 24:20
99:23 101:4,9	grateful 25:1	74:5 79:16	help 22:12 24:24	60:8
118:2,3 122:5	66:21	80:5 96:9	36:18 71:3	hospital 24:8
goes 5:9 12:1	gratitude 1:12	117:14 119:3	helpful 16:23	26:8 30:4 31:5
32:16 37:18,18	great 50:3 77:4	happening 1:11	34:24 46:1	hostage 50:24

59:17 60:13 hour 84:5 98:3 99:10 105:17 hours 103:15,15 Housekeeping 1:5 120:1 123:5,10 houses 61:14 62:3 huge 13:6 90:8 hybrid 66:10 hypothetical 26:18 65:10 hypothetically 75:5 hypotheticals 26:11 30:8	imminent 29:18 31:15 impact 79:18 impacted 111:21 imperative 12:4 imperfect 45:14 implement 8:11 66:22 implementation 4:21 107:21 implications 80:9 importance 25:14 96:4,18 112:17 important 4:19 14:11 39:11 48:5,18 50:23 62:25 69:8 76:25 97:16 98:8 104:4,5 112:23 importantly 100:22,23 impossible 63:16,24 impression 37:14 imprisoned 19:6 20:10 imprisonment 27:21 improvement 24:21 improvements 23:17 24:15 inadvertently 108:10 inappropriate 67:15 71:1 Inaudible 115:7 incarcerated 19:14 31:1 incarceration 19:19 22:23 32:3	inches 98:16 inchoate 51:21 incident 23:16 49:14 52:10,13 56:10 76:12 109:10 incidents 23:16 52:10 59:1 74:13 95:2 106:9 113:25 114:3,4 117:12 include 12:14 29:16 79:3 87:25 104:6 including 6:8 8:22 13:7,25 59:16 85:20 88:4 95:4 106:5 107:10 112:11 incorrectly 8:1 increase 29:18 30:14 32:12 increased 32:9 44:10 46:17 48:24 increases 44:3 independence 106:15 independently 11:10 indicate 52:14 68:22 indicated 2:12 2:16 119:8 indicates 68:20 93:2 indicating 10:7 indication 1:19 3:20 69:4 individual 32:7 73:22 106:24 individually 90:7 individuals 23:6 25:24 39:16 68:14 105:6	108:9 induced 71:8 induces 72:11 infancy 117:6 infer 51:23 infers 51:18 infinite 27:3 inform 39:13,13 67:3 105:23 information 6:8 10:13 19:11,15 38:10 39:22 45:8,13 67:18 68:10 88:2 94:22 97:8 98:19,22 99:3 99:12,17,20,24 100:4,14,18 101:5,7,19,25 102:2,7,15,22 104:3,7,11,15 105:12,23 112:12 114:7 114:21 115:2,4 115:16 informed 19:21 19:24 38:11 45:15 72:15 105:19 118:5 inherent 28:14 initiated 2:3 innocent 73:24 input 30:20 inquest 16:5 inquests 117:13 inquiries 24:14 115:1 117:12 inquiry 1:9 12:5 16:5 21:20 22:19 24:16 25:16 39:5 46:8 60:9 79:22 88:14 122:8 inside 57:24,25 insofar 88:20 94:15	inspector 8:3 instance 5:16 11:19 instances 82:4 instigated 61:2 instructor 94:8 instruments 41:1 intel 19:8 29:6 31:24 37:3 39:1 intelligence 6:8 29:3,20 30:1 30:20 31:14 33:2,19 34:13 34:15 35:14,19 39:12,13,25 42:24 43:22,25 44:6,9,15,18 44:20 45:14 56:17 74:24 83:4 88:4 89:2 89:5,7 97:8 98:19 100:14 101:19 intending 120:17 intent 42:18 intention 104:8 111:3 intentional 111:4 intercept 50:1 61:1 intercepted 50:10,10,14 54:5 interception 48:14,16 49:4 49:9,18,21 50:16,18 51:8 54:5 67:23 75:24 77:11,12 98:3,9,15 99:25 interest 33:3 interesting
I				
IAN 4:14 123:6 idea 57:22 72:16 ideal 99:16 ideally 99:19 102:23 identified 51:16 identify 17:5 86:17,20 103:13 106:3 ifs 97:21 image 88:17 89:5 imagine 20:21 32:11 76:19 84:12 imitation 37:3 38:15 40:15 42:5,9,14 44:20 45:5 71:10 immediacy 53:11 immediate 17:18 82:1 90:1 immediately 67:25 91:5 118:1				

likelihood 32:23 33:15	18:2 28:8 59:12 66:5	M	98:18 103:17 104:19 109:7	mended 4:5
limbs 18:15 23:20	69:21 70:15 76:8,22 92:6	main 12:9,13 46:24 47:5,8	110:12,13 120:14	mention 67:11 97:18,20
limit 115:16	93:18,24 117:25	75:2	matters 2:14 4:2 4:8 14:6 17:25	mentioned 64:18 82:12
limitations 97:15	long 2:13 59:20 78:25 80:1	maintain 36:9	97:8 99:25 100:11	112:7
limited 67:12,18 68:10 101:16	81:3 83:25 84:7 121:13	maintained 107:13	maxim 85:19	mere 98:16
Lincoln 88:23	long-term 18:1 96:10 109:21	major 18:11 66:6 118:1	Maximum 84:1	merely 17:21 18:8 26:7
lines 109:15	110:2	makers 100:15	McCann 72:8 73:10	46:20
link 2:20 71:17	longer 17:16,19 24:1 29:16,19	making 2:8 18:22 20:16	McDonald's 76:8	merits 113:16
Linking 34:23	91:4 105:15 119:11 120:11	24:4 37:21,23 40:6 42:13	McDonalds 76:20	message 45:3 61:24
list 78:20,25	longer-term 17:24 18:6,17	56:8 68:3 81:2 95:11 97:5	mean 17:18,19 41:21 62:22,23	met 9:17 110:2 110:13,15
listed 79:1,5 82:13	18:18 21:22 33:2	101:22 115:3 119:6	63:23 76:4 120:20,24	114:8 117:23
listen 104:16 118:3	look 10:3,13 15:9 16:19,20	man 88:11,17 116:16 119:10	meaning 48:22 50:8,11,20	Met's 106:1 109:11
listened 69:14	17:13 26:1 37:2 49:1,16	119:12	52:19	method 17:15 36:10 55:4
listening 102:12 103:16,21,22	56:21 58:3 60:22 62:11	managing 28:22 108:2	meaningless 75:17,25 76:24	methods 60:15
103:25 104:1,3 104:11,25	76:4,6 82:14 99:21	manner 20:14 54:20 112:15	29:17 37:12,13 114:4,14 115:9	Metropolitan 70:11 109:7,22
105:6	looked 52:23 63:14 65:19	112:22	means 20:18 29:17 37:12,13	111:15
literal 54:6 61:17	73:13 79:22 82:18	manuals 52:16	114:4,14 115:9	milliseconds 90:15
literally 3:12 98:25 99:6	82:18	map 113:9	meant 46:7,12 61:17	mind 31:3 40:20 92:5 119:6
literature 117:2 118:6	looking 9:14 18:17 41:23	Market 93:25	measure 100:15	mindful 37:8
little 17:1 43:16 47:1 81:8 85:6	106:19 114:24 115:5	master 94:17	mechanisms 110:15	minds 52:8 54:19 103:23
92:4 94:4,5 99:21	looks 41:20 84:20	MASTS 7:19,20 7:21 8:1,4 12:6	111:20	minimise 24:6 58:9,14,16,20
live 41:15 44:23 45:9,16	lost 102:14	60:24 61:2 64:10 67:22	media 65:20 111:20	58:22 59:19 96:13,21
loaded 45:4 88:11 109:18	lot 64:24 113:1	71:21 73:5	medical 91:6	100:16,23
local 80:23	low 58:18 75:13 75:21 76:2,2,9	match 117:14	medium 58:19 75:23 77:10,16	minimises 58:13
locate 17:5	76:13,14,23 77:16	material 4:11 8:20,21 10:16	meet 42:11 54:23 111:13	minimising 59:14 100:5
location 53:24 82:9 99:12	lunch 84:6	94:21 107:7 115:10	meeting 34:13 75:14	minute 43:13
locations 65:4		matter 30:18,24 32:5 33:10	meetings 34:11	minutes 43:15 81:9 84:1,13
lock 44:6,19		35:3 39:2 70:5 73:23 80:22	member 73:15	mischief 106:4
locked 57:24,25 89:14		91:12 94:7	members 48:24 62:17	misconduct 115:14
London 14:13			memory 57:12	misleading 37:14

missed 34:3 104:2	movement 116:14	23:4 28:6 29:10 33:21	notable 114:6	24:13 26:6
mission 65:13 91:16 96:25 98:2,9	movements 24:7	34:7 42:14 47:16 49:20	note 15:10 46:10 54:12 78:5 89:24 90:3,18	28:21 33:20 38:16 44:9 47:5 59:8 61:6
mistake 54:9,18 83:5 118:17 119:13	moving 45:17 50:19 57:18,22 67:23 70:20 112:4 116:15	52:14 67:1 71:17 74:7 77:4 81:10,22 85:12 87:20 90:18 98:23 109:11,15	noted 35:23 67:17 118:10 118:24	61:13 62:21 64:19 83:19 120:14
mistaken 101:17 118:18	MPhil 117:5,7	needed 9:25 86:22 107:9	notes 84:4	occasion 9:17
misunderstan... 102:17	MPS 2:9,18 4:18 46:25 50:4 53:14 54:13 107:18,20,24 108:4,7,16,19	needs 16:14 40:2 40:8,9 44:2,24 52:11,11 59:25 60:20 66:24 70:15 79:22 82:1 109:3	notice 110:24 111:14	occasionally 11:10
mitigate 17:6 26:3 27:9,13 36:2	multidimensio... 76:3 78:2	neither 75:19	notify 32:25 33:18	occasions 54:10 55:17 90:14
mitigated 29:18	multiple 64:12	neutralising 58:11	November 106:20 107:20	occupants 62:5 68:1 76:7 96:25 101:9 102:10,13
mixture 29:5	<hr/> N <hr/>	never 66:5 69:21 70:14 73:3 79:8	NPCC 54:13 67:1 80:19	occupationally 5:7
module 55:20 66:11,11	N 123:3	negative 120:22	number 4:19 13:8 26:11 27:4 41:13 55:16 68:13 75:10 78:5 85:3 90:5,8 92:2,12 95:9 114:2	occur 72:25
modules 11:3	narrative 77:18	neither 75:19	numerous 90:10	OCG 75:2
moment 16:19 24:23 40:3,14 43:4 80:17 83:20 86:15 106:19 119:17 120:25 121:11	national 7:11 8:16 9:12 10:21 39:24 40:11 57:8 80:7	neutralising 58:11	Nevertheless 45:24	October 20:23 88:12
money 70:13	nationally 39:6 40:8 113:1	never 66:5 69:21 70:14 73:3 79:8	new 38:16 51:12 78:23	OCUs 108:2
monitoring 112:5,9,11,20 113:18 114:16 115:11	natural 106:9	new 38:16 51:12 78:23	Nicholson 13:9 67:6 68:11	OFC 65:22 101:23
morning 2:9 44:12 46:11 78:22 88:23 98:1 101:6	nature 49:6,14 50:21 89:6	Nicholson's 67:5	night 32:11 42:25 45:10,11	off-piste 43:16
mount 34:19 98:15	near 103:15	non-discrimin... 112:22	non-evidential 29:4,6	offence 53:23 54:22 100:6
mounted 71:19 79:13	nearing 70:21	non-evidential 29:4,6	non-exhaustive 78:25	offences 42:17 51:21 100:21
move 10:4,13 43:10 47:14,22 56:14 58:8 65:1 78:17 80:25 81:20 105:25 116:5	nearly 92:19	non-exhaustive 78:25	non-obvious 15:24 33:22 39:4 74:7	offenders 27:22 27:24
moved 55:23 98:6	nearside 98:15	norm 39:2 82:5	obstacle 98:17	Office 38:2 117:8
	necessarily 43:2 49:5 62:22 64:7,25 66:10 76:11 82:2 97:2 106:17 117:11	normally 76:16 91:25 92:16	obtain 25:6 28:6 29:10 104:10 115:10	officer 56:16 71:12 72:9 73:13 88:22 90:17 95:12 111:6 117:9
	necessitate 62:15 63:1,9	north 18:2 76:7 76:21	obtained 12:5 113:15	officers 5:6 9:22 30:15 37:7,9 38:19 41:10 43:3 44:4 48:1 55:6,13 56:14 56:17 58:7,10 59:5 60:17 61:3 62:14
	necessity 57:3	Northern 94:13	obviously 2:25 7:13 11:8 20:17 23:12	

64:3,11,13,20 65:3,7 66:22 70:24 71:25 73:6 77:22 78:4,5 89:3 91:14,21 93:12 93:17,18,19 94:21 95:2,5 95:12 98:25 99:2,4,5 105:10 113:15 114:7,9,14,19 114:25 115:5 115:13 officers' 58:25 old 38:21 once 89:9 92:23 121:18 onerous 20:12 ones 63:14 66:10 69:7 114:22 117:22 onwards 89:21 open 71:12 86:9 103:23 opened 86:23 operating 1:9 operation 4:21 13:21 14:3 15:5 16:3,15 18:16 23:1 29:9 32:6 33:1 34:20,21 36:9 39:16 58:1 61:25 71:19 72:5 75:7 76:3 78:16 82:22 88:15 96:9,11 96:13,14,21 97:13 100:5,24 105:9 106:19 106:22 107:3 110:20 111:8 114:22 operational 18:12 64:23 operationally	5:6 9:2 66:16 88:2 operations 13:24 24:10,17 25:5 32:2 48:4 78:6,11,14 81:23 108:1,2 112:19 opinion 4:23 7:25 10:17 40:3 47:11 57:1 59:23 66:19 77:9 85:25 86:13 opinions 39:7 83:19 opportunities 29:20 30:5 33:2 36:8 opportunity 3:19 15:12 36:5 61:13 99:7 103:15 105:15 opposed 1:18 10:8 107:1 117:3 option 36:11 58:6 61:1 65:25 68:21 69:15,18,19,21 70:9,9 71:1,11 71:24 105:20 105:21 116:1 options 5:1 8:10 26:16 34:16 36:2 59:4,9 64:18 66:10,19 74:11 77:16 order 2:17 3:14 16:12 25:4,6 29:11 59:22 100:23 105:1 ordinary 50:8 50:11 52:1,19 54:14 organised 14:12	14:13 16:18 18:11 113:5 original 43:12 104:12 originally 41:21 105:3 106:5 origins 25:20 37:17 ought 102:20 108:21 outcome 24:16 45:24 68:23 69:5 106:7 110:10 outcomes 22:21 97:24,25 109:5 outright 68:18 outside 110:5 over-sensory 117:22 overall 111:6 overload 39:21 overnight 29:25 overriding 106:15 oversight 108:4 overstate 37:12 38:12 overt 32:22,24 33:14 61:19 overwhelmed 68:4 overwhelming 68:1 Ozcan 88:14	paragraph 4:22 6:5,12 7:1,8 8:2 10:15 11:2 13:14 36:22 45:21 56:25 85:25 86:1,20 87:5,23,24 89:8 107:19 paragraphs 6:24 9:15 21:16 67:9 85:22 87:6 89:21 parameters 82:12,16,19,20 paraphrased 90:12 parked 65:11,14 part 1:20 6:9 29:8 36:19 40:21 41:2 59:12 67:3 69:8 104:12 105:11 106:25 117:10 partial 63:20 participants 1:16 2:2,8 120:23 participate 120:13 particular 12:23 22:18 35:5 36:19 38:1 47:3 64:5 65:11 80:5,7 86:2 87:5,17 87:23 96:24 97:9 99:13 101:21 108:16 110:6 117:19 particularly 6:1 27:21 39:18 50:3 51:16 60:13,13 74:24 76:1 106:10 parts 11:11,23	12:5 67:9 118:7 party 117:25 passage 85:21 passed 106:18 paste 8:25 pasted 9:8 path 40:2 44:1 patient 81:6 pattern 76:17 pause 7:24 37:16 pausing 50:2 PCA 114:24 PCRs 120:21 Penny 2:9,19 83:25 84:1 85:1,2,3 95:15 95:16 116:23 118:10 123:8 people 13:16 24:13 54:13 61:24 66:3,9 76:20 103:6,14 103:21 104:3,6 117:19 perceive 94:22 perceived 37:10 117:14 percentage 41:25 perception 44:1 44:5,11 95:12 perceptual 116:23 perceptual 94:16 perennial 109:19 perfect 63:21 perfection 83:17 perfectly 121:9 performing 5:6 period 105:16 periods 22:22 permission 11:14
---	--	---	---	---

permit 111:17	31:17 47:19	14:2 18:22	60:17 61:20,21	53:23 54:3
permitted	48:11 49:7	19:4 24:3	62:15 65:17	56:9 68:20
111:15	53:2 54:11	28:21 29:9	66:8,12 70:11	76:5 103:4,5
person 16:7	55:17 56:13,19	30:16 33:25	70:23 71:12,25	108:15 115:13
48:21 50:24	59:18 61:7	34:19 35:5,6	72:9 73:6,13	potentially 36:3
53:6 82:9 87:8	69:16 86:10	38:7 39:23,24	73:16 76:6,8,9	41:8 44:4
87:13	98:3,6 113:1	40:6 41:5,7,11	76:18,19 79:9	74:11,18,19
person's 79:19	114:25 117:7	41:22,23 42:13	80:3,16 93:8	75:3 105:15
personal 72:6	placed 89:16	44:24 47:22,23	94:19 95:1,2,3	powered 91:24
117:15	places 58:4	50:15,18,22	95:11 98:14	92:1
personally	plan 28:11 32:18	51:2,14,14,21	109:7,22	PowerPoint
114:3	33:4 73:12	51:22,25 52:7	111:15 113:2,6	88:18,19
persons 19:24	74:23 98:8	53:12 55:8	policies 34:6	powers 34:6
87:19	planned 35:19	56:13,19,20	policing 5:1,20	pray 93:4,5
perspective 16:6	75:9 97:23	61:16,17,20	13:9 21:2,9	pre-deployment
90:22	108:1	67:24 69:24	28:19 38:21	29:10
perspectives	planning 4:21	72:12 74:4,12	39:3 46:16	pre-determined
92:21	6:7 20:21	75:21,23 76:22	110:1	68:23
pertinently	34:11 46:2	77:10,11 79:14	policy 39:24	precise 23:4,8
95:10	96:4,5,18,22	80:21,24 88:25	40:8,11	precursor 4:9
phase 6:7	97:17,21 111:8	91:2 97:5	portrayed 111:2	preface 10:7
phenomena	plans 6:6	98:23,24,24	pose 15:24	prepared 1:17
94:16	platform 67:22	99:11 100:22	posed 17:6 18:2	88:18,19
phenomenon	play 59:20	103:3 110:9	position 53:25	presence 1:18
116:23,25	playing 40:24	111:9,9 115:3	65:23 89:16	1:19 30:10
philosophy	pleaded 30:17	115:12 119:5	95:24 105:18	81:23 104:20
94:17	please 4:19	pointed 44:22	positioning 64:3	120:14 121:9
photograph	13:20 15:9	90:21	positions 64:4	present 32:13
88:13,16,17,25	17:1,14 26:1	pointing 50:4	108:10	37:22 39:22
photographs	35:24 37:1,2	points 9:3,4,5	positive 27:6	48:21 51:6
65:20	56:21 58:3	23:19 71:9	possession 44:18	53:4,24 54:24
phrase 93:4	60:23 78:17	87:7	possibility 56:16	82:7 88:21
phrases 48:8	81:1 84:25	polarised 22:17	72:2 74:2	102:24 118:2
physical 54:25	85:4,23 89:8	51:16,19	possible 1:19	presented 19:12
physically 53:25	95:18 119:17	police 10:21	13:24 17:5	19:15 26:21
58:8 62:22	120:18 122:5	14:23 15:1,13	27:19 28:11	73:20 91:4
picked 23:21	pleased 45:17	16:10 20:9,24	31:15 52:18	97:15
53:8 71:15	84:11	21:5,12,13	71:21 90:23	presents 35:2
picking 76:20	plot 17:19,21	24:25 28:21	98:9 99:16,24	55:1 73:15
picture 27:10	18:7,18 19:8	29:13,19 30:1	105:10,13	preserve 58:10
71:20	19:21 23:23	30:4,10,12,19	114:11 118:22	presumably
pistol 88:11	26:7 30:3	30:25 31:14	possibly 54:18	75:17
pistols 41:18	35:15,20 81:23	32:11,22,24	Post 38:2	prevent 19:14
92:18	plots 19:1	33:1 36:4	post-incident	prevented 21:13
place 8:5,6	pm 84:22,24	38:19 41:25	115:17	preventing
19:18 23:24	122:7	50:13,18 51:4	potential 19:20	28:22 62:16
29:13 30:12	point 6:23 7:2	56:18 57:8	21:3 23:9 51:6	previous 10:24

80:2 88:1 115:23 previously 4:8 52:22 113:21 primarily 23:25 primary 17:3,10 117:23 principle 39:12 39:14 43:24 74:11 100:4 102:1 105:4 principles 28:17 Prior 62:13 priorities 108:6 priority 14:4 15:5,17,21 16:12 73:25 prison 19:1,12 19:15,21 21:11 24:8 30:19 31:2,4,5,9,13 32:10 61:19 prisoner 18:24 31:10 35:1,13 35:18,18 prisoners 18:14 19:18 31:1,5 35:12 probably 18:10 29:2 47:4 55:10 71:23 92:12 probe 74:20 100:1,3,9,9 101:14 102:3 102:12 103:4 104:11,25 105:7,12 problem 64:19 66:24 72:19 108:15,20 109:19 problems 74:8 74:16 procedures 31:12 proceed 42:7	95:24 96:10 proceedings 1:3 4:18 111:13 114:20 115:14 120:4 process 96:19 processes 4:25 produced 117:2 product 105:6 profession 21:9 professional 23:4 professionals 38:8,9 profiles 89:2,5 prohibition 106:4 properly 23:8 39:15 69:25 70:1 74:12 100:8 113:5 proportionate 86:16 proposed 3:20 82:19 83:3 proposition 91:17,20 propositions 86:4,20 87:3 prosecution 27:20 28:7 32:8,22,24 33:15 protect 13:22 17:14 24:25 25:4 31:9 32:12 protection 13:21 16:17 20:2,6 20:14 21:17,21 21:22 22:22 23:11 24:2,18 27:12 31:16 34:3,18 36:6 45:12 51:18 54:23 71:18 73:24 75:1	96:8,11 proved 42:6 provide 8:9 100:13,14 113:10 provided 8:3,20 67:17 88:10 91:6 107:7 114:7 provides 26:2 108:4 providing 82:10 100:4 107:25 provisions 112:9 proximity 53:11 54:4 psychologists 117:2 public 13:21,23 14:4 15:1,5,7 15:16,21,25 16:11,17 17:3 17:11,14,16 20:2,6,7,13 21:17,22 22:22 23:11 24:1,18 24:25 25:16 27:11,20 29:16 33:2 34:3,18 36:6 48:25 51:18 54:23 60:3 61:14 62:17 65:20 71:18 73:24 75:1 96:7,11 published 95:8,8 pull 62:7 pulled 61:15 111:6 pulling 57:23 59:15 purpose 58:9,14 58:15,19,21,23 80:4 purposes 100:13 113:18 114:16 115:11	pursue 106:11 pursuing 107:1 pursuit 68:3 74:9 106:17 pushed 113:3 put 2:7 11:13 31:17 54:14 65:3 70:13 83:12 94:3 110:21 114:9 puts 34:4 109:10 putting 6:17 54:16 61:7 73:6 118:21 <hr/> Q <hr/> qualification 6:1 queried 46:11 question 4:9 8:14 23:20 35:16 38:19 39:11 61:23 99:9 101:13 102:20 103:12 108:14 109:18 109:19 111:5 113:15 114:11 questioning 3:15 43:17 114:8,13 questions 2:17 3:18 4:15 39:20 43:14,20 70:18 83:22 85:2,4,7 96:2,4 105:5 119:22 123:7,8,9 quick 41:24 quickly 61:22 quite 9:21 16:5 35:3 38:1 39:3 43:23 47:14 57:17 58:19 69:6 71:15 73:19 77:19 81:6 90:17 93:9 94:24	116:8 118:7 quote 7:13 quoting 6:15 <hr/> R <hr/> raise 70:22 79:21 86:11 raised 2:14 ran 75:7 range 8:9 40:24 40:25 64:23 65:4 82:4 92:7 114:19 rapidly 58:11 60:15 rate 38:9 rational 41:3 101:20 rationale 13:16 36:15,22 re-echoed 42:17 reach 74:25 reached 102:15 reaching 89:4 react 94:22 reaction 85:19 95:13 reactivated 41:14,15,17 42:2 reactivating 24:7 read 6:24 7:17 33:21 67:5 69:3,4 85:12 87:24 reader 87:4 reading 8:19 16:24 33:20 108:3 real 1:14,18 12:21 38:22 41:1,12 42:5 45:4 56:18 71:10 72:8 74:16 75:3 120:14
--	--	--	--	--

realise 4:1 18:22 47:22 53:5,12	recognises 28:14	30:25 34:17	19:13 22:11	represent 4:17
realised 30:17	recommendat...	48:15 80:10	44:18 52:9,12	120:15
91:3	80:19 85:24	99:19 104:7	78:9 79:20	representation
realises 119:12	recommendat...	regarding 19:17	93:14 97:9	110:16
realising 118:16	56:22 107:21	regret 81:12	99:25 104:15	reproduced
reality 27:3	record 2:7 4:6	regular 6:6	remained 69:17	58:4
really 37:3	27:1 85:13	40:22	remains 115:9	request 10:7
46:20 60:4,20	112:18	regulations	remarks 120:10	requested 105:6
65:19 78:12	recorded 7:11	115:15	remember	require 66:9
83:16 89:3	8:15 9:11 28:5	reinforced 46:1	37:17 38:2	required 16:10
101:21 110:22	44:13 47:9,11	rejection 68:18	remind 43:11	20:1 22:21
realm 31:18	red 77:5,6	relate 16:18	removal 28:8	36:5 86:21
rear 62:18 63:9	redrafting 52:16	related 9:5 88:3	removed 52:22	87:8,12 96:23
reason 34:24	reduce 19:19	108:11	58:7	requirement
35:9 37:16	32:23 33:15	relates 12:17	removes 68:1,3	119:3
67:16,18 71:4	43:25	112:9	removing 14:12	requirements
71:5 79:16	reduced 29:19	relating 28:24	repeat 63:14	60:15
91:21 101:10	33:1,18	38:15 49:15	replace 71:25	rescue 60:13
111:12 115:25	reduces 16:11	60:24	replaced 71:7	research 11:1
119:1	reducing 14:14	relation 3:14	replacing 70:23	113:20,23
reasonable 6:21	refer 36:18,19	4:20 6:24	replica 40:1,21	115:23 117:2,3
7:3 74:14 86:8	47:18 48:11	12:24 20:13	41:14,20,21	117:7,18 118:5
86:15 101:18	113:20	22:20 23:5,9	42:2,18 74:24	researchers
reasoning 85:23	reference 7:19	25:20 27:7	replicas 41:1	117:23
reasons 1:8 11:5	11:3 12:16	35:14,18 39:25	replicated 39:6	residential
33:7 41:13	17:13 20:17	41:4 42:18	replicating	76:21
60:5 71:19	52:2 69:8	43:3 51:8,15	106:1	resolution 51:21
82:4 89:15	87:18 112:12	51:17 52:9	report 4:22 6:16	55:4 78:3
91:19 92:9	referenced 13:8	54:20 56:11	7:14 10:14,15	97:16
99:18,19,22	69:7 80:1,2	58:21 61:2	10:20 12:9,13	resolve 23:1
117:19 119:4	referred 7:14	64:10 74:12	12:17,23 13:2	103:18
recall 13:5 36:17	39:8 85:21	77:20 82:13	13:14 21:16	resources 30:13
46:25 57:11	92:17 97:13	83:3,4,17	35:23 36:16,19	62:15 108:5
75:14 76:1	114:1	85:17 96:24	36:20,23 43:6	respect 43:16
79:4	referring 36:17	100:8,20 101:5	45:20 46:20	85:6 86:2
received 1:24	47:24 48:3,23	101:22 103:4	47:15,18 50:20	87:12 89:6
3:13	50:12 88:15	106:23 107:2	54:10 67:10	94:18 95:9
receiving 101:24	91:25 113:11	109:2 113:21	68:25 74:1	96:23 97:5
recidivist 27:22	refers 114:23	116:25 117:9	85:5,10,13,14	100:5,6,21
27:24	reflect 78:2	118:11	85:16,22 86:1	112:18 114:22
reckon 83:25	reflected 90:20	relaying 33:24	86:6 89:12,20	116:23
recognise 14:4	reflecting 23:15	102:8	94:7 107:11,22	respond 66:12
15:16,20 50:15	26:21	release 121:25	110:19 111:22	responding
recognised	reflection 22:9	releases 111:20	reporting 113:2	30:15
46:15 48:1	regard 20:2	relentless	113:5	response 37:9
109:22	regarded 91:19	106:17	reports 50:6	48:19 49:7
	regarding 8:24	relevant 12:5	69:1 107:5	50:4,21 55:11

55:22 64:21	rifle 92:1	risking 61:15	8:15 9:10	screen 13:4
72:24 90:15	right 8:11 11:4	risks 32:4 48:23	11:19	16:23
95:12 114:7	12:18 23:21	49:5 51:1	sadly 94:13	scroll 17:1
responses 51:19	37:21 53:9	60:21 64:5,8	safe 13:24	searched 29:24
responsibilities	57:11 69:6	66:9 96:12,14	safer 65:25	searches 41:24
109:4,12	78:24 94:16	96:21 100:23	safest 59:18	second 12:16
responsibility	95:13 96:20	road 61:21	safety 14:4 15:5	24:1 57:21
73:16 107:25	97:6 106:21	88:24 93:25	15:7,7,17,21	87:2 89:11,13
109:16 121:8	116:25 120:17	113:8	17:4,11 106:16	Secondly 5:4
responsibly	rightly 16:5	robbery 38:2	sat 103:23	18:6 35:12
121:8	58:19 70:5	robustly 15:2	saw 36:12 47:8	86:24 88:13
resting 98:6	73:19 90:21	rock 56:12,19	67:12	92:15
restricted 11:12	rights 106:8	Rodney 21:20	saying 23:15	seconds 72:18
restricting	rigour 60:2	role 14:11 22:19	40:1 55:2,3	86:16
65:12	rise 75:23 96:12	40:24 105:25	60:11,16 69:6	section 34:6
result 12:13	121:18	roles 5:6 107:6	69:14 70:4	52:9 60:25
21:19 29:19	risk 13:25 15:24	109:4,11,24	73:4,6 74:5	secure 25:6
33:1 119:2	17:15,24 18:1	room 1:9 75:14	80:16,17 81:12	29:11 114:15
resulting 33:18	18:4,17,18,19	75:18 81:23	110:4	securing 17:3,10
resume 120:7	18:25 19:1,2	104:14 120:24	says 17:1,10	28:12
retire 111:15,18	21:10 24:10	120:25 121:22	27:13 40:15	security 24:6
retrospective	26:3,4 27:14	round 89:24	47:8 49:17	30:18 31:1
95:4	27:16,19 28:12	90:1,3 118:11	53:21 58:12,15	see 2:21 3:19
return 84:5	28:14,16,22,22	118:15,17,21	58:19,21,23	7:17 9:25 10:6
review 45:22	28:25 29:15,18	118:23,25	63:4,4 64:10	14:2 16:5 26:2
67:2,3 70:17	29:18 30:9,14	rounds 41:16	76:4 90:12	35:17 60:25
90:13 94:25	31:23 32:1,9	57:20 90:9	112:10 118:1	69:25 73:10,11
95:12 111:18	32:12 36:2	92:2,12,13	SC19 107:24	76:14 90:15
118:1	37:23 38:5	93:3	SCD7 88:18,19	95:20,21,22
reviewed 13:7	40:9 45:2	Rover 65:15	89:3	109:20 113:25
83:2 94:21	48:13 49:3,9	Royal 94:8	scenario 21:1	117:25 119:19
114:3,4,23	49:17 51:6	rule 1:24 2:8	73:12 74:23	120:11,12
reviews 6:6	55:4,7 56:5,7	3:17 114:17	75:9	seek 3:22 26:3
35:25 114:24	57:2,21 58:1,9	ruled 69:19	scenarios 30:8	105:1 115:10
118:6	58:13,13,15,16	rules 121:4	40:22 55:1	119:6
revised 59:22	58:18,20,21,22	run 24:10,13,18	76:5,15	seeking 87:3
90:10	58:24 59:8,14	25:5 59:6,15	scene 65:21 99:3	seen 10:16 14:10
revision 52:11	59:19 72:8	72:7 74:7 75:2	99:17	33:7 56:3
60:1	73:5,7,15	96:15,22	scenes 1:13	57:10 61:4
revisit 22:10	75:12,13,18	running 29:9	scheme 30:12	63:22 68:22
113:24	76:9,22,25	30:23 60:17	117:9	70:6 75:6
revisited 55:3	77:7,23,24	81:8	Science 79:7	76:16 119:2
60:8	78:3,6,10,11	<hr/>	SCO19 38:9	sees 106:23
revisiting 4:8	78:15,15 79:17	S	88:19	seizing 27:2,14
52:11,14	93:14 100:5,15	S105 11:20	SCO7 14:11,18	selected 108:23
115:24	100:16 108:9	101:4	34:14 108:18	selection 9:2
rewrite 37:19	risk-based 41:3	S48 7:9,25 8:3	scope 22:9 23:16	19:18

selective 43:21	5:25 6:6 20:18	105:25 106:2,9	85:11 86:3	somewhat 22:17
semi-automatic	28:5 53:15	107:15	88:5 89:18	90:12
92:8 94:12	70:6 81:22	SIO's 22:19	90:5 91:8,11	soon 91:3
seminal 10:16	82:6,18,25	sir 1:7,15,24	91:24 94:14,20	105:10
94:24 117:7	83:9 108:23	2:16,22 3:21	95:14,18 96:16	soonest 4:5
118:4	SFC's 83:2	4:16 5:2,3,12	97:1,20 98:11	SOP 46:25 47:8
send 9:21 61:24	SFCs 77:24	5:14 6:11,13	98:22 99:13	106:1 107:18
senior 89:3	shoot 44:19 51:1	6:23 7:13,23	100:7 104:17	sorry 3:23 6:13
sense 50:8 54:6	71:13 72:13	8:3,12 9:9,20	104:18 105:4	16:7 23:18
59:3 61:18	shooting 44:6	10:3,11,18	107:4 111:3,23	37:19 41:14
sent 78:21	86:14 107:22	11:5,21 14:1,5	112:24 114:17	58:17 69:12
104:14	117:11	14:20,24 15:3	115:22 116:3	79:10 90:5
sentenced 18:25	shootings	15:8,14,23	116:12,18	91:24 93:7
24:5	113:22	16:4,13,22	119:14,16	97:19,20
separate 22:20	short 17:16,18	17:23 18:3,5,9	120:18,19,23	100:10 103:3
28:24	26:3 27:14	18:21 19:10	121:15,21,23	112:24 120:19
separation	29:16 36:3	21:24 22:4	sit 84:25	sort 34:21 46:3
109:4,11,15	68:4 84:23	25:8,13 26:5	site 98:9	72:21 90:11
Serco 70:23 71:7	96:12	26:10,14 27:5	situated 99:10	92:13,13,20
71:9 72:10,11	short-term	27:17 28:2,4,9	situation 39:3	93:11 113:9
72:16 73:8,15	21:23	28:15,23 29:5	56:15 60:4	sorts 92:7
73:22,24	shorthand 84:3	29:7,12,21	66:8 67:13	source 30:1
series 113:21	shot 56:16,17	30:2,7,11,16	73:14 88:3	45:12 99:24
serious 13:23	73:22 90:11	31:12,22,25	89:13 93:20	100:17 102:3
20:12 21:2	118:20,23	32:14 33:6,17	102:18 109:20	114:11
serve 27:15	shoulder-cont...	33:20 34:5,10	situations 59:17	sources 6:8
served 33:3	92:17	36:13 37:11,16	60:14 85:20	speak 23:18
111:14	showed 120:22	38:23 41:11	94:23 95:6	40:18 41:7
service 21:5	shown 23:3	42:20 45:17	115:19	speaking 41:5
30:19,25 31:2	88:20	46:13,19 47:1	skilled 66:15	103:6
31:4,9,13	side 96:8	47:7,21,22	skin 92:3	special 30:12
70:11 73:16	sight 50:7	48:15 49:11	Skorpion 57:20	specialised
80:16 113:2,6	significant 18:4	50:2 52:15	slides 57:11	108:7
services 80:3	19:13 22:9	53:5 55:9,22	slight 3:23 74:13	specialist 5:25
set 7:10 11:3	47:23 73:25	57:7,10,17	slightly 37:16	93:18 107:25
13:16 16:10	98:17 112:2	58:17,23 59:11	39:8 54:17	speciality 99:14
26:12,16 36:21	significantly	61:9,16 62:20	69:22 94:4	specific 9:2
50:17,23 85:24	19:19	62:25 64:24	small 12:17	11:22 19:7
86:4 105:3	silence 84:21	65:9 67:7 68:7	75:10 89:14	31:23 35:14,19
107:20 117:17	silent 103:7	68:9,16 71:14	Smith 75:16	56:10 58:1
sets 70:13	similar 93:20	72:15 73:12	77:9	66:16 76:13
setting 52:17	Similarly 68:9	74:10,18 75:9	solid 80:12	specifically
85:20	simply 2:7 3:11	75:11 77:13,18	solutions 110:9	11:14 15:25
settled 98:2,5	10:3 66:16	78:21 79:2,25	somebody 53:7	27:13 36:17
101:7	82:7 100:13,19	81:5,10,18	102:12 104:13	49:2,17 55:20
seven 90:9	107:5	82:11 83:1,11	104:21 106:25	114:5 120:10
SFC 5:10,20,21	SIO 34:13	83:20,22 84:9	107:1	specifics 33:24

specify 8:5	63:9,17,18	88:1	6:16	60:11 62:8
speculate 45:23	Stockwell	subject 2:14	superiors 34:14	64:9 67:14
90:23 99:19	107:22	32:7 37:10	supervision	68:15 96:23
118:18,20	stood 100:11	53:22,24 56:1	82:25 83:8	97:2,6,9,10,23
speculating	stooge 40:23	58:10 60:1	support 9:25	tactical 4:25 7:9
29:22	stop 19:5 23:1	62:13 115:13	108:2	8:3,9,10,10,14
spin 34:4	60:1	subjected	supports 108:5	9:10 22:23
spirit 106:5,13	stopped 16:1	102:10	suppose 2:3 66:4	32:18 33:4
spontaneous	66:9	subjective 43:8	115:18	46:24 48:19
108:2	straight 71:17	subjects 13:25	sure 4:11 34:23	51:19 55:11
spray 93:4,5	89:9,22	16:2 17:5	35:3 37:21	58:6 61:1
spring 22:13	strategic 5:16	27:21 32:20,22	43:5 63:2	65:22 70:2,3
springs 40:20	18:10,15 20:1	32:25 33:18	71:15 106:13	70:25 78:25
squeeze 92:11	22:24 81:21	40:22 51:6	111:11,21	82:12,15
squeezing 90:16	83:15 97:17	58:7 64:12,21	113:8 116:7	106:20 108:17
stage 32:23,25	108:17	68:3 76:6,10	surmise 29:3	tactics 12:6,24
33:4 34:17,22	strategies 16:14	76:12,18,20	surveil 99:11	22:16 47:14
53:4 54:23	strategy 14:3	88:15 89:6	surveillance	56:4,23 59:16
77:3	15:11,13,16,20	submit 56:13	62:24 71:22	74:1 97:2,12
stages 77:1	15:22 16:10,15	submitted 54:13	99:2,5,13,16	101:12 105:24
96:19 115:16	36:10,11 39:14	subsequent 21:4	99:22 101:3,8	take 3:15 7:3 8:5
standard 42:14	street 65:18	37:9	101:15,23	20:19 23:24
standing 82:3	76:12	substantive 7:1	102:7,17,24	30:22 31:4
start 3:8 34:7	streets 14:13	54:22	103:1 104:19	32:19 34:25
96:3 120:17	28:8 75:4,22	success 14:19	105:9,14,22	35:5 37:1
started 20:22	92:6 94:13	114:9	suspect 31:13	43:14 45:20
Starter 41:18	strength 32:19	successful 32:24	suspects 14:14	55:6 58:8,24
starting 14:2	stress 16:13	33:15 113:7	sustained 13:20	59:18 60:8
28:21 64:24	27:16 69:2	sufficient 28:12	16:17 20:2,6	69:16 75:3
state 15:24	stressed 15:6	32:21 33:8	20:13 21:17,22	81:11 82:15
32:16 53:5,6	47:15	sufficiently	22:21 23:11	83:14,23 84:15
stated 49:2	stresses 49:20	62:14 63:7	24:1,18 27:11	84:21 86:8
statement 6:19	strobe 78:18	suggest 8:4	34:3,18 36:6	89:8,22 98:7
35:16 67:5	79:9 80:8,9	63:21 68:17	51:18 54:23	121:20
statements 5:4	strobes 79:3,13	71:5 83:13	71:18 75:1	taken 13:3 19:13
13:8 37:23	strong 60:16,20	109:13	96:7,11	21:20 25:11
95:5 114:10	115:12	suggested 75:12	swiftly 70:20	26:2 27:9 34:8
static 67:22	struck 89:25	110:19	system 35:4 77:2	35:21 46:25
stationary 62:18	structural	suggesting 5:21	79:18 80:13	60:21 86:17
statistics 113:13	108:15,20	24:23 25:2		87:2 89:11
115:1	structured	43:4 100:12,17	T	96:7,9 99:8
status 74:20	77:24	suggestion	table 69:6	113:1 116:24
steamed 57:25	study 87:17	33:13 89:10	TAC 5:13 28:5	118:9
59:6	117:5,7	102:2	tackle 15:2	talk 74:2
step 61:21	sub-machine	summarise 67:9	tactic 7:20,20,21	talked 67:2
steps 19:13 27:9	92:15	summary 46:14	8:1 57:2,6,16	92:14 96:6
sterile 62:16	subconscious	Superintendent	58:13 59:24	talking 19:17

47:2 62:1,1 72:19 92:1 117:11 targeted 106:4 114:8,12 targeting 113:15 task 20:13 tasked 105:5 tasking 108:5 taskings 31:16 tasks 110:5 team 12:5,17 99:22 101:4,8 101:15 102:7 121:18 team's 102:17 teams 71:22 73:5 tease 85:6 technical 61:18 100:8 technicalities 52:21 techniques 102:11 Technology 79:7 teeth 37:25 tell 103:22 109:17 telling 104:4 tendency 106:9 tends 68:22 tension 13:22 term 7:20 17:16 17:18,19 26:3 27:14 29:16,19 36:3 40:23 45:23,25 46:1 46:7,15 55:10 56:11 63:18 73:18 93:7,8 96:12 terminology 46:16 47:16,24 48:5 51:15 terms 2:12,16	6:20 8:14 9:2 18:10 19:17 20:15 28:1 35:1 43:7 48:16 50:4 53:11 54:18,24 55:13 58:12 63:19 75:7 80:6 86:1 92:1 92:5 97:14,22 98:18 107:14 117:5 118:19 terrible 118:17 terrifying 20:24 93:23 terrorism 93:18 terrorist 35:1 60:14 93:20 test 56:1,6 57:3 57:6 tests 120:21,22 text 9:7 TFC 5:9,16 6:5 28:5 36:1 44:14,17 47:6 53:14 65:22 70:5 77:15 78:10 82:19 103:1 106:2 107:15 108:23 TFCs 77:24 thank 1:7,22,23 3:6 4:16 7:7 9:20 10:11,12 16:25 25:25 36:25 37:1 43:19 47:13 55:15 56:24 67:4 70:19 77:21,22 82:11 83:22,24 84:21 84:25 90:20 95:15,16,19 96:1,17 101:2 110:17 111:10 119:16,23,24 120:18 121:15	121:21,23,24 122:1,4 themes 104:1 107:4 114:2 thesis 94:18 thin 81:8 thing 16:13 26:14 51:12 60:19 75:4 things 9:3,8,8 22:19 26:18 34:23 50:5 65:17 74:23 97:4 104:4 107:6,10 114:5 think 3:8 4:4 6:14,23 8:8,23 11:25 13:3 16:13 18:9 19:10,23 22:9 22:12,15,15,17 24:3 25:15,15 25:16,21 27:5 27:10 30:16 33:12 34:11 35:5 38:2,7,25 39:7,7,22 40:6 41:11 42:17 43:15,24 44:24 45:2 47:1,23 48:7,22 49:5 50:23 51:14 52:10,13 53:1 53:7 54:1,18 55:2,3 56:4 57:15,17 59:22 61:16 62:2 64:24 66:12,25 68:7 69:20,22 71:4,8 72:11 73:4,23 74:14 74:23 78:13 79:14,16 82:13 84:7 85:24 86:19 89:3,22 90:11,20 94:25 100:12 101:18	102:5 103:4 104:23 109:1,2 109:7 110:8,9 111:5,20 113:19,22,23 114:18 115:12 115:23 116:6 119:7 120:16 121:3 thinking 72:8 96:20 97:6 third 61:5,11,23 104:20 Thirdly 6:5 87:1 88:7 thoroughly 7:10 8:15 9:11 51:2 thought 9:1 40:8 44:2 49:24 79:20 101:9,10 101:11 thousands 12:1 threat 16:11 17:6 18:6 31:15 35:2 37:10,12,14 44:1,3,5,10,11 46:17 53:25 56:7 58:11 73:17,20 76:3 77:24 78:2 91:4 97:15 119:2,11 threats 14:14 three 2:2 44:7 44:19 66:2 86:20 87:4 90:8 103:10,15 103:15 three-quarters 84:5 threshold 75:1 throat 59:13 Thursday 1:1 time 1:7 10:20 12:3 23:13 41:7 47:3,3	48:8 52:13 55:8 56:20 62:7 64:8,12 69:4 70:13 80:1 81:4,10 86:16 87:1,8 87:12 89:10 94:11,24 97:16 98:13 101:21 105:16 107:17 118:1,6,8 times 44:7,19 90:10 107:15 117:20 timescale 93:2 timescales 43:7 timing 86:2 timings 87:18 tin 76:4 tipping 53:12 100:22 today 1:9 4:2 67:3 120:5 today's 22:11 Tokarev 88:11 told 66:1 72:4 101:8 102:12 tomorrow 45:16 120:7,13,16 122:2 topic 68:17 70:18 89:19 94:15 topics 3:19,21 75:10 85:17 87:4 torch 78:18 79:8 torches 79:3,13 79:23,25 Toronto 118:2 torso 91:3 touch 85:14 tracts 85:12 traffic 62:16 77:2 tragic 16:6 trained 5:11
--	--	--	--	---

24:13 70:10,10 70:11 73:14 92:25 training 6:1 7:11 8:16 9:12 10:21 23:5 38:23 40:21,22 41:2 57:9 64:11 66:23 70:14 88:2 91:10 92:20 transcript 75:6 transmission 46:10 trauma 117:9,10 117:16 travelling 50:13 59:11 tread 40:2 44:1 treat 38:22 41:12 42:5 45:3 trends 113:13 115:2 tribunal 86:8,14 tried 69:1 83:16 trigger 90:16 92:11 111:7 triggers 88:1 true 5:4 96:17 truly 62:22 69:24 70:1 trump 109:5 trust 121:22 try 57:12 68:2 94:5 111:16 112:21 trying 24:23,24 52:25 turn 13:20 110:18 118:9 two 11:5 16:14 17:24 19:23,24 23:19,20 25:19 34:23 41:10 43:20 50:5 51:19,23 52:23	54:2,4 55:1 65:11,13 66:2 71:21 76:22 81:3 85:15 89:14 90:6,8 92:9 100:13 102:16 103:10 110:5 113:25 120:7 type 49:6 66:1 types 51:24 typically 92:23 92:23 <hr/> U UK 113:6,24 Ulster 94:9 ultimate 25:22 25:22 ultimately 110:24 umbrella 33:23 34:7 UN 112:7 unarmed 9:22 uncommon 90:9 undercover 70:23 71:7,12 72:9 73:19 undermine 5:5 understand 1:11 49:11 50:22 54:7 66:25 71:18,19,21 100:10 102:11 111:23,25 112:20 115:3,4 understanding 19:23 60:7 79:11 understands 4:11 understate 37:14 38:12 understating 38:5 undertaken	14:11 undertook 117:9 unfair 22:13,15 83:13 unfairly 110:14 unfettered 10:25 unfold 104:9 Unfortunately 94:14 unit 6:9 93:24 107:19,24 108:4,8,25 110:6 universally 75:13 unknown 94:12 unloaded 38:16 unnecessarily 43:11 unquestionably 106:24 108:8 unsuccessfully 111:17 untrained 87:8 87:13,19 92:24 unusual 76:14 updated 12:2 50:7 51:3 updates 83:4 88:4 upset 111:24 use 40:24 45:23 45:25 46:1 54:3,7,13 56:11 63:18 64:18 65:16,17 65:17 73:18 76:13 80:16 91:5,24 94:11 94:18 95:9 100:19 112:9 112:11,20 113:2,5 114:14 Utara 14:22 utilised 4:24	utility 97:14 <hr/> V valid 26:6 60:11 105:5 valuable 100:4 102:3 113:14 114:14 115:10 valued 5:21 van 21:11 30:9 32:10,12 53:12 61:19 72:10 variables 59:2 variation 74:14 76:17 variety 6:7 various 23:24 vary 78:16 97:3 97:13 vast 85:12 vehicle 12:6 57:19,23 58:7 59:6,11,14,15 61:4 62:14,18 63:7,17 64:21 65:1,2,23 66:1 66:8 67:22,23 68:1 81:24 91:16,22 92:3 96:25 98:2,10 100:1 103:6,14 104:7,21 105:2 105:3 116:10 vehicles 60:18 65:11,17 89:14 91:15 98:14,14 99:6 velocity 91:25 venue 63:21 viable 74:11 105:20 victim 16:7 48:22 50:25 53:4,5,11,17 54:24,25 victims 15:25 32:13 51:5	53:24 video 27:3 video-link 27:2 videos 65:19 view 12:4 21:20 26:24 45:25 46:2,7 47:10 57:5 63:8 66:25 67:1,20 68:14 72:6,6 75:8 80:12 98:7 108:20 112:19 views 41:9 violence 14:15 virtual 1:19 120:13 121:9 virtually 1:10 2:20 120:25 121:1 visit 26:9 30:4 32:11 visited 65:20 visual 63:20 90:23 visually 62:23 64:2 vital 104:2 voice 103:11 voices 103:9 volume 40:18 voluntary 114:10 vulnerable 89:16 <hr/> W W80 2:10 86:2 87:2 88:20 89:4,14,24 90:24 91:3 110:21 116:5,9 116:13,19 118:11,15 W80's 119:6 wait 49:25 122:5 Waiting 89:13
--	---	--	--	---

Wales 42:1 95:3	92:8,17,20	66:14 77:3	53:8,20 55:18	11th 23:23
walked 64:1	94:12 112:8	78:13,14 86:7	102:6	12 57:20 92:13
want 2:6 24:16	wearing 88:16	90:14 93:22	wrote 10:14	93:3
44:4 57:12,13	106:24	121:8	43:5	12.31 84:22
63:15 65:9,24	weeks 103:24	work 10:25		12.45 84:5
71:2 85:3,14	weighed 21:22	11:10 16:12	X	12.47 84:24
91:12 99:18	weighting 70:8	19:3,6 25:1,19	X 123:3	120 123:10
101:9 103:23	went 55:14	64:14 72:1	Y	13 10:15 20:23
104:4,7 110:21	86:12 98:14,14	113:1 116:24		14 35:25
112:4 115:6,8	99:1,7,9,11	117:1	year 42:21	143 13:14
121:12	117:22,25	worked 73:1	years 66:15 94:1	15 84:1,12
wanted 101:6	118:4	99:15	113:4	15-minute 84:15
warning 27:15	weren't 5:11	working 6:9	yesterday 13:3	18 98:16
warnings 47:6	14:19 26:12	11:17,19 14:2	20:15 25:15	19 37:18
warrant 32:21	27:24 61:11	15:10,22 16:10	34:10 38:25	1985 94:9
wasn't 18:4	whatsoever	18:2	39:9 42:16	1991 95:4
19:16,22 25:6	50:11	world 118:2	46:25 48:7	1992 94:9,17
28:13 42:9	whilst 19:14	worldwide	57:11 63:15	117:6
43:12 44:15	43:12 53:22	60:17	71:3,24 75:12	1993 95:4
67:20 68:19	wholly 51:24	worn 87:11 88:7	85:8,18 88:14	1996 94:25
79:1 99:18,24	wider 16:17,18	worst 14:25	91:13 96:6,18	
way 1:17 2:4	33:23 61:25	worthwhile 53:1	110:19 111:2	2
30:22 44:13	63:19 65:6	worthy 41:8	112:7 116:7	2 16:1 21:7 23:7
49:10 57:15	114:19	wouldn't 9:21	Z	23:10 57:3
58:5 59:19	Williams 77:10	11:13 12:22	zero 72:17	72:19 106:8,12
106:21 107:6	100:18 102:9	15:2 17:22		106:16 109:6
107:13 110:4	102:21 106:20	20:2,19 25:12	0	20 84:13
111:1,4,18	106:23	30:5,10,15	1	2003 79:1
120:16	windows 81:16	32:13 33:16		2007 37:19
ways 23:24 27:4	wish 48:17	43:1 44:5 45:6	1 123:5	95:10
39:8 56:9 64:2	withdraw 86:10	50:1 53:15	1.30 84:20	2009 107:20
weapon 42:10	86:25	59:19 62:3	1.40 122:7	2015 14:19
42:15,22 57:19	witness 46:6	63:12,17 69:9	10 1:24 2:8 26:1	17:21 20:23
86:11,25 91:1	witnesses 84:4	76:23 78:10,12	46:14 57:20	29:6 89:4
91:22	112:2	82:5 114:17	88:21 92:13	2020 79:5
weaponry 40:25	word 40:15	115:6,8	93:3	2021 1:1
40:25 80:10	50:12 54:6,7	wound 81:17	10.00 120:17,18	209 85:9
92:5 93:11	56:8 61:18	wrestled 109:9	122:2,8	22 1:1
104:8	62:25 66:11	writer 84:3	10.50 1:4	225-page 12:13
weapons 14:12	83:14	writing 10:20	100 54:10	23 95:2
20:24 38:15,15	wording 37:17	12:23 55:9	1095 85:25	24 67:21
38:16 41:1,25	47:25 90:13	68:25	11 9:18 17:21	25 107:18
42:2,2,18,20	words 25:23	written 49:10	18:7 29:6 33:8	26 15:9 58:3
59:8 60:18	45:7,7 49:15	51:25 52:12	88:23 98:2	
64:8 65:25	50:6,8 51:23	54:17 55:1	106:20,22	3
78:25 79:13,18	52:18 54:4	85:10	111 89:1	3.00 30:13
80:13,14 92:5	55:5,7 63:2	wrong 9:21 21:4		304 9:15

35 16:21	926 87:21			
356 9:16	938 89:8			
<hr/>	940 89:21			
4	944 89:22,22			
<hr/>	947 90:21			
4 123:6,7	948 90:21			
416 7:8	96 123:9			
427 6:5	9mm 88:11			
437 21:16				
438 21:16				
45 4:22 43:15				
<hr/>				
5				
<hr/>				
5.00 88:23				
57 11:2				
<hr/>				
6				
<hr/>				
6 17:14				
6.17 107:19				
613(ii) 47:15				
616 45:21				
686 56:25				
<hr/>				
7				
<hr/>				
7 60:23				
7.00 76:19				
7.30 46:11				
700 67:9				
704 67:9				
<hr/>				
8				
<hr/>				
8 9:17 89:4				
8.00 98:1 101:6				
8.56 99:6,10				
85 123:8				
<hr/>				
9				
<hr/>				
9 62:12				
9.45 1:2				
910 85:22				
914 85:22				
916 85:23 86:1				
917 86:20				
918 87:5				
919 87:14				
920 87:17				
922 87:14				
923 87:21				
925 87:23				