

<p>1 Monday, 6 September 2021 2 (10.00 am) 3 THE CHAIRMAN: Good morning, everybody, welcome back. 4 I hope you have had a reasonable summer. 5 MS BLACKWELL: Thank you, sir. Good morning. 6 We are about to embark upon closing submissions. 7 THE CHAIRMAN: Yes. 8 MS BLACKWELL: I know that you have received written 9 submissions on behalf of all core participants. 10 THE CHAIRMAN: Written submissions and further submissions. 11 MS BLACKWELL: On behalf of some core participants, yes. 12 THE CHAIRMAN: Yes. 13 MS BLACKWELL: We are going to begin by hearing from 14 Ms Kaufmann, who will now address you on behalf of the 15 family. 16 THE CHAIRMAN: Can I just identify or remind all core 17 participants about the timetabling. 18 MS BLACKWELL: Yes. 19 THE CHAIRMAN: Every core participant, through counsel, will 20 have the opportunity of addressing me for two hours. 21 That is not approximate, it is as precise as possible. 22 We will have a 15-minute break in the middle of those 23 submissions, which are going to be closer to two hours 24 than one, but counsel can address me if they think they 25 are going to be less.</p> <p style="text-align: center;">Page 1</p>	<p>1 MS BLACKWELL: Yes. 2 THE CHAIRMAN: I appreciate that the two-hour timetable can 3 only work if I keep silent, because it wouldn't be fair 4 otherwise, so before, Ms Kaufmann, you address me, I am 5 going to highlight three areas which I will expect you 6 to cover during the course of your submissions. I am 7 sure you will anyway, but -- and you don't need to look 8 surprised. 9 The first is an easy one, it is self defence and 10 reasonableness. Perhaps you will be able to confirm 11 during the course of your submissions that the 12 self-defence test is the holding of an honest and 13 genuinely held belief and that the reasonableness of the 14 belief is relevant only to whether the belief is 15 honestly and genuinely held. 16 Secondly, in relation to Article 2, I would like to 17 know what, if any, the practical difference is between 18 your position and that of the MPS, given the terms of 19 reference as to which there is no dispute. 20 Thirdly, in relation to the issue of gross 21 negligence, and let me make it clear that the fact that 22 it raised its head only during the course of closing 23 submissions and at no stage prior thereto, will not, as 24 it were, lead to it being treated any less seriously or 25 importantly than any other matters which you urge before</p> <p style="text-align: center;">Page 2</p>
<p>1 me, but there are a number of matters which will arise. 2 The first is the extent to which, if at all, you 3 take issue with Mr Butt's summary of the elements of 4 gross negligence manslaughter. 5 Secondly, the identification of the failings upon 6 which you rely as satisfying the issues of negligence 7 and the test of being a gross or truly exceptionally bad 8 breach. 9 Thirdly, foreseeability. 10 Finally, on that point, causation. 11 As I say, none of those will come as a surprise but 12 I have no doubt that you will wish to deal with them in 13 any event. 14 That said, the floor is yours. 15 MS KAUFMANN: Thank you, sir. 16 THE CHAIRMAN: What I will do, when we get to about an hour, 17 if I may, if Ms Murphy hasn't, I will suggest that we 18 take a break. 19 Closing submissions by MS KAUFMANN 20 MS KAUFMANN: Thank you, sir. 21 I do very much hope I can complete this within the 22 two hours, it will mean I am going to gallop through, 23 I am afraid, because there is an awful lot of ground to 24 pass through. 25 THE CHAIRMAN: Yes, well, I have your submissions in</p> <p style="text-align: center;">Page 3</p>	<p>1 writing, and you will take it at whatever speed you 2 need, but two hours is two hours. 3 MS KAUFMANN: Two hours is two hours. As I say, it will 4 mean it is going to be something of a gallop. 5 I will address in the course of those submissions 6 all those issues that you have identified, if you will 7 allow me, sir, to do so in the course of submissions 8 was. 9 THE CHAIRMAN: That is why I raised them now for you to deal 10 with them at a time and place of your choosing. 11 MS KAUFMANN: I am grateful. 12 As you have indicated, you have our written 13 submissions. I am not going to obviously -- they are 14 130 something pages long -- go through all of those, but 15 I am going to seek to extract and highlight some of the 16 most important issues that we urge you to consider. 17 Before I do so, can I just on behalf of the family 18 extend their deep gratitude to you, sir, and to the 19 entire inquiry legal team. Both for moving heaven and 20 earth to ensure that there was no further delay once we 21 finally reached the point of this being converted into 22 an inquiry, and for the monumental work that has been 23 put into the inquiry by the entire inquiry legal team 24 throughout -- 25 THE CHAIRMAN: Thank you very much.</p> <p style="text-align: center;">Page 4</p>

<p>1 MS KAUFMANN: -- and also for the way it has been conducted. 2 I know this has been communicated already to the 3 inquiry and I assume to you, sir, but I hope it will not 4 be taken as any discourtesy at all to anybody when, once 5 I have completed my submissions, the family leave today 6 and do not return this afternoon, and do not return for 7 the rest of the hearing. 8 The truth is, they simply cannot face listening to 9 what will inevitably be the case, and must be the case, 10 is the other core participants' legal teams putting 11 forward such justifications as they consider appropriate 12 for the actions that led to the taking of Jermaine's 13 life. 14 THE CHAIRMAN: It is understood and no discourtesy is for 15 one moment inferred. 16 MS KAUFMANN: I am grateful, sir. 17 As you have read, sir, in the written closings, the 18 family contend that Jermaine died following a litany of 19 failures, failures that amounted to grave errors. 20 Failures and errors which commenced right at the outset, 21 shortly after 30 October when Mr Murray learned of the 22 escape attempt and which continued right up to the 23 moment and included that moment when W80 shot Jermaine 24 dead. 25 The family contend that but for some of the most</p> <p style="text-align: center;">Page 5</p>	<p>1 serious of those failings and errors Jermaine would 2 never have died. That those failures and errors which 3 contributed to his death were so fundamental and so 4 egregious that they do warrant you, sir, reaching both 5 a narrative conclusion and verdict that Jermaine died in 6 violation of his rights under Article 2 of the European 7 Convention, and by reason of having been unlawfully 8 killed. 9 The Article 2 violation arises as you will have seen 10 from the submissions on two separate bases. 11 Firstly, a breach of the positive obligation that 12 the MPS owed to him to take measures to mitigate the 13 risk to Jermaine's life that arose from the firearms 14 operation that had been authorised. 15 Secondly, a breach of the negative obligation not to 16 take life unless absolutely necessary and that breach 17 arose by reason of the fatal shot fired by W80. 18 As far as verdicts of unlawful killing are 19 concerned, we again submit, as you have indicated, sir, 20 that you have foreseen, on two bases. 21 First, because of the repeated failures of 22 Mr Williams, which made a more than minimal contribution 23 to Jermaine's death and were grossly negligent, such 24 that were this a criminal trial, a verdict of gross 25 negligence manslaughter would be appropriate.</p> <p style="text-align: center;">Page 6</p>
<p>1 Second, because when W80 deliberately shot and 2 killed Jermaine, he was not acting in self defence. 3 Turning very briefly, sir, to the legal framework, 4 because happily very much of that framework is agreed 5 between the parties and CTI. As far as the requirements 6 of Article 2 are concerned, those are all agreed. 7 I would simply again emphasise the two duties that are 8 in contention or are engaged here, the negative 9 obligation and the positive obligation. You have all 10 the written submissions on those and, as I say, there is 11 not a dispute between the parties as to their content. 12 But in relation to the positive obligation to take 13 reasonable steps to minimise the risk to life, that 14 obliged the MPS to ensure that the planning and the 15 operational phase of the firearms operation were 16 undertaken with a view to minimising to the greatest 17 extent possible, the risk to life, and that means that 18 all feasible precautions, all reasonable precautions in 19 the choice of means and methods in the planning had to 20 be taken. 21 Coming to one of the matters that you, sir, wanted 22 me to address, that is the question of whether or not 23 there is any difference between the position the MPS 24 take, which is you can make all the judgmental factual 25 conclusions that you would like, including it would seem</p> <p style="text-align: center;">Page 7</p>	<p>1 as to the terms of reference, because they never 2 objected to the terms of reference, but stopping short 3 of that and saying you cannot then go on if you do so 4 find to make the inevitable further finding that there 5 is a violation of Article 2, and our position, which is 6 that of course you can, you just go on and you make that 7 finding. 8 There is not a difference in substance. The only 9 difference is whether you go on to simply state what 10 inexorably follows should you so find, which is that any 11 failures you find that, in their totality, leads to your 12 conclusion that there was a failure to minimise the 13 risks to life, constitutes a violation of Article 2 -- 14 I think I have just lost my sentence there, but there is 15 absolutely no distinction in substance to be drawn 16 between you being allowed to take those two steps, which 17 is, firstly, to find what the failings were, secondly to 18 make a further factual finding in light of those 19 failings, namely that there has been a failure to 20 minimise the risk to life and a further finding that 21 there has been a violation of Article 2. We do say very 22 briefly that we don't accept at all that there is any 23 prohibition on your taking that further step. We don't 24 accept there is any such prohibition under section 10 of 25 the CJA, which is the coronial jurisdiction upon which</p> <p style="text-align: center;">Page 8</p>

2 (Pages 5 to 8)

<p>1 the MPS places very considerable reliance because, if 2 one steps back, you are not prohibited, here, sitting in 3 lieu of an inquest, nor is a coroner sitting as 4 an inquest, from making a finding of unlawful killing. 5 That finding of unlawful killing is inevitably 6 an inference arising from a finding for example in 7 respect of this particular inquiry, that there was gross 8 negligence on the part of a particular individual, or 9 there was an absence of self defence in the fatal shot. 10 It is an inexorable further step that flows from those 11 findings and if that is not prohibited, then how on 12 earth can it be prohibited to go on to state that there 13 has been a violation of Article 2. 14 In any event, section 2 of the Inquiries Act is more 15 permissive, it is a much more permissively framed power 16 and prohibition. In our submission, the approach of His 17 Honour Judge Teague in the Grainger Inquiry is to be 18 preferred to the approach in the London Bridge Inquest, 19 which is what the MPS have referred to, where he does 20 and he did go on to make findings about whether or not 21 Article 2 had been violated. 22 We submit, at the very, very least, and there is no 23 dispute about this, you should make findings as to the 24 failures that arose. Findings as to whether those 25 failures amounted, either collectively or some of them,</p> <p style="text-align: center;">Page 9</p>	<p>1 to a failure to minimise the risks to life. That is 2 something that the MPS agree upon, but we say you should 3 take the further step of then stating in terms whether 4 that amounted to a violation of Article 2. 5 Can I then turn to the reasonableness question. 6 Again, there is no dispute between the CPs, us included, 7 that as far as an unlawful killing verdict is concerned, 8 the test is the criminal test. Therefore, it is 9 precisely as you have just set it out. 10 We have in our written submissions invited you to 11 take a further step. That is not on the basis that that 12 is what unlawful killing requires, it is not on the 13 basis that is what Article 2 requires you to do. It is 14 on a different basis. It is on the basis that you have 15 a discretion, a very broad discretion, as to the 16 findings of fact that you might make. You have sat for 17 eight weeks examining in the greatest of possible detail 18 the facts that underlay and led to Jermaine's death. It 19 would be a lost opportunity for you not to make 20 a finding about the objective reasonableness of the 21 decision of W80 to shoot Jermaine. 22 Why would it be valuable to do so, apart from the 23 fact that it forms part of all the circumstances? That 24 is this, that Article 2 exists in its investigative 25 form, the obligation to conduct an investigation</p> <p style="text-align: center;">Page 10</p>
<p>1 following the death of an individual, precisely because 2 not only should any wrongdoing be suitably punished, but 3 also because it provides a mechanism to learn lessons 4 and prevent future fatalities. 5 One of things we know is that the code of ethics and 6 paragraph 4 of the code of ethics prevents officers from 7 using force, save as is justified in all the 8 circumstances. 9 Now, all the circumstances, we know, from the 10 judicial review that W80 brought includes not just the 11 circumstances as they subjectively believe them to be 12 but also the objective circumstances. The point about 13 the code of ethics is it is a statement of principle and 14 prohibition in respect of officers' conduct that they 15 must not use force save where it is laid down in the 16 code of ethics. Therefore the reasonableness 17 objectively of the use of force has a bearing on what is 18 acceptable conduct on the part of officers, but it also 19 has a very obvious bearing that if force is used when it 20 is not objectively reasonable, ie negligence, and the 21 force results in a fatality because it is force used in 22 the context of discharging firearms, then there is 23 a real question about future prevention. We submit that 24 this inquiry should put itself in a position to give 25 valuable findings in relation to that question.</p> <p style="text-align: center;">Page 11</p>	<p>1 I want to make it absolutely clear, this is not 2 something that is required by any of the duties you have 3 to discharge. It is not required because you have 4 a duty to consider unlawful killing, it is not required 5 because you have a duty to consider either the facts or 6 a finding in relation to Article 2. But it is part of 7 your discretion and we invite you to exercise it in that 8 way. 9 I should just say, going back to whether or not you 10 can make a finding of Article 2, that in relation to 11 inquests, what enables a coroner to make a finding of 12 unlawful killing, even though the inevitable basis of 13 that is a finding that somebody has acted not with self 14 defence or somebody has acted grossly negligently, is 15 that you don't name that individual, and that is how 16 that protection arises, so you can do exactly the same 17 here. 18 On gross negligence manslaughter, sir, I am going to 19 address at the end of my submissions the questions that 20 you then raise. 21 THE CHAIRMAN: Thank you. 22 MS KAUFMANN: Can I move now on to the family's submissions 23 on the facts, on what happened in the course of this 24 operation. 25 As we say in our written submissions, it is very</p> <p style="text-align: center;">Page 12</p>

<p>1 important to note at the outset that by 2015 the policy, 2 training, guidance, for the command of firearms 3 operations, and that included the NDM, the APP AP, the 4 SOP and the Code of Practice, together they provided 5 a framework to ensure that the decision making and the 6 planning of firearms operations were at all times 7 intelligence led and informed by appropriate threat 8 assessments and contingency planning and that the 9 planning was systematic and thorough and recorded in 10 detail.</p> <p>11 In other words, a lot of work had been done over the 12 years at a corporate level, both nationally and within 13 the MPS, to try to ensure that systems were in place 14 which, if applied properly, should ensure that firearms 15 operations were conducted in a manner that minimised 16 their inherent risks. What has been so striking about 17 this case is how, despite the luxury of weeks to 18 consider whether to allow the operation to go ahead, and 19 then to plan for it, there was such widespread failure 20 to apply those policies, whether to the letter or in 21 spirit.</p> <p>22 One such failure was record keeping. There was 23 a total failure to record the key meetings where the 24 planning was ostensibly taking place. That has 25 seriously hampered the inquiry's ability to reconstruct</p> <p style="text-align: center;">Page 13</p>	<p>1 what happened in the weeks running up to 11 December. 2 Mr Arundale explained that the requirement to minute 3 a planning meeting was not merely to provide an audit 4 trail but was a basic management technique to ensure 5 that there is proper communication of what needs to be 6 done by whom, by when, so that the actions can be 7 revisited at the next meeting.</p> <p>8 We reject entirely, sir, the MPS's attempt to excuse 9 in part the failure to record planning meetings on the 10 basis that it was expected at the time that the 11 deliberations would later be recorded in the FA forms. 12 That is something that we see in the written submissions 13 of the MPS.</p> <p>14 Those forms, as we know, are only ever prepared 15 shortly before a firearms deployment. They will never 16 record, and nor did they, the deliberations that went 17 into the planning. But in any event, it was obvious 18 that planning meetings should be minuted. The failure 19 to do so was such a basic failing that it is the first 20 instance of the extraordinary complacency in respect of 21 this operation, an operation that was so obviously full 22 of potential hazard for all concerned that we see.</p> <p>23 The result of the failure to minute is that the 24 inquiry has had to try to reconstruct what happened on 25 the basis of evidence that was given years later by</p> <p style="text-align: center;">Page 14</p>
<p>1 those who were present at those meetings, whose memories 2 will inevitably have faded but also, and very 3 importantly, who have a very strong incentive to present 4 what occurred at those meetings in a favourable light 5 and a light that is consistent with the requirements of 6 policy.</p> <p>7 But the documentary evidence that actually does 8 exist, such as the FA forms, and such notes as were 9 taken, they give the lie to the evidence that was given, 10 because despite the paucity of the contemporaneous 11 documentation, we contend it is possible to gather 12 a sufficiently reliable picture of what went on in the 13 planning and it is an ugly sight. Because there really 14 was no planning to speak of, not for the firearms 15 operation.</p> <p>16 Instead, the energies in planning 11 December were 17 devoted to the criminal investigation, to have to gather 18 as much evidence as possible of the conspiracy to effect 19 Izzet Eren's escape.</p> <p>20 To some extent the family can only speculate about 21 why the firearms command was so weak and so incompetent, 22 and no doubt there are a mixture of reasons.</p> <p>23 Complacency on the part of Mr Williams and 24 Mr Turner. They had commanded so many operations by 25 then, nothing had ever gone wrong before. Inevitably,</p> <p style="text-align: center;">Page 15</p>	<p>1 people can become lazy and the tendency to become lazy 2 in a situation like that is all the greater where there 3 is a lack of oversight to ensure that policies are being 4 properly applied. That is one of the recommendations we 5 make, is that there needs to be some sort of spot check, 6 some sort of dipping in, to see that these operations 7 are being commanded and planned in the manner in which 8 it is required by the carefully crafted policies.</p> <p>9 The question does arise whether Mr Williams and 10 Mr Turner were actually chosen by Mr Murray, because he 11 knew that they would take a very, very hands-off 12 permissive approach and wouldn't get in the way of his 13 investigation.</p> <p>14 So whatever the reasons, or all the reasons are, we 15 say two are overwhelmingly clear.</p> <p>16 The first is that the MPS had failed by 2015 to drum 17 into its firearms command the need to conduct 18 multidimensional threat and risk assessments.</p> <p>19 The second is that the firearms command allowed the 20 operation to be driven by investigative imperatives.</p> <p>21 The result was a wholesale failure by the firearms 22 command to thoroughly evaluate and re-evaluate whether 23 sustained public protection really did justify or 24 require the operation to run, or whether the interests 25 of SPP could be adequately met by disrupting the offence</p> <p style="text-align: center;">Page 16</p>

4 (Pages 13 to 16)

<p>1 and/or whether the balance of risk and benefit favoured 2 disruption, even if disruption did not meet the 3 requirements of SPP quite as well as letting the offence 4 run might do.</p> <p>5 It also resulted in a wholesale failure by the 6 firearms command to discharge their fundamental 7 responsibility to safeguard life, subverting their 8 duties to those investigative imperatives.</p> <p>9 In addition to that, Mr Murray's management of the 10 criminal investigation was also deeply flawed. We 11 address that in great detail in our written submissions, 12 I do not have time to do that now but I will do so 13 briefly.</p> <p>14 Just in summary, steps were not taken which might 15 have enabled arrests to be made earlier, thereby serving 16 SPP without the risks of letting the offences run on 17 11 December, or which might have provided valuable 18 intelligence to aid decision making and risk management 19 on 11 December.</p> <p>20 There was no systematic approach to the collation 21 and recording of information.</p> <p>22 There was no systematic approach to agreeing a form 23 of words in relation to sensitive intelligence.</p> <p>24 There was no formulation of evidential tipping 25 points.</p> <p style="text-align: center;">Page 17</p>	<p>1 The surveillance strategy was insufficient to 2 maintain control even on the main subject, Ozcan Eren, 3 or the mission vehicle, KM13. The available 4 opportunities such as running a cell site analysis on 5 Ozcan Eren's mobile phone were not exploited and there 6 was no systematic or concerted effort to identify the 7 occupants of KM13.</p> <p>8 The decision to let the conspiracy run in the 9 interests of SPP was a necessary precursor to the 10 decision to mount a firearms operation on 11 December. 11 If the offence was to run, then it necessarily followed 12 that a MASTS firearms operation would need to be mounted 13 to assist the evidence gathering process and to make 14 arrests should that be appropriate.</p> <p>15 So the two were intertwined and the firearms command 16 were ultimately responsible for making the decision 17 whether the offence should be permitted to run in the 18 interests of SPP.</p> <p>19 The whole concept of SPP rests upon balancing 20 long-term risk against short-term risk. It means that 21 the police can and should be permitted to take action 22 which might elevate short-term risks, if in doing so 23 they are reducing the overall risk in the longer term. 24 A necessary part of the exercise is to properly 25 calibrate the nature of the longer-term risks and to</p> <p style="text-align: center;">Page 18</p>
<p>1 measure those against the short-term risks of allowing 2 an offence to proceed.</p> <p>3 Needless to say, it is only if the longer-term risks 4 outweigh the shorter-term risks that a reasonable 5 decision can be taken to let the offence run.</p> <p>6 Neither of those exercises were properly conducted 7 at any stage.</p> <p>8 Instead, what we saw was Mr Murray on the very day 9 he received the intelligence of the plan to break 10 Izzet Eren from prison formulating his own plan to let 11 the offence run. He considered a strategy at his first 12 meeting with Mr Sparks on 30 October 2015, that 13 encompassed intelligence gathering and an armed arrest 14 strategy. In evidence he accepted that from that point 15 forward planning towards an armed arrest phase in the 16 context of an active breakout attempt was what he was 17 engaged in.</p> <p>18 Consistent with that plan, he progressed a meeting 19 with the TSU -- it happened I think on 4 November -- to 20 discuss technical surveillance on the mission vehicle 21 once identified and also at that stage on the prison 22 van.</p> <p>23 It is hugely significant that within a matter of 24 hours he had chosen his firearms command team. From his 25 own section, SCO7, and his personal chain of command, to</p> <p style="text-align: center;">Page 19</p>	<p>1 authorise that operation and to act as TFC and SFC. He 2 proposed that they would be assisted by a SCO19 tactical 3 adviser, who he also identified. Each of those 4 individuals that he picked out on 30 October ultimately 5 commanded the operation.</p> <p>6 On any view, the input from the TFC and the SFC was 7 permissive rather than rigorous, permissive rather than 8 testing and objective, and there is no doubt that part 9 of the explanation for the manifold failings of the 10 firearms command arose because of a blurring of the 11 lines between the investigation and the firearms 12 operation. That itself was caused by Mr Williams's role 13 in SCO7 and his involvement in Operation Utara, 14 ie double hatting in all but name.</p> <p>15 You will recall, sir, that Mr Williams spoke with 16 passion of his desire to apprehend the OCN: 17 "There was a really real threat in my mind and this 18 was the driving force for me in this operation, that 19 that feud was going to re-instigate and we would return 20 to the murder and mayhem [again, coming back to 21 Mr Lammy's comments] of New York style mafia shootings 22 being carried out on the streets of London. That really 23 for me was the raison d'etre of this operation and that 24 was the driving force." 25 He was unabashed about this, but in fact his</p> <p style="text-align: center;">Page 20</p>

5 (Pages 17 to 20)

<p>1 overarching responsibility was to ensure that those very 2 same imperatives did not overwhelm the planning of the 3 firearms operation in accordance with the McCann 4 principles.</p> <p>5 Mr Arundale described the imperatives behind the APP 6 AP's clear prohibition on the blurring of roles between 7 the SIO and the TFC/SFC in the following terms: 8 "For decades there have been concerns arising out of 9 the incidents in relation to the natural and positive 10 drive of a senior investigating officer to catch 11 criminals and incarcerate criminals. Of course the 12 objectives of armed policing deployments can be slightly 13 different because there is a strict requirement to 14 comply with Article 2 issues and to ensure the health, 15 safety and welfare of all the people involved in 16 an operation. It has become very clear over the decades 17 of experience that there has to be a very clear 18 separation of roles.</p> <p>19 "The APP AP is unequivocal in its insistence that 20 objectivity and oversight be clearly demonstrated in the 21 decision-making process and further it is clear that 22 separation of roles and clarity of responsibility are 23 essential to the provision of effective command and 24 tactical advice."</p> <p>25 Mr Arundale observed that the MPS had itself</p> <p style="text-align: center;">Page 21</p>	<p>1 wrestled for decades with the investigative and command 2 roles and responsibilities. To that end, he said, it 3 should be extremely clear what the criminal justice 4 strategy for an operation is, it should be extremely 5 clear what the SIO is seeking to achieve, ideally in 6 a hierarchical set of desired objectives, it is for the 7 SFC and TFC to manage that constructive tension between 8 what the SIO wants and actually what is deliverable 9 safely and in accordance with the law.</p> <p>10 Both he and Mr Burrows were unequivocal in their 11 opinion that these imperatives are not met merely by 12 ensuring that the SIO and the TFC/SFC are not the same 13 officer.</p> <p>14 Mr Burrows made plain that the responsibility for 15 ensuring that there was no blurring of lines wrested 16 with the SFC. It was notable therefore that Mr Turner 17 professed himself entirely happy that Mr Williams and 18 Mr Murray were independent of one another, when the 19 former was the line manager of the latter and had such 20 close involvement with the wider Operation Utara.</p> <p>21 The first opportunity that Mr Murray's chosen 22 firearms command had to begin to consider the balance of 23 long-term and short-term risk was at the 10 November 24 meeting. The fundamental failure to achieve 25 a separation of roles between those responsible for the</p> <p style="text-align: center;">Page 22</p>
<p>1 investigation and the command of the firearms operation 2 was the context in which that first planning meeting 3 took place.</p> <p>4 As to the substance of the meeting, Mr Burrows 5 explained the concept of moving the debrief into the 6 planning, "Think judge, think court, think public 7 inquiry".</p> <p>8 This meeting should have addressed, and the minutes 9 recorded, consideration of the following topics. The 10 up-to-date intelligence in response to which and 11 applying the NDM decision making was to take place.</p> <p>12 The process and substance of the deliberations which 13 led to the decision in principle that the operation 14 should be permitted to run in the interests of SPP. 15 This should have included a multidimensional threat 16 assessment of the risk to the public of both disrupting 17 the operation and of not doing so, and once a decision 18 was taken to let the operation run in the interests of 19 SPP, then consideration should have been given to how to 20 minimise the risks to all concerned having first 21 identified the various what ifs.</p> <p>22 Then, how the investigation was to be taken forward, 23 should have been considered and recorded. How to take 24 it forward in the next few weeks in order to avert the 25 need for the operation to run at all, or if it was to</p> <p style="text-align: center;">Page 23</p>	<p>1 run, to have secured the best evidence and intelligence 2 to minimise the risks posed.</p> <p>3 Not only was there a total failure to record the 4 deliberations but there was a wholesale failure to carry 5 out the necessary exercise at all, let alone in the 6 systematic manner required.</p> <p>7 Turning to what was actually considered, it is plain 8 that only the most cursory consideration was given to 9 whether the operation as envisaged should be permitted 10 to run at all. That consideration was based upon 11 assumption, because no one took the trouble to inform 12 themselves about matters absolutely central to that 13 decision.</p> <p>14 All those present assumed that if the offence was 15 disrupted, it would just shift the threat to another 16 day. You will recall that reference was made to 17 Izzet Eren being taken out on a hospital visit for 18 example.</p> <p>19 This shouldn't have been assumed. The officers 20 should have taken steps to inform themselves of the true 21 position. The decision should not have been taken in 22 ignorance of how the prison service in fact manages -- 23 as it must do day in, day out -- highly dangerous 24 prisoners who pose a risk of escape, a high risk of 25 escape or even an exceptional risk of escape.</p> <p style="text-align: center;">Page 24</p>

6 (Pages 21 to 24)

<p>1 The prison service has a well-established system of 2 security classification, with category A security 3 classification sitting at the top of a hierarchy of 4 a classification system which is allied with appropriate 5 measures being taken in respect of those who are 6 categorised as category A. That is those whose escape 7 would be highly dangerous to the public, or the police 8 or the security of the state and for whom the aim must 9 be to make escape impossible.</p> <p>10 We know that Belmarsh has been set up to hold remand 11 prisoners who fall into that category. We address in 12 our written closing in detail the nature of that 13 classification, but suffice to say that the exceptional 14 escape risk classification that is available would have 15 been appropriate to be applied to Izzet Eren if the 16 intelligence and information that the police had about 17 him had been passed to the prison service. That is 18 intelligence and information that on 29 October he had 19 intended to mount an escape and that he was going to do 20 so again on 11 December and that it was believed that 21 firearms either had been available on 29 October, or in 22 any event, were certainly being looked for and sought to 23 facilitate the escape on 11 December.</p> <p>24 To have suggested in these circumstances, where he 25 so clearly fitted those exceptional escape risk</p> <p style="text-align: center;">Page 25</p>	<p>1 criteria, that disruption would have simply shifted the 2 threat to another day is quite simply wrong. The prison 3 service, when dealing with somebody of that level of 4 escape risk, takes measures which prevent any escape, 5 whether an individual is going on a hospital visit or 6 otherwise. As Mr Arundale and Mr Burrows stated, the 7 prison service has routinely to deal with such risks and 8 the fact that Izzet Eren later escaped when imprisoned 9 in Turkey is irrelevant. The security system in Turkey, 10 the corruption in Turkey that might have informed his 11 escape are totally different and none of this was ever 12 considered on that day, or afterwards, because the 13 officers' minds were quite simply closed to anything 14 other than allowing this conspiracy to run, and 15 consistent with this, there was no or no adequate 16 consideration of the extent to which sustained public 17 protection would be served by the different offences for 18 which evidence could be gathered on 11 December.</p> <p>19 It is material that the counts of attempted prison 20 escape that led to the sentence of incarceration ranged 21 between four to five and a half years, whereas the 22 counts relating to possession of imitation firearms led 23 to sentencing ranging from one and a half to two and 24 a half years. It was the responsibility of the TFC and 25 the SFC to consider that likely sentencing range in</p> <p style="text-align: center;">Page 26</p>
<p>1 determining whether the interests of SPP justified 2 letting the plan to escape proceed and this was 3 a responsibility they completely failed to discharge.</p> <p>4 An evaluation of the SPP potential of different 5 offences was also necessary to feed the into the 6 planning for the investigation moving forward. For 7 example, a strategy could and should have been worked up 8 to prove the conspiracy to effect the escape without it 9 being permitted to progress to the advanced stage it had 10 reached by 11 December, and had the SPP potential of the 11 different offences been identified in advance, this 12 would have been readily available to inform decision 13 making as that intelligence picture changed and 14 developed with respect to the possession of a real 15 firearm.</p> <p>16 Allied to this was the failure to establish 17 evidential tipping points and I am going to deal with 18 that in more detail later.</p> <p>19 Not only was there an abject failure to consider 20 properly all the factors relevant to determining one 21 side of the SPP balance, but there was a similar failure 22 to carry out the necessary exercise in balancing the 23 interests of SPP against the risks of the operation 24 running.</p> <p>25 The firearms commanders in particular had formal</p> <p style="text-align: center;">Page 27</p>	<p>1 duties to undertake that balancing exercise, but in 2 reality they considered only the benefits and not the 3 risks and that was a complete abrogation of their duties 4 under Article 2.</p> <p>5 Those risks, the risks of running the operation, 6 could only be considered in the context of and by the 7 application of a multidimensional threat and risk 8 assessment. Among the most trenchant criticisms 9 Mr Arundale and Mr Burrows made of the TFC and SFC was 10 their failure to do so. Their evidence was unequivocal. 11 They were required and had been trained to undertake 12 such an assessment.</p> <p>13 Because we have no records of that meeting, you, 14 sir, can only assess how the TFC and SFC thought about 15 those risks at the time by reference to how they 16 documented their thinking a month later in the FAs, I do 17 address this a little further later but for now I simply 18 note that the completion of the FA forms shows -- 19 contrary to what the MPS submit in their written 20 submissions -- that no multidimensional threat 21 assessment was in fact undertaken and nor was there any 22 scenario planning by reference to the what ifs and the 23 contingencies.</p> <p>24 In substance, the 10 November meeting was not 25 a planning meeting for the firearms operation at all.</p> <p style="text-align: center;">Page 28</p>

7 (Pages 25 to 28)

<p>1 It wasn't a meeting directed to deciding whether the 2 interests of SPP justified allowing the offence to run 3 and thereafter engaging in the planning to which I have 4 referred. In truth, it was a meeting about what 5 resources could be deployed to facilitate the gathering 6 of evidence on 11 December so as to advance the criminal 7 investigation. 8 Mr Williams, just as much as Mr Murray, wanted that 9 offence to run. It was in this context -- that is of 10 not wanting anything to stand in the way of letting the 11 conspiracy run -- that they addressed potential 12 obstacles, such as other affected bodies and authorities 13 who might refuse to offer their cooperation. 14 One of those was Serco. Mr Murray decided early on 15 that Serco shouldn't be informed. He having so decided 16 brought the matter to the 10 November meeting where it 17 was discussed, albeit in the most cursory way. 18 Those attending did not consider any specific 19 intelligence relating to Serco corruption. They 20 proceeded instead on the basis of non-specific anecdotal 21 concerns. They based their decision making on known 22 corruption. What was known within the police -- it was 23 well known within the police, we heard witnesses say, 24 that Serco officers were corrupt. 25 Again, through the endeavours of the inquiry, we now</p> <p style="text-align: center;">Page 29</p>	<p>1 have the benefit of the intelligence that was in the 2 possession of the MPS at the time about Serco corruption 3 and, yes, it does reveal instances of Serco corruption, 4 because it is true that Serco corruption is something 5 that is known about, certainly in criminal justice 6 circles, but what was revealed is this. That Serco 7 officers, some Serco officers, engage in bringing in 8 contraband, mobile phones and drugs, but of fundamental 9 importance what was not revealed was any corruption at 10 a corporate level, at a managerial level in Serco. 11 Mr Arundale and Mr Burrows were deeply critical of 12 the MPS's failure at a strategic level to address the 13 issues thrown up by the purported corruption of Serco. 14 They characterised it as an extreme concern. Mr Burrows 15 pointed out that the decision to let this operation run 16 without informing Serco was an obvious high-risk 17 decision which carried with it the necessity for 18 officers to demonstrate that a justifiable decision had 19 been arrived at. He said: 20 "These are high-risk decisions, mistakes are made, 21 occasionally people are injured and you have to show 22 that you have thought those issues through and you have 23 made a reasonable decision in the circumstances." 24 This absolutely was not done. Had the intelligence 25 been interrogated that was available, it would have been</p> <p style="text-align: center;">Page 30</p>
<p>1 clear that their concerns or the concerns to which they 2 gave rise reasonably, did not justify leaving Serco 3 management, corporate Serco, in the dark. Yes, 4 Mr Burrows did observe that there are always trusted 5 individuals in the upper reaches of companies such as 6 Serco, and that often they are retired officers. The 7 MPS have completely mischaracterised in their closing 8 written submissions what he said and they have called 9 him unrealistic. They didn't say just say go out and 10 find a senior officer who happens to work in Serco, they 11 were making the point that there are trusted individuals 12 at a corporate level and quite often they are retired 13 officers. 14 Again, the MPS stance here just demonstrates 15 a wholesale refusal to accept a very grave error. 16 Serco owed a duty of care to their staff, and they 17 could only discharge that if they knew of the planned 18 operation. There were, for the MPS, incredibly 19 important reputational issues to consider. None of this 20 was done. We know that the reality is that Serco would 21 simply not have permitted the operation to run given its 22 duty of care to its staff. In other words, if informed, 23 Serco would have proven an immutable obstacle to the 24 plan to permit this conspiracy to run. The family are 25 left wondering whether this particular example of</p> <p style="text-align: center;">Page 31</p>	<p>1 hopeless decision making was actually something far more 2 sinister, a deliberate attempt to avoid the outcome of 3 Serco refusal to cooperate. 4 If it wasn't, if it wasn't something that cynical, 5 then it is yet another example of the shocking arrogance 6 and the cavalier approach that permeated Operation 7 Ankaa. As we outline in our written submissions in 8 detail, having made that decision not to inform Serco 9 there was then a wholesale failure to plan around that 10 decision. 11 The evidence demonstrated the absence of basic 12 professionalism in how that issue was to be approached. 13 There was no research or investigation, relevant bodies 14 and individuals were not consulted. There was no 15 discussion, no debate, and no record of the factors 16 weighing for or against the approach they had decided to 17 take once they had decided not to inform Serco. For 18 example, Messrs Arundale and Burrows said this should 19 have led at the first stage to questions concerning how 20 the MPS could nevertheless be able to retain control of 21 their operation and mitigate the harm to it. They 22 needed to give consideration to the possibility that the 23 driver would be on in on the job or forced to become 24 involved in the job and the failure for them to plan 25 around this at all, for example to think about putting</p> <p style="text-align: center;">Page 32</p>

<p>1 a police officer in place instead of a Serco officer, 2 the failure is not answered -- as the MPS seek to do 3 so -- by saying that none of this was necessary because 4 the geographical tipping point meant that there would 5 never be a point at which the prison van and the 6 conspirators would come together. The residual risk 7 still needed to be considered and mitigated. 8 For example, Mr Williams, when he completed his FA 9 form, said in terms he didn't know whether or not 10 Ozcan Eren might be involved actually directly on the 11 day. He said that on the day itself he didn't know if 12 there would be a second vehicle, so preventing the 13 mission vehicle KM13 and the Serco van coming together 14 simply does not address those risks. 15 On the failures in the investigation, I am just 16 going to address now -- as I said before, we deal in 17 great deal in this in our written submissions -- 18 intelligence gathering and dissemination as one such 19 failure. 20 It is clear from the evidence that we have seen in 21 open that the Operation Ankaa investigation team failed 22 to develop a reasonable working methodology in relation 23 to the collation and dissemination of intelligence. 24 There was no problem profile developed to assist in 25 subject identification and bridging intelligence gaps</p> <p style="text-align: center;">Page 33</p>	<p>1 and there was no intelligence collection plan. The 2 objectives deposed to the FA2 by Mr Murray as late as 3 7 December included obtain movements and activities of 4 subjects and identify criminal associates, their 5 addresses and vehicles. But, save for the 6 identification of Ozcan Eren and the mission vehicle, no 7 progress was made against those objectives and there is 8 no evidence that attempts were made to ensure that 9 progress. 10 All this was despite the substantial resources 11 devoted to the operation. 12 In contravention of his responsibilities under the 13 MOPI and the NIM Mr Murray failed to ensure that clear 14 intelligence requirements have been set and ultimately 15 the investigative strategy failed to secure proactive 16 intelligence in relation to the identity of those 17 involved in the conspiracy and the whereabouts of key 18 conspirators, such as Ozcan Eren. The investigation 19 team were passive. They merely received intelligence 20 volunteered to them by the NCA. There was a wholesale 21 failure to comply with the intelligence guidance. 22 So intelligence wasn't placed on the MPS general 23 intelligence database, the CRIMINT, save in two 24 instances. So none of the key intelligence passed by 25 the NCA summarised in the gist provided in the course of</p> <p style="text-align: center;">Page 34</p>
<p>1 this hearing, with respect to the attempts to source 2 a firearm, were ever dealt with in compliance with the 3 policies. None of that was broken into a form of words, 4 none of it was evaluated in accordance with the five by 5 five by five matrix. 6 DCI Williams didn't even realise what his 7 responsibilities were in respect of the intelligence. 8 He thought it was his responsibility to grade it, but 9 Mr McKibbin explained his responsibility was to ensure 10 that it is graded, ie to ask what the grade is and to 11 clarify the basis for that grading. 12 Mr Williams wasn't even sure he had received the 13 intelligence as a matter of course, so he obviously 14 wasn't able to comply with that duty. 15 In the FA2 we know that he graded all the 16 intelligence as A1. When, apart from the intelligence 17 relating to the commission of the 13 October offence, 18 none of it met those criterion. No doubt as a result of 19 or compounded by these failures in the application of 20 the policies, the dissemination of the intelligence was 21 inaccurate and in particular to the CTSFOs at Leman 22 Street on 11 December, when they were briefed. And we 23 say when they were briefed in a dangerously inaccurate 24 way. They were told, just as Mr Justice Sweeney was in 25 relation to the application made to Wood Green Crown</p> <p style="text-align: center;">Page 35</p>	<p>1 Court, reliable and high-graded intelligence indicates 2 that those seeking to carry out this offence will be in 3 possession of firearms and other weapons. 4 Senior officers were unable to assist the inquiry as 5 to whether they reasonably relied upon intelligence that 6 the conspirators were in possession of firearm or 7 whether this was an inference drawn from antecedents in 8 relation to those believed to be involved. 9 There were also failures to collate the available 10 information. In our written closing we provide 11 a detailed analysis of the failure to include in the 12 intelligence about Ozcan Eren the reference from 13 July 2015 of his possession of a Luger firearm. That 14 was part of a bigger failure, a failure to ensure that 15 the evidence gathered in relation to Ozcan Eren, but 16 also all his other known associates, was up to date. 17 We also address the contradictory manner in which 18 the intelligence about Ozcan Eren was handled. How on 19 the one hand it supported the conclusion that those in 20 the mission vehicle were likely to be armed, but on the 21 other that Ozcan Eren would be unarmed and so needed 22 only to be subject to unarmed surveillance. This is, 23 even though, as I have indicated, Mr Williams stated in 24 the FA2, it is unknown whether Ozcan Eren will be in the 25 actual team on the day.</p> <p style="text-align: center;">Page 36</p>

<p>1 The evidence revealed a total absence of 2 cross-checking analysis or any other form of development 3 of the intelligence by SCO7 and the process corruption 4 that commenced at the very outset of SCO7's handling of 5 Operation Ankaa therefore permeated through to the 6 absolutely central arrangements for the deployment of 7 the CTSFOs. There was a deeply troubling level of 8 complacency and incompetence which was reflected in the 9 evidence of Mr Turner, Mr Williams and Mr Murray in 10 relation to these failings. We submit that, as well as 11 making findings in respect of all the failings, the 12 chair must also find with reference to the terms of 13 reference that the handling of information was 14 unreasonable, in particular having regard to the need to 15 minimise, to the greatest extent possible, the risk to 16 life. That is quite apart from the firearms enabled 17 message, which we will come to later.</p> <p>18 I am going to gloss over the 3 December meeting, the 19 so-called second planning meeting, held almost a month 20 later, but in one sense that is irrelevant, sir, because 21 it wasn't actually a planning meeting for the armed 22 deployment at all, it was in truth a meeting devoted 23 almost exclusively to planning the installation of the 24 audio devices into KM13, originally on 7 December. 25 Albeit there does appear to have been some brief</p> <p style="text-align: center;">Page 37</p>	<p>1 discussion regarding the arrangements for 11 December, 2 such as establishing C3000 as a control room and 3 arrangements in relation to the ground command, but not 4 we submit for the purposes of the firearms operation but 5 for the purposes of gathering evidence in relation to 6 the investigation.</p> <p>7 The fact that there was only ever this first 8 planning meeting, which in any event wasn't as I have 9 explained a planning meeting and there never was 10 a second planning meeting, just underscores the total 11 failure to plan to minimise life in relation to this 12 entire operation.</p> <p>13 I am also going to gloss over this, but it is very, 14 very important, and that is the liaison that took place 15 or didn't take place with criminal justice partners, 16 with Wood Green Crown Court and with Wormwood Scrubs. 17 Suffice to say that the appalling approach to these 18 bodies is explained by that same drive to ensure that 19 the conspiracy could run. This led to an inaccurate and 20 an overblown intelligence picture being provided to Wood 21 Green Crown Court to ensure their cooperation. I have 22 touched on that, the high grade and reliable 23 intelligence indicating that they would be in possession 24 of the firearms.</p> <p>25 In relation to the prison service, wholly</p> <p style="text-align: center;">Page 38</p>
<p>1 unjustifiable secrecy which produced the unhappy result 2 that no one at prison service headquarters responsible 3 for the security of dangerous prisoners who presented 4 an escape risk had any idea about the planned conspiracy 5 or the police operation.</p> <p>6 Mr Burrows said this: 7 "Izzet Eren was in lawful custody of the prison 8 service, put there as a result of a decision made by 9 a judge, a decision had been made that they were going 10 to allow these people to be conveyed to a court during 11 which there may have been an ambush on that vehicle but 12 they were not police prisoners at that stage, they were 13 not people in remand in the police station, they were in 14 the lawful custody of Her Majesty's Prison Service. 15 I have not been able to reconcile on what authority they 16 would allow that movement to take place. It is an issue 17 that if I had been involved, or a consultant, I would 18 have gone to the highest level possible to ensure that 19 I had authority to allow these people to be put at risk 20 without the knowledge of the judicial system or indeed 21 the knowledge of the prison service. I haven't got 22 an answer to it, it is just something I would have 23 a very strategic thought about seeking clarification 24 on." 25 Can I turn to the completion of the FA forms. I am</p> <p style="text-align: center;">Page 39</p>	<p>1 not going to address this area in detail, it is one 2 where the MPS accept, as they absolutely must, much of 3 the criticism that has been made by the experts and the 4 family. They accept an FA1 should have been completed 5 to ensure an audit trail, though again they try to 6 minimise the impact of the failure. They accept the key 7 criticisms in relation to the completion of the FA2 and 8 FA3 forms. This was inevitable. We all, sir, shared 9 Mr Arundale's feelings when watching the witness's 10 evidence on their completion of the forms. It was, in 11 his words: 12 "An uncomfortable experience for those witnesses, it 13 didn't look professional at all." 14 I think the lessons are patently obvious. At the 15 heart of the substantive failings with regard to the 16 completion of the forms was the failure to carry out 17 a multidimensional threat and risk assessment. Instead 18 risk was assessed at the time the forms were completed, 19 with the result that the threat assessment was 20 universally low. Frankly, the family are completely 21 dumbfounded by this. Particularly by the fact that this 22 practice seems to be ongoing. The MPS has not yet made 23 the necessary adjustments to the form. As noted 24 earlier, the MPS insist that even those FAs were 25 completed in accordance with their structure which</p> <p style="text-align: center;">Page 40</p>

1 didn't allow for the recording of a multidimensional
 2 threat assessment, such a threat assessment was
 3 performed because when state amber was called the risk
 4 was raised to medium, but that fundamentally misses the
 5 point. As Mr Burrows said, if you want to mitigate to
 6 the greatest extent possible resort to lethal force you
 7 have to ask the question: at what point is lethal force
 8 likely to be used? What is the situation in which it
 9 will be used and does this plan, that is being brought
 10 forward, take us to that point? And what can I do in
 11 terms of agreeing or distinguishing or setting aside
 12 some other plan that would mitigate it?
 13 Unless you think about the end point, you cannot
 14 actually be compliant with McCann. Raising the threat
 15 assessment at the point of state amber to medium simply
 16 doesn't address this point that multidimensional threat
 17 assessment requires that exercise to be conducted at the
 18 planning stage and to feed into the planning process.
 19 The FA2 and FA3 forms, as Mr Arundale commented,
 20 failed to set out a range of tactical options,
 21 contingencies and potential operational scenarios. The
 22 basic building blocks of a considered firearms operation
 23 were absent.
 24 It inevitably followed from the point at which this
 25 illogical threat assessment was made that the

Page 41

1 never use containment and call out on the streets of
 2 London because of the presence of members of the public.
 3 Thirdly, Mr Williams -- again consistent with the
 4 fact that it would never ever be used on the streets of
 5 London -- never put himself in any position to give any
 6 meaningful consideration to the tactic at all, because
 7 he never obtained the necessary environmental
 8 information to make this a possibility.
 9 We ask you, sir, to address this evidence with
 10 extreme care, because we submit it compellingly
 11 demonstrates that in truth containment and call out was
 12 simply not an option that was ever on the table in
 13 relation to this incident but more fundamentally in
 14 relation to any interception, armed interception on the
 15 streets of London, and given the MPS concession that
 16 even with the caution expressed by some of the officers
 17 that it should be on the table, and I include here the
 18 senior officers, this is something, sir, that you should
 19 pay close attention to, because it is a far, far less
 20 dangerous tactic and if it can be deployed safely, with
 21 the necessary planning and the necessary understanding
 22 of the environment, then officers should be working
 23 towards ensuring that this does happen in the future.
 24 I am about to come on to 11 December, and I think we
 25 are now at the hour, so --

Page 43

1 consideration of Article 2 was wholly inadequate.
 2 Ms Blackwell's questioning revealed that the approach of
 3 both Mr Williams and Mr Turner was entirely formulaic.
 4 It consisted simply of a recitation of Article 2
 5 principles, without applying them to the contemplated
 6 threats and mitigations at the time the operation was to
 7 be put in train. When asked whether in completing the
 8 FA2 form Mr Williams gave consideration to the absolute
 9 necessity to use force, he replied:
 10 "No, because ultimately the decision to use force
 11 ultimately comes down to the individual officer."
 12 That speak volumes about his failure to discharge
 13 his responsibility.
 14 I want to address very briefly the tactical option
 15 of containment and call out. The MPS accept that this
 16 is a tactical option that should have been considered,
 17 and they say it was on the table and it was considered
 18 and we say in truth it was never on the table and it was
 19 never considered. We say this for three reasons.
 20 First, while mentioned on the FA5 by S48, this was
 21 with reference to persons in a building, not with
 22 reference to the interception of persons in a vehicle.
 23 Secondly, the fact that he only mentioned it in
 24 relation to a building is entirely in keeping with the
 25 overwhelming evidence of all the CTSFOs that they would

Page 42

1 THE CHAIRMAN: We are a little less but if you want to stop
 2 now, we will take our break now.
 3 MS KAUFMANN: Could we take our break, I think with a gallop
 4 through I might finish at sort of two hours and five or
 5 ten minutes if you, sir, will give me that tiny
 6 indulgence.
 7 THE CHAIRMAN: We will see. I would make no assumptions.
 8 We will resume at 11.20.
 9 Thank you.
 10 (11.06 am)
 11 (A short adjournment)
 12 (11.20 am)
 13 MS KAUFMANN: Sir, I am going to skirt over the 10 December
 14 meeting at New Scotland Yard, we do make observations
 15 about that in our written closing.
 16 THE CHAIRMAN: Yes.
 17 MS KAUFMANN: I am going to come to the 11 December briefing
 18 at Leman Street, which I have already touched on. There
 19 are multiple issues relating to these briefings. Again,
 20 we look at those in our written closing in detail,
 21 I just want to focus now on the content of the briefing
 22 and the inaccurate picture, again which I have touched
 23 upon, that it gave the CTSFOs of the intelligence with
 24 respect to the possession of firearms.
 25 That was the result of a failure by Mr Williams to

Page 44

<p>1 ensure that the information, intelligence and detail of 2 reliability was included in the briefing delivered on 3 11 December.</p> <p>4 What he did was he just left it to the briefing 5 officers to use the documentation provided to them, 6 documentation itself compiled without compliance with 7 the relevant information management policies.</p> <p>8 We do know, even though there was no record of the 9 Lemn Street briefing -- which in our submission is 10 completely unjustifiable -- what Mr Stewart said in that 11 briefing, because he explained that he provided 12 a verbatim relaying of his note and he explained the 13 material upon which that note was made and that is why 14 we see the identity between what was told to Wood Green 15 Crown Court in the application and what he relayed to 16 the CTSFOs about the high-grade reliable intelligence 17 that they will have firearms.</p> <p>18 He explained what he sought to do in briefing the 19 officers was to draw out the really salient points that 20 were important to the police station to give them 21 exactly what they needed to know. He wished to give 22 them the facts because, and I quote, "Mindset is 23 an incredibly important thing when you are a firearms 24 officer. So it is really important that the facts are 25 presented properly and rationally and proportionately".</p> <p style="text-align: center;">Page 45</p>	<p>1 That is the context in which that information was 2 relayed, reliable and high-graded intelligence suggests 3 those seeking to carry out an offence will be in 4 possession of firearms and other weapons.</p> <p>5 When he conveyed that, it was in this context, 6 shortly before he had explained that those involved in 7 the 13 October offence had been caught in possession of 8 two loaded weapons with safety catches off, the Tokarev 9 9mm pistol containing six rounds of ammunition and 10 a Skorpion sub-machine pistol with a full magazine. It 11 was clear from the evidence of the CTSFOs as to their 12 assessment of the risks they faced at the end of these 13 briefings that their mindset was affected by the 14 reference to high-grade and reliable intelligence.</p> <p>15 Their risk assessments were almost universally high. 16 W109 stated that being told this would have been 17 significant to her and led her to attaching greater 18 weight to the intelligence than if she was told that 19 there is some intelligence to the effect that 20 weapons/firearms will be used.</p> <p>21 She also made it clear that she understood 22 possession of firearms to refer to real firearms, and we 23 submit that that is just a matter of common sense and 24 entirely consistent with Mr Stewart's evidence about the 25 importance of accurate information being relayed because</p> <p style="text-align: center;">Page 46</p>
<p>1 of its affect on their mindset.</p> <p>2 We accept there were other factors contributing to 3 the threat assessments made by the officers, following 4 those two briefings on the morning of 11 December. But 5 the inaccuracy of what Mr Stewart inadvertently briefed 6 is, we submit, a serious matter, precisely because of 7 its critical bearing on the officers' state of mind and 8 it was bound to lead them to consider that the 9 likelihood that real firearms would be used was high.</p> <p>10 Was that a fair representation of the intelligence 11 as it existed at that moment in time? We cannot provide 12 a meaningful answer to that, because we have not seen 13 that intelligence. But basing ourselves on what we have 14 seen, so the updated gist -- I should say in answer to 15 the MPS, what I say now is not simply based upon the 16 original NCA gist, ie, "Numerous attempts have been made 17 over the last number of weeks by the conspirators to 18 obtain a real weapon, so far unsuccessfully so", but on 19 the gist provided in the course of hearing, which is to 20 effect that there have been numerous attempts to obtain 21 a weapon over the course of the last few weeks.</p> <p>22 There is a fundamental distinction between that, 23 albeit only disclosed to us in gist form, and what was 24 relayed, because the gist provided in the course of the 25 hearing indicates attempts have been made, it says</p> <p style="text-align: center;">Page 47</p>	<p>1 nothing about whether those attempts were successful. 2 What was relayed gives the strongest indication possible 3 that any such attempts were successful.</p> <p>4 We say it goes without saying that providing 5 information which will lead a firearms officer 6 unreasonably to elevate his assessment of the threat 7 will result in a violation of the right to life of any 8 person who is fatally shot on the basis, even in part, 9 of such a threat assessment, because far from minimising 10 risk, such a briefing necessarily elevates risk.</p> <p>11 We note that in their closing submissions the MPS 12 accept that in relation to the 6.58 intelligence, that 13 is the intelligence received that they had not been able 14 to obtain a real firearm and only had an imitation, the 15 MPS position, despite what everybody said, all the 16 CTSFOs and so forth said, is that it would have been 17 perfectly proper for, and reasonable, to brief on that 18 intelligence, albeit with a very strong health warning 19 and so forth. They also argue it was reasonable not to 20 do so and for Mr Williams not to have done so in the 21 specific circumstances.</p> <p>22 We will address later why we profoundly disagree 23 with the fact that it wasn't reasonable. What it does 24 mean, what that concession means, is I don't need now to 25 explore our detailed written submissions on why all the</p> <p style="text-align: center;">Page 48</p>

12 (Pages 45 to 48)

<p>1 MPS witnesses and the CTSFOs who said that up-to-date 2 and reliable intelligence indicating that imitation 3 firearms as opposed to real firearms were likely to be 4 used, should not be briefed, are profoundly wrong about 5 that. 6 But I do ask you, sir, to read those submissions 7 very carefully, because we submit they demonstrate not 8 only that there is nothing improper in the MPS 9 concession about briefing such intelligence accurately, 10 but that Article 2 positively requires that it is 11 briefed, in an appropriate form of words and if 12 necessary and appropriate with a very, very proper 13 health warning. 14 Starting from the correct proposition that it is the 15 duty of command to ensure that CTSFOs receive up-to-date 16 and accurate briefing of the state of the intelligence 17 with respect to the possession of firearms, you, sir, 18 must determine whether what those officers were told at 19 3.00 am at Leman Street, before they even entered into 20 their vehicles, meant that they were already setting off 21 with a threat assessment that was unreasonably high, 22 because it didn't accurately brief them on the true 23 state of the intelligence. 24 Moving now to C3000, in a moment I am going to 25 address the critical failures in relation to the running</p> <p style="text-align: center;">Page 49</p>	<p>1 of the CMP and the installation of the audio recording 2 equipment, but what went wrong that morning is not 3 explained by those failures alone. Of equal importance 4 is the use to which those facilities were actually put 5 and that was unsurprisingly, given the mindset of 6 Mr Williams from the outset, entirely directed to 7 furthering the criminal investigation, albeit wholly 8 incompetently and not to gathering information and 9 intelligence in order to minimise the threats to life of 10 the operation. That manifested itself in two critical 11 ways. 12 The first was that there were no evidential tipping 13 points. At no point did Mr Williams or Mr Murray 14 establish evidential tipping points. They didn't seek 15 advice from the CPS as they clearly could have done. 16 Instead, they had only one tipping point and that was 17 a geographical one, ie the A1/406 junction after which 18 they would go over so as to make sure that the mission 19 vehicle and the prison van never met. 20 That was plainly a vital aspect of the planning of 21 the operation, because it provided a very important 22 safeguard against the offence being completed and the 23 obvious heightened risk to Serco staff, the other 24 occupants in the prison van and any members of the 25 public who might be in the vicinity should that contact</p> <p style="text-align: center;">Page 50</p>
<p>1 be made. But it was far from a sufficient condition to 2 meet the requirement to minimise risk. As important was 3 an evidential tipping point for the reasons given by 4 Mr Arundale, because by having clear evidential tipping 5 points for different offences, and an appreciation of 6 the likely sentences for each, the SIO can present the 7 TFC with his most desired outcomes, those which, 8 although not ideal are nonetheless acceptable from the 9 point of view of SPP and those which are not going to 10 achieve that aim. The TFC can then take that 11 information and try to resolve it and apply the 12 Article 2 principles in relation to safety and hopefully 13 manage the tension between the two to find an acceptable 14 balance. 15 The importance of establishing evidential tipping 16 points is something that was also highlighted by S48 in 17 the FA5 he provided for Mr Williams. He said this: 18 "It is recommended that the TFC explore the 19 evidential and intelligence thresholds in detail to 20 ensure the OFC is in the best position to understand 21 when an interception or arrest is likely to be required. 22 This will enable resources to be deployed more 23 effectively and increase the chances of a successful 24 deployment." 25 By having evidential tipping points well in mind,</p> <p style="text-align: center;">Page 51</p>	<p>1 there was greater opportunity to plan the firearms 2 operation itself and the means by which arrests will be 3 effected and thereby to reduce the associated risks. 4 Mr Murray admitted that there had never been any 5 discussion of evidential tipping points and he himself 6 didn't have any such tipping points in mind. 7 The only plan he had was to let the offence run for 8 as long as possible with that geographical tipping point 9 backstop. 10 As to whether Mr Williams established a tipping 11 point himself. 12 Firstly, there is absolutely no record that he ever 13 did so, or undertook anything like the kind of exercise 14 that Mr Arundale identified. In any event, it would 15 have been wholly inappropriate for him to have 16 undertaken that role. That was a role for the SIO. It 17 was for him to direct the SIO to do this and then for 18 him to carry out the relevant firearms command article 2 19 exercise. 20 We submit it is overwhelmingly clear that he did not 21 establish any evidential tipping points himself. At 22 best he considered evidential tipping points on the 23 hoof, in the course of the morning, from the admitted 24 position that he, and I quote, "... wanted the 25 opportunity to get more evidence, as long as that wasn't</p> <p style="text-align: center;">Page 52</p>

<p>1 going to increase the risk to any of the parties 2 involved".</p> <p>3 It is not at all surprising, given this, that he let 4 the offence run to the point just short of the 5 geographical tipping point, and only declared state 6 amber once he knew from the probe that the occupants had 7 been passed the registration number of the Serco van. 8 Again, we are looking at a blurring of responsibilities 9 here.</p> <p>10 It is just that kind of blurring of responsibilities 11 that the prohibition on the SIO taking on the role of 12 the TFC was intended to prevent.</p> <p>13 If we actually look at the information that was 14 available to Mr Williams on that morning, and as we set 15 out fully in our written submissions, when carefully 16 examined, and what I am asking here is what was relayed 17 or what I am addressing here is what was actually 18 relayed to Mr Williams as opposed to what he actually 19 recorded, then in our submission, by 7.30 that morning 20 an evidential tipping point had in fact been reached for 21 an offence of conspiracy to commit an indictable 22 offence. You will recall, sir, that this was the 23 offence which on Mr Williams's evidence could 24 realistically meet the needs of sustained public 25 protection, so not an imitation firearm possession</p> <p style="text-align: center;">Page 53</p>	<p>1 offence on its own but, yes, the section 18. In our 2 submission, he had all he needed by 7.30.</p> <p>3 But because he had no evidential tipping points in 4 mind, he failed to record some of the key intelligence 5 passed to him from the CMP that bore on that evidential 6 tipping point. Again, we analyse that in our written 7 submissions.</p> <p>8 He also failed to use the probe to confirm 9 information coming from surveillance that he said he 10 believed was relevant to the conspiracy, for example 11 whether the occupants had been joined by other 12 coconspirators with the possibility that weapons were 13 being passed.</p> <p>14 The second failure that informed everything that 15 happened that morning was the failure to focus on the 16 need to maximise the safety and minimise the risks of 17 the operation.</p> <p>18 We have discussed how that is the most fundamental 19 task of the commander and the commanders of the firearms 20 operation.</p> <p>21 It is a responsibility that arises not just in 22 relation to members of the public, it might be entirely 23 appropriate that you focus and prioritise safeguarding 24 and minimising the risk to the members of the public but 25 your duty as a firearms commander is to minimise the</p> <p style="text-align: center;">Page 54</p>
<p>1 risks to everybody who will be affected by that 2 operation. That includes, even if they come at the 3 bottom of your hierarchy, CTSFOs and the subjects of the 4 operation as well.</p> <p>5 The family submit that Mr Williams focused 6 exclusively on the threat posed by the subjects of the 7 mission vehicle to anybody who was in the Serco van or 8 around the Serco van, and he failed to engage in that 9 wider exercise of minimisation.</p> <p>10 We also submit he sought to minimise that risk with 11 that single tactic of a geographical tipping point. He 12 said, as we have noted, he was happy to let the offence 13 run up to the geographical tipping point as long as it 14 didn't increase the risk to any of the parties involved, 15 but his job was to minimise the risk to everyone and the 16 possible interception of the subjects in the mission 17 vehicle was an obvious point of potential high risk to 18 life which he needed to take into account.</p> <p>19 He needed to plan for it in order to minimise the 20 risks around it. Planning required time and it required 21 opportunity.</p> <p>22 Had he been planning around the need to minimise the 23 risk to all, he would have said once the evidential 24 tipping point was met: 25 "I am content to let the offence run, because this</p> <p style="text-align: center;">Page 55</p>	<p>1 provides me now with an opportunity to plan for the 2 interception and to focus on minimising the risks to 3 that."</p> <p>4 His exclusive focus on the risk posed by the mission 5 vehicle is also evidenced in relation to his handling of 6 Ozcan Eren. We know he had no control on Ozcan Eren 7 that morning, nothing from the point at which he was 8 sighted at around 5.00 am or so, until he was next seen 9 at 9.16 am.</p> <p>10 When he was seen at 9.16 am, sir, you will recall 11 that that was entirely fortuitously by a CTSFO, who was 12 following the prison van, who spotted Ozcan Eren's car 13 as the prison van passed it. So for all that time there 14 was no control on him, everything was allowed to 15 continue, no steps were taken to integrate and plan 16 around the threat that he posed, in circumstances where, 17 and again I repeat, Mr Williams said in terms in the FA5 18 that he didn't know whether Ozcan Eren would be directly 19 involved. In circumstances where he said on that 20 morning he didn't know if there would be a second 21 vehicle involved in attempting to effect the escape of 22 Izzet Eren.</p> <p>23 These fundamental failures work together. The 24 failure to establish evidential tipping points, the 25 failure to minimise risk to all. They work together and</p> <p style="text-align: center;">Page 56</p>

<p>1 they work together to increase risk rather than decrease 2 risk.</p> <p>3 Can I then turn to C3000 and the CMP. C3000 and the 4 technical equipment available to command provided 5 an exceptional set of resources for the investigation 6 and the firearms operation. The MPS had authorised the 7 deployment of expensive, intrusive surveillance to 8 assist the operation, but its utility was almost 9 completely squandered by wholesale incompetence. That 10 is true not just of the running of the CMP but of the 11 entire running of C3000.</p> <p>12 Once again the MPS accepts, as it must, the expert 13 evidence from Mr Brown that the equipment actually used 14 was well capable and could easily have been set up to 15 provide simultaneous livestream and review functions and 16 EG39's lack of knowledge about the capabilities of the 17 machinery that he installed was profound. We, the 18 family, are completely unable to comprehend how such 19 an incompetent installation could have taken place given 20 the operational requirements and obvious need to meet 21 those requirements for simultaneous live feed and 22 playback capability.</p> <p>23 It wasn't just the result of EG39's incompetence. 24 He should never have been put in that position in the 25 first place. There was a systemic failing within the</p> <p style="text-align: center;">Page 57</p>	<p>1 TSU to ensure that a competent, trained engineer who 2 understood the machinery and had experience of it was 3 responsible for the installation and for its testing.</p> <p>4 But because the MPS accept that this could have been 5 done I am not going to dwell on it, but it is detailed 6 in our written submissions. It is important to say 7 this: contrary to what the MPS submit, the family 8 contend that it is overwhelmingly clear that if the 9 machinery had been competently set up, had been tested 10 in good time, as Mr Brown said it should have been, then 11 the playback function would have worked on that morning.</p> <p>12 First, as Mr Brown stated in evidence, it was known 13 from 24 November that a CMP was to be required. There 14 was ample opportunity to test the equipment early on, 15 end to end, multiple times. Discussions could have 16 taken place, decisions could have been made on the 17 listen and review functionality and sorted in good time. 18 Instead it was left to a time when the operation was 19 already live for any of that to be done.</p> <p>20 While no records were kept of the repair of the 21 machine, as there plainly should have been, the evidence 22 of EG39 was that when the machine was returned to the 23 TSU and when it was put through functional bench tests 24 and rebooted, that fault had cleared and that strongly 25 suggests that the problem that arose on the morning of</p> <p style="text-align: center;">Page 58</p>
<p>1 11 December wasn't due to a fault in the equipment but 2 rather it was caused by EG39's faulty wiring or 3 a freezing of the screen on the playback function. But 4 on either of these bases, the failure to set up the 5 machine correctly was an operative cause of the fault 6 with the playback function.</p> <p>7 Mr Brown explained that had the split feed been 8 properly applied, then in the event of a fault in the 9 playback facility it would have been possible to have 10 replaced the screen or switched it on and off again in 11 order to reboot it without in any sense interfering with 12 the live feed. He said the product has no requirement 13 to use a screen and it is literally an interface that is 14 unplugged and plugged back in again.</p> <p>15 We do submit it is overwhelmingly clear that had it 16 been wired correctly, either it would have worked 17 properly on the day or any fault would have been 18 detected and remedied without interfering with the live 19 feed, such that it was there and available and working 20 on the morning.</p> <p>21 How should the CMP have been run? Again, given the 22 concessions that the MPS have made, as we submit is 23 inevitable, I am not going into detail into the failures 24 that we deal with in detail in our written submissions 25 on the running of the CMP, but, in summary, no CMP</p> <p style="text-align: center;">Page 59</p>	<p>1 manager was appointed, the staff were incompetent, not 2 through any fault of their own but because of how they 3 were selected. There was no competent organisation of 4 how they were to work. There was no competent 5 supervision. And, when the playback facility failed to 6 work, they were not competently re-organised to use the 7 resource that they could make available in any rational 8 way.</p> <p>9 On top of that, Mr Williams completely failed to use 10 the probe for the purpose of commanding the firearms 11 operation, as opposed to, albeit incompetently, as 12 a means to gather more evidence until that geographical 13 tipping point was reached.</p> <p>14 What would have been gleaned and could have been 15 gleaned from that audio had it been working properly and 16 had there been a competent CMP in operation with 17 a competent manager?</p> <p>18 We submit that it would have been quite clear from 19 listening to that audio with the opportunity to playback 20 repeatedly over the two hours that it was being listened 21 to, it would have been abundantly clear that 22 consistently with that message that Mr Williams received 23 at 6.58, they only had an imitation firearm and that 24 they were not going to get a real firearm at any stage 25 in the course of the operation.</p> <p style="text-align: center;">Page 60</p>

1 We say this because, firstly, the quality of the
 2 audio was very clear. We heard that from I think it was
 3 Mr Reddy. The review function would have enabled the
 4 listener to replay that feed as many times as he or she
 5 needed to secure absolute clarity and certainty about
 6 what was said and to record what was said verbatim.
 7 There was ample time to do so. Not just two hours
 8 but it is also the case that in that two hours there
 9 were long, long periods when nothing was being said at
 10 all, particularly that last hour, when in Bracknell
 11 Close, the occupants of the vehicle were basically
 12 asleep. There was ample, ample opportunity to listen to
 13 the relatively limited parts of the feed that were
 14 relevant in order to fully comprehend what was being
 15 said.
 16 Furthermore, particularly in light of what I have
 17 said about the 7.30 am deadline, even with the feed and
 18 the CMP being as it was, by 7.30 am that evidential
 19 tipping point would unquestionably have been reached.
 20 From that point onwards it would have been clear
 21 they only had an imitation firearm, no need to gather
 22 any more intelligence and planning could then have been
 23 devoted entirely to bringing the operation to a close.
 24 In our submission, there is absolutely no question, had
 25 that happened, with that information, then W80 would

Page 61

1 So from that point onwards, energies could and
 2 should have been devoted to planning for the
 3 interception. Energies could have been devoted to
 4 listening to the feed for the purposes of planning that
 5 interception. What would have been elicited for example
 6 had that been done is that there were only three
 7 occupants in the vehicle, is that at no stage did
 8 anybody else get into the vehicle, but two occupants got
 9 out to relieve themselves.
 10 It also would have provided an opportunity, and
 11 I will come to this a little bit later on, to rectify
 12 the mistaken understanding that the surveillance had of
 13 anti-surveillance measures being undertaken in relation
 14 to the vehicle. I mean Mr Williams had that information
 15 but he never addressed it and he never used it to direct
 16 surveillance to go in earlier. I shall come on to all
 17 of that later, but all of that information, the picture
 18 about the environment and the ability to gather a better
 19 picture about the environment would have been possible
 20 if, from 7.30 onwards, the probe was used in the way it
 21 ought to have been.
 22 I turn now to the "firearms enabled" message.
 23 Mr Williams decided at 6.58, when he received that
 24 message, not to act on it and not to relay it to the
 25 CTSFOs. Instead, we know at 7.30, and for reasons set

Page 63

1 never, ever have fired a shot.
 2 Because, of course, that information would have had
 3 to have been relayed to the officers who would not have
 4 gone in with an understanding and a belief that they had
 5 real firearms. They would have gone in with
 6 an understanding and a belief, albeit they have to still
 7 treat them as having real firearms, they would have gone
 8 in with an understanding and a belief that this was
 9 three individuals in that vehicle, there were three
 10 individuals, who had an imitation firearm only.
 11 Even without the review function working, so let's
 12 assume, sir, that you find that the review function
 13 still wouldn't have worked, if all those failings I have
 14 identified had not taken place. We submit that had the
 15 CMP itself been staffed by trained officers, and
 16 supervised and managed by a competent trained CMP
 17 manager, Mr Williams would unquestionably have been
 18 provided with enough information to establish that
 19 evidential tipping point at 7.30.
 20 There are more details that they did miss,
 21 Mr Reddy -- sorry, Mr Hawthorn, that he did miss, such
 22 as the reference to Serco officers, such as the
 23 reference to the Rambo knife being used to cut the
 24 wheels and add those to what was already there and you
 25 unquestionably had that evidential tipping point.

Page 62

1 out in our written submissions, we contend it was he, he
 2 authorised dissemination of the firearms enabled
 3 message.
 4 I repeat, in our submission, it was his duty under
 5 Article 2 to make sure that that was relayed. Whether
 6 he did it then or whether he did it at 7.30, and at 7.30
 7 he included in his message a very strong health warning
 8 based upon what he had actually heard in the probe,
 9 ie you will know his evidence was that from what I heard
 10 in the probe, it wasn't clear to me whether they might
 11 still have a weapon. So whether he provided a very,
 12 very carefully worded message at 7.30 am that
 13 incorporated both the 6.58 intelligence and what he
 14 gleaned thereafter, that is a completely different
 15 message to the message he actually relayed.
 16 The message he actually relayed, which the MPS
 17 accept it would have been preferable for him not to have
 18 relayed, had very serious consequences, contrary to what
 19 the MPS contend.
 20 The MPS contend that that message did not increase
 21 the threat assessments of any of the CTSFOs and we
 22 submit that is absolute nonsense. All the CTSFOs
 23 understood that message to mean that those in the Audi
 24 were in possession of a real firearm and they understood
 25 them to be, or rather that information to have come from

Page 64

1 the probe, and therefore to be incredibly reliable and
 2 accurate.
 3 To suggest that that had no effect upon their threat
 4 assessment and their state of mind is, we submit,
 5 wholly, wholly, unrealistic.
 6 We address the effect it did have on their state of
 7 mind, as does W80 in his submissions.
 8 What should have happened from that point forward?
 9 From that point forward, there should have been
 10 an accurate briefing in the manner that I have just
 11 described. So those officers would never have gone in
 12 with a heightened threat assessment. At 7.30, he had
 13 the evidence, or the evidential tipping point had been
 14 met. He also knew at 7.30 that they were going to head
 15 to the point behind the court. By 8.00 am they had
 16 reached that point behind the court in Bracknell Close.
 17 So he should have known at that point in time that this
 18 was where they were going to remain until they were
 19 going to move off to try and assist in securing the
 20 escape of Izzet Eren.
 21 At 7.30 onwards he should have been addressing his
 22 mind to minimising the risk of the interception that was
 23 inevitably now going to take place now that he had
 24 reached the evidential tipping point.
 25 At 8.00 am when they arrived in Bracknell Close, he

Page 65

1 should have thought about whether or not this was a good
 2 site at which to intercept. In our submission, the
 3 inevitable conclusion would have been this is
 4 an excellent site at which to intercept because they
 5 have come to a natural stop. That means that the
 6 operation is much less risky than it would be if we were
 7 going to have to stop a vehicle as it was itself moving.
 8 Once that tipping point was reached, once it had
 9 reached Bracknell Close, he should have been thinking
 10 all about the armed interception. As Mr Burrows said,
 11 at that point, the question is: how do I arrest or when
 12 do I arrest the people in that vehicle, now that I have
 13 my evidence?
 14 One issue is simply let the van go overt, the people
 15 in the vehicle and the third eyes will say about the
 16 operation and you continue your surveillance operation
 17 on that vehicle and you arrest people at a point of your
 18 choosing. Perhaps when they are abandoning the vehicle,
 19 they are getting out or whatever, but this should have
 20 been one of the what ifs that was being thought of,
 21 either in advance or during this hour in the morning
 22 when they have that period of grace. During all of that
 23 time that the evidence was in Bracknell Close, you have
 24 the choice of how you progress the operation and what
 25 sort of outcome you have. That would only happen of

Page 66

1 course provided your interception and extraction is not
 2 actually your end goal and indeed you would have to have
 3 thought that out in advance.
 4 You would have to think: do the occupants now on the
 5 information I have available pose a risk such that
 6 I need an armed interception? That would then give you
 7 the opportunity to start thinking about contain and call
 8 out as a potential option and if I am going to have to
 9 go for an armed interception, then what information do
 10 I need in order to plan that and minimise the risks?
 11 As matters actually stood, far from that,
 12 Mr Williams had no clarity that the occupants of the
 13 mission had only an imitation firearm.
 14 Bear with me a moment, sir.
 15 He took no steps in the period from 8.00 am onwards
 16 to gather intelligence and evidence about the
 17 environment. Sir, you will recall that S105, shortly
 18 after 8.00 am, was asking for evidence -- he wanted to
 19 understand the environment. It wasn't until 8.56 that
 20 the surveillance team went in to look at the environment
 21 and to feed back information.
 22 We know that the reason they didn't go in was
 23 because they believed that the occupants of the mission
 24 vehicle had been engaged in anti-surveillance techniques
 25 and therefore they were nervous. The MPS in their

Page 67

1 written submissions insist that even if Mr Reddy's
 2 information that he relayed to Mr Williams that the
 3 occupants of the mission vehicle had not for one moment
 4 been engaging in anti-surveillance techniques but had
 5 actually been lost and were laughing, the MPS position
 6 is even if that information had been understood by
 7 Mr Williams, taken into account, the surveillance team
 8 would still not have gone in.
 9 In my submission, sir, that is absolutely not
 10 a reasonable position. The MPS assert that the
 11 surveillance team have all the experience, they have
 12 an understanding, they know about these things. The
 13 probe was by far the most accurate piece of information
 14 about what was going on in that vehicle and what the
 15 beliefs were of the individuals in that vehicle, and it
 16 was quite clear that they were not engaging in
 17 anti-surveillance techniques and apart from a moment
 18 when they made reference to builders, at no time did
 19 they express any concern about being watched, police
 20 spying upon them, about them being surveilled in any
 21 way.
 22 In addition, sir, it was the rush hour.
 23 So that vehicle sat there for an hour, in a close,
 24 with people going off to work, people taking their
 25 children to school, there would have been nothing

Page 68

<p>1 surprising about seeing another individual walking down 2 the street. So the risk of any surveillance officer 3 being identified was very, very low.</p> <p>4 Further, and importantly, there was the probe which 5 provided information of what the occupants of the 6 vehicle were actually doing during the course of that 7 hour, which was largely sleeping. To submit that had 8 they actually been provided with the information in the 9 probe, they still would not have gone in to undertake 10 a proper surveillance operation in order to inform what 11 tactics should be used, or if armed extraction was to be 12 used to provide the essential environmental information 13 is, in our submission, entirely wrong and Mr Williams 14 would and should, most importantly, have sent them in 15 earlier.</p> <p>16 Because as you heard, sir, Mr Arundale and 17 Mr Burrows made it quite clear, but in any event it is 18 obvious and it is there also in the training materials, 19 it is of vital importance to obtain information about 20 the environment. You cannot plan containment and call 21 out unless you understand the environment, unless you 22 know whether you are going to be able to contain that 23 vehicle and hold it in or whether there are escape 24 points. Unless therefore you have surveillance on the 25 ground, you cannot make that assessment, but also you</p> <p style="text-align: center;">Page 69</p>	<p>1 cannot minimise the risks to an extraction without 2 understanding that environment, which is precisely why 3 S105 was asking for the information from as early as 4 8.00 am and became so jumpy shortly before state amber 5 was called.</p> <p>6 So all of that could and should have been done: 7 Had Mr Williams discharged his duties properly, all 8 that information would have been available and they 9 would have known not only that, as they did, the windows 10 were steamed up, they would have known that there were 11 only three occupants in the Audi, because it beggars 12 belief that Mr Williams's last record was that there 13 were four occupants in the Audi, up to four occupants in 14 the Audi was his last record. He never sought to find 15 out from those listening to the probe how many were 16 actually in there, and it was quite clear, had he asked, 17 he would have been told there were only three.</p> <p>18 It would have been known that there was a serious 19 hazard -- namely the BMW parked a matter of inches away 20 from the nearside of the vehicle -- that needed to be 21 addressed and is that had a bearing on how an extraction 22 could be effected. For example, in relation to the back 23 seat passenger: it would have been most sensible, had 24 that been known, to try and extract that passenger from 25 the offside rather than from the nearside of the</p> <p style="text-align: center;">Page 70</p>
<p>1 vehicle.</p> <p>2 Most importantly, that information could have been 3 relayed and it would have provided an opportunity for 4 the CTSFOs themselves to plan amongst themselves or at 5 least to themselves incorporate that and think about how 6 they themselves were going to deal with it.</p> <p>7 As matters stood, even with the limited information 8 that they had, the CTSFOs failed to plan how they would 9 achieve the most critical task of getting their eyes on 10 the occupants, given what they knew, which is that the 11 windows were steamed up. Given the limits of time I am 12 going to gloss over how they went about trying to get 13 in, rather than trying to open the door and smashing the 14 windows. But, moving to the actual performance of the 15 extraction, S111, having taken that extraordinary 16 decision to try and smash the window, at least 17 positioned himself correctly by standing around the 18 pillar between the front door and the back doors. When 19 that failed, when he failed in his attempts to smash the 20 window, W80 told him to move on and he again positioned 21 himself correctly, stopping just past the door and then 22 dealing with and extracting Gokay Sogucakli without 23 difficulty. But his threat assessment was almost 24 identical to that which W80 says he believed he was 25 facing. Yet, the outcome could not have been more</p> <p style="text-align: center;">Page 71</p>	<p>1 different.</p> <p>2 Sir, I want to pause for a moment to look at how 3 S111 dealt with the situation he faced. His evidence 4 was that at the moment he opened the door he was able to 5 see both of Mr Sogucakli's hands, following which 6 Mr Sogucakli sat back in his seat and raised his hands 7 up towards his chest area. He pulled his hands back out 8 of S111's sight so that S111 could no longer see them. 9 S111 wasn't quite sure what he was doing. He may have 10 been going for something around his chest area, out of 11 S111's vision. At any rate, Mr Sogucakli was not doing 12 what S111 wanted him to do.</p> <p>13 He understood that in putting his hands out of 14 sight, Mr Sogucakli was doing something other than 15 complying with S111's instruction because, and I quote: 16 "I hadn't told him to do that, although a lot of 17 people do put their hands up immediately, I thought his 18 sitting back in his seat and bringing his hands out of 19 my view was because he wanted to be out of my view for 20 a particular reason."</p> <p>21 S111 then heard the gunshot and he thought it was 22 a Hatton round and he said that he wanted to get 23 Mr Sogucakli out of the vehicle so that if for some 24 reason the car escaped, at least there would be one less 25 occupant and he quickly extracted him. He was</p> <p style="text-align: center;">Page 72</p>

<p>1 questioned about what other options were open to him or 2 were considered by him, and in particular he was asked 3 whether he considered discharging his weapon and he said 4 that he had not: 5 "I couldn't see any threat, any firearms threat 6 towards me or any immediate threat either to me or 7 a colleague currently at that time, because I have lost 8 his hands out of my sight and I can't see his head, so 9 I am just purely going not on instinct but I -- it is 10 going to be very strange for someone not to react as 11 I want them to react, but I was ... I didn't think at 12 that stage I was in imminent danger." 13 Then the question by Ms Blackwell: 14 "But you believe that there is a gun in the car, you 15 have got somebody who hasn't been compliant in the 16 instructions you have given them and you now believe 17 that they have intentionally put their hands out of 18 view. Why did that to you not amount to grounds for you 19 to need to use your weapon, your carbine?" 20 Answer: 21 "Because I haven't seen myself or my colleagues in 22 imminent danger. I can't see that there is a gun 23 pointed at me or one of my colleagues or that he is 24 physically reaching for a gun. I can't take any of 25 those chances unless I physically see it."</p> <p style="text-align: center;">Page 73</p>	<p>1 I want to turn now to W80's actions and the 2 independent evidence and the conclusions that we can 3 draw from that evidence. 4 I say in passing that it is notable that W80 in his 5 written submissions has veered largely away from the key 6 independent evidence, namely the probe and the agreed 7 transcript, as well as the joint report of Mr Kabbani, 8 Mr Randall and Mr Brookes, and instead he has placed 9 a great deal of reliance and given a great deal of 10 attention to the report of Messrs Arundale and Burrows, 11 but that report didn't take account of the agreed 12 transcript or that joint report from Mr Kabbani, 13 Dr Randall and Mr Brookes. 14 The family's analysis, by contrast, pays very close 15 attention to that independent evidence. We accept that 16 the scientific evidence cannot alone determine what 17 happened. But we submit that when you combine that 18 evidence with the audio and common sense, it is possible 19 to reconstruct with a great deal of confidence the 20 sequence of events. 21 We invite you, sir, to make the following findings 22 based upon the audio. The agreed transcript is 23 unquestionably helpful but, sir, you will no doubt 24 listen and listen again as we have hundreds of times to 25 that Audi, and we submit that the following is</p> <p style="text-align: center;">Page 74</p>
<p>1 absolutely clear. 2 The first I don't think is in dispute: the shot is 3 the loud sound that can be heard a couple of seconds 4 after the last of the four bangs, at about 00.09, 5 line 11 on the agreed transcript. W80 himself accepted 6 that that sound was consistent with the timing of his 7 shot. 8 Secondly, the only instructions issued between the 9 four bangs and that shot are instructions for those 10 inside to get their hands up. 11 Thirdly, at the time the shot is fired, 12 an instruction is being issued which was not completed. 13 It is recorded on the agreed transcript as, "Put your 14 hands on your ..." 15 Turning to the joint report of Mr Kabbani, 16 Dr Randall and Mr Brookes, the following matters were 17 agreed between them. 18 Firstly, Jermaine's left wrist was raised above the 19 entry wound to the neck. So it was as he was sitting 20 back, we know he was sitting back in his chair, it was 21 above the entry wound to his neck, although the precise 22 position of his wrist is unknown. 23 Secondly, Jermaine's right shoulder area was 24 supported by the back of the passenger seat at the 25 moment the shot was fired, so that gave rise to two</p> <p style="text-align: center;">Page 75</p>	<p>1 possibilities. Either he was back with both his 2 shoulders resting against the seat or his left shoulder 3 was to some extent off, moving off or moved off that 4 front seat. 5 Thirdly, the muzzle of the tactical rifle used by 6 W80 was within 50-centimetres of the left wrist of 7 Jermaine, within a minimum distance of only a few 8 centimetres, but there was no contact between the muzzle 9 and the wrist. 10 Fourthly, the muzzle of that rifle was inside KM13, 11 forward of the vehicle's A-pillar. 12 Fifthly, the damage to the man strap was caused by 13 the bullet. 14 Taking all of that, we have the audio making clear 15 that the instructions issued by the officers before that 16 shot was fired were, "Put your hands up". 17 Second, we know Jermaine was not armed and so would 18 have absolutely no reason whatsoever to do anything 19 other than what he was being instructed to do when 20 a police officer was pointing a loaded firearm at his 21 face and body within 50-centimetres of his person. 22 Thirdly, W80's very, very first account to S105 was 23 that Jermaine moved his hands up to his chest area, in 24 other words both his hands went up together, which is 25 again entirely consistent with Jermaine following the</p> <p style="text-align: center;">Page 76</p>

<p>1 instructions he received to put his hands up. 2 Further, in his witness statement, dated 3 19 February 2016, W80 stated that Jermaine's hands moved 4 up from a low position. 5 Mr Kabbani explained that the time taken from firing 6 the shot and it striking Jermaine first on the wrist was 7 instantaneous. In other words, the position of his 8 wrist, as agreed between the experts, is the position it 9 was in at that moment when the shot was fired. The 10 photographs in the joint report of the possible position 11 of Jermaine's left wrist make clear that his arms were 12 at that moment on a trajectory upwards to a surrender 13 position. They were not on their way down to his chest 14 area from here to here, they were here. (Indicated) So 15 not from here to here, they were moving up. 16 If Jermaine was intending to reach for the contents 17 of a bag on his chest, his elbow would simply not be 18 raised in the figure that is shown in figure 17. Can we 19 possibly put the report up, if that is possible? It is 20 INQ27 and it is page 16, or rather I think it is not 21 page 16 for figure 17, I think figure 17 is on page 15. 22 So it is the previous page. Figure 17, and we can 23 see where his elbow is. 24 It would make absolutely no sense for his arms, his 25 elbow, to be raised in that position if he was reaching,</p> <p style="text-align: center;">Page 77</p>	<p>1 from here with his hands low down to his man bag here. 2 You don't put your arms up like that. 3 Putting all the evidence together, the family 4 contend that the most likely position of Jermaine's arms 5 and hands at the moment the shot was fired, after he had 6 been told to put his hands up, is shown at figure 19, so 7 the next page, please. 8 So in accordance with the instructions he was given, 9 he was exactly in the process of doing that and putting 10 his hands up. It is only, of course, if Jermaine's man 11 bag was sitting on his chest that W80 could possibly 12 have thought that Jermaine was reaching for it. And, 13 again, the joint report gives the lie to this. 14 The experts are agreed there were two possible 15 positions in which that man bag could have been up on 16 Jermaine's chest area that were consistent with the 17 bullet shot on the strap, which that damage to the strap 18 came from the bullet shot. That is figures 14 and 15, 19 if we could turn back to those. But the problem for W80 20 is that in order to have been positioned there, 21 something would have to have been done with the excess 22 strap that was then produced and what would have had to 23 have been done is that that excess strap would have had 24 to have been pulled behind Jermaine's back and he would 25 have had to have lain on it, because in order to</p> <p style="text-align: center;">Page 78</p>
<p>1 position it there it produced an excess run of strap, 2 whereas if it was positioned down here and here there 3 was no excess strap. 4 Quite simply, that is wholly, wholly improbable. 5 Jermaine, we know, had nothing in his man bag, so he 6 wouldn't have wanted to access it, he had been in that 7 vehicle for more or less an hour, sleeping for much of 8 the type, lying back in a relaxed position. It makes 9 absolutely no sense whatsoever that he would have sought 10 to deliberately pull the straps behind his back, lain on 11 it in order to secure it in front of him, it simply 12 would not have happened. There is not one officer that 13 described having to extend the strap of the man bag in 14 order to remove it and the implications of that is that 15 the length of strap upon which all these measurements 16 were done is the length of strap at the time he was 17 shot. There is no evidence, nor reason to believe, that 18 Jermaine was wearing his man bag on his chest with the 19 strap tightened. He plainly wasn't. 20 If we compare W80's account with the conclusions 21 that one can reasonably draw from that independent 22 evidence, from his first formal post-incident account 23 onwards, he said he repeatedly told Jermaine to put his 24 hands on the dashboard. He said he did this several 25 times.</p> <p style="text-align: center;">Page 79</p>	<p>1 We know from the probe he didn't say it once, let 2 alone repeatedly so. He said Jermaine's man bag was 3 high on his chest. We know that is wrong. He said: 4 "I have said that his hands moved quickly up to his 5 chest. I could see both of his hands, both moved at the 6 same time, both moved upwards towards his chest. His 7 hands moved from a low position. He had the opportunity 8 to put his hands on the dash. Had he done so I would 9 not have fired. His lifting of his hands quickly from 10 low in his lap area towards his chest caused me to 11 believe he was going for a gun and that that is why 12 I shot him." 13 In evidence he added this, that at the time he 14 decided to shoot Jermaine, Jermaine's hands were lower 15 than shown on the reconstruction. They were coming back 16 up towards the man bag that was on his chest, his hands 17 were moving towards the bag, not in a direction 18 consistent with them making their way up to putting his 19 hands up. But we know from Mr Kabbani that that shot, 20 was instantaneous. His hands were already there. He 21 wouldn't have taken time between deciding in his mind he 22 was going to shoot and shooting. His hands were already 23 well on the way up. Not lower, as he insisted in 24 evidence. 25 He insisted that in evidence because he knew he was</p> <p style="text-align: center;">Page 80</p>

20 (Pages 77 to 80)

<p>1 in trouble when it comes to looking at the agreed 2 report. 3 Can this inconsistency be explained by the 4 perceptual phenomena that we heard about from Mr Burrows 5 when he gave evidence? He said that in high stress 6 situations such as this -- and this obviously was -- 7 senses can be subject to a number of perceptual 8 phenomena, which he described as follows. 9 Firstly, you can have auditory exclusion or auditory 10 amplification, so you might hear a click if a click is 11 important to you, like a safety catch going off on a gun 12 or you might not hear the bang which has stunned 13 everybody else, because your focus is so intent on what 14 you are moving forward to. 15 In terms of distance, you may get a narrowing of 16 your vision and a focusing in on the threat and that 17 focusing in on the threat can cause you to lose your 18 peripheral vision, which is actually very important when 19 you are in life-threatening situations. What it can do 20 is two things, it can shorten distance so that therefore 21 something that is a relatively long way away can seem 22 very, very close and then it has that impact of making 23 you unable to see things that are happening at the 24 periphery. 25 Then he described other effects on distance and</p> <p style="text-align: center;">Page 81</p>	<p>1 time, so you can cover a relatively long distance in 2 a short period of time and your memory of that will 3 become mixed up. 4 You will remember significant parts of an incident 5 and not know about others. I may well cross this entire 6 room he said and not remember crossing the room. All 7 I will know about is getting to the point of contact 8 that is important to me. 9 None of the perceptual phenomena that he described 10 can explain how W80 would have perceived the situation 11 in which he told us he perceived that situation, 12 starting with his having told Jermaine repeatedly to put 13 his hands on the dashboard. We submit his insistence 14 that he repeatedly told him to do this is a really, 15 really telling part of his concoction, because while it 16 might be possible that you think you are giving somebody 17 an instruction to put your hands on the dashboard, 18 whereas what you actually give them is an instruction to 19 put their hands up, you cannot be mistaken and honestly 20 say that you told somebody to do that repeatedly. 21 His assertion that he gave that instruction 22 repeatedly is, we say, a concoction and a deliberate 23 concoction and it is one that has a very specific 24 purpose. He was seeking to demonstrate that he gave 25 Jermaine repeated opportunities to comply, but each time</p> <p style="text-align: center;">Page 82</p>
<p>1 Jermaine did not do so, and in so asserting W80 is 2 seeking to give credence to his account as to the 3 perceived threat and justification for his decision to 4 shoot. 5 As well as lying about that instruction, that he 6 repeatedly gave, W80 has also deliberately lied about 7 Jermaine's own behaviour, namely that he was moving up 8 to his man bag and that his man bag was positioned on 9 his chest. 10 Again, the stark contrast between what actually 11 occurred and what he says he believed to have occurred 12 simply cannot be explained by perceptual phenomena. 13 Mr Burrows's explanation of that phenomena is about 14 a narrowing of focus on something in particular that is 15 present at the expense of what is on the periphery. It 16 does not explain seeing things that are simply not there 17 at all. 18 If the perceptual distortions neither can nor do 19 explain the stark difference between what W80 says he 20 saw and what the situation really was, the inquiry can 21 and should take into account that the more unreasonable 22 the stated belief, judged against the objective 23 circumstances, the less likely it is to be honestly 24 held. 25 That stark contrast doesn't stand alone. We submit</p> <p style="text-align: center;">Page 83</p>	<p>1 that matters are put beyond doubt by the very first 2 account that W80 gave of what had happened and that was 3 to S105, who asked him for a brief first account. It is 4 not his later account, given to another officer where he 5 had an opportunity to think things through, his very, 6 very first account made no reference to the man bag at 7 all, let alone to his belief that Jermaine was going to 8 remove a weapon from it. If W80 shot Jermaine because 9 he genuinely believed that he was reaching for a weapon 10 in his man bag, it is unquestionable that W80 would have 11 immediately said this, because he knew, and it is 12 drummed into every CTSFO at the end of their briefing, 13 that he would have to account for his actions so as to 14 justify his use of fatal force. 15 He knew he would have to justify what he had done on 16 the basis of what he honestly believed to be the 17 situation at the time force was used, but he omitted 18 mention of the most crucial features of his later 19 account, that there was a man bag on Jermaine's chest 20 and that Jermaine was moving towards it, giving rise to 21 a belief he was going to take a gun from it. 22 Instead, he simply explained that Jermaine's hands 23 were moving up to his chest area, which is exactly what 24 they were doing, Jermaine was moving his hands up to his 25 chest area, putting his hands up.</p> <p style="text-align: center;">Page 84</p>

1 Other factors that we submit should be taken into
 2 account.
 3 Firstly, W80 only fired once. We don't say that is
 4 decisive but it is entirely consistent with W80
 5 realising he had made a terrible mistake and he had shot
 6 Jermaine for complying with the very instruction that
 7 Jermaine had been given.
 8 We also submit his disappearance is of significance.
 9 W80 knew he had no legitimate explanation to advance in
 10 the face of this investigation. He knew that there
 11 would be the probe and the information that the probe
 12 would disclose and his was never going to be a response
 13 that would lead to his being vindicated in his decision
 14 to resort to lethal force. His decision making was
 15 under scrutiny and he had no response to offer that
 16 would in any way be consistent with the lawful use of
 17 force, his training, firearms guidance and the
 18 independent evidence.
 19 So what might really have been W80's honest state of
 20 belief?
 21 Only he knows why he acted as he did on that
 22 morning, with such grossly disproportionate force. It
 23 cannot be a coincidence that it was his first firearms
 24 operation since returning from a two-year role training
 25 firearms officers. Given this, he just wasn't used to

Page 85

1 pushed him on past that window to get to the rear of the
 2 vehicle.
 3 The consequence of that fundamental error was that
 4 he was in no position to extract Jermaine from the
 5 vehicle. The door was in his way. Equally, S111's
 6 position, having been pushed past by W80, meant that no
 7 other officer was in a position to get to that door
 8 post.
 9 Secondly, he placed his weapon within 50-centimetres
 10 of Jermaine, a very dangerous move that officers are
 11 trained never to engage in, which would have allowed
 12 Jermaine to grab that weapon, should he have chosen to
 13 do so. These are all a piece with his decision to shoot
 14 Jermaine.
 15 The family contend in light of the objective
 16 evidence that there are two possibilities as to what W80
 17 did honestly believe at the time he fired the shot, and
 18 they come from the probe.
 19 The first was that he actually told Jermaine to put
 20 his hands up, thinking told him to put his hands on the
 21 dash, and that he then shot Jermaine when he saw that
 22 Jermaine was putting his hands up, contrary to what he
 23 believed that he had instructed Jermaine to do.
 24 The second is that he hadn't yet issued any
 25 instruction to Jermaine at all but was in the process of

Page 87

1 being at the coalface. We also accept that he
 2 approached the vehicle with a heightened sense of threat
 3 that he should never have had because of the way in
 4 which he had been briefed. No one, none of those
 5 officers, should have been in that situation, and no
 6 doubt that might have influenced how he reacted, but it
 7 doesn't justify it.
 8 The terrible, unreasonable mistaken decision to
 9 shoot Jermaine didn't stand alone that morning as the
 10 only instance of appallingly poor decision making. He
 11 made a series of other poor decisions as he approached
 12 and dealt with vehicle.
 13 Firstly, how he positioned himself in front of
 14 Jermaine as he opened the door. Right in front of
 15 Jermaine's arc of fire. He should never have been
 16 there, but most especially not when he had the belief
 17 that Jermaine might be in possession of a live firearm
 18 and he himself was without cover. He should have pushed
 19 past that door, he should have stood by the door post
 20 between the front and rear doors, just as S111 had done.
 21 His explanation for why he didn't do that made
 22 absolutely no sense, he said he didn't do that because
 23 he could not see into the vehicle and would have to walk
 24 past a steamed-up window, but the fact is that is
 25 exactly what he had just directed S111 to do when he

Page 86

1 doing so and what he was going to tell him to do was to
 2 put his hands on the dash, to put them on the dashboard,
 3 but before he completed that instruction, Jermaine put
 4 his hands up in accordance with the instructions he was
 5 receiving from other officers and W80 then shot him,
 6 wrongly believing he had completed his instruction and
 7 that Jermaine was not complying.
 8 On either basis, such an honest belief did not
 9 justify W80 in shooting Jermaine. On either basis,
 10 Jermaine was not failing to comply with an instruction,
 11 but nor was he doing anything to indicate that he was
 12 reaching for a weapon. So even if W80 shot Jermaine
 13 because he genuinely believed that he was going to
 14 attack others, judging the matter objectively, he shot
 15 Jermaine for no reason other than that he was not
 16 complying with an instruction.
 17 The question of whether or not the use of force in
 18 this scenario was reasonable must be judged by reference
 19 to the standard of a reasonably competent CTSFO,
 20 together with all the training that they had and these
 21 CTSFOs, of course, are trained to a higher standard to
 22 be able to deploy enhanced tactics such as MASTS
 23 deployments and the ability to intervene as well as to
 24 intercept. They are selected, trained, accredited and
 25 authorised in line with the APP AP, and the NPFTC, these

Page 88

<p>1 officers have to achieve a maximum of 165 hours' 2 training development within any training year, so it is 3 those standards that you need to apply. 4 When faced with precisely the same scenario in 5 relation to Mr Sogucakli, S111 made it absolutely clear 6 that there was no justification for him to shoot. He 7 had not seen himself or his colleagues in imminent 8 danger, "I can't see that there is a gun pointed at me 9 or one of my colleagues or that he is physically 10 reaching for a gun. I can't take any of those chances 11 unless I physically see it". 12 What he should have done in that situation is to 13 have issued the instruction again, which is precisely 14 what W80 concocted as his having done, because he knew 15 that to justify shooting him he would have had to have 16 been given a further opportunity to comply. So he 17 should have given him that further chance and if at that 18 point Jermaine still did not comply, but still showed no 19 sign of reaching for a gun, he then should have used 20 a less-lethal option, such as a distraction technique or 21 completing the extraction in the way that S111 had done. 22 This was particularly so, whereas here Jermaine was 23 putting his hands up, because as S111 said, a lot of 24 people do put their hands up. The fact that he was 25 taking this course of action was not in itself</p> <p style="text-align: center;">Page 89</p>	<p>1 indicative of anything other than a surrender. 2 Sir, I hope, and I really am now going to very 3 briefly -- 4 THE CHAIRMAN: 10 more minutes. 5 MS KAUFMANN: I won't even be 10. 6 THE CHAIRMAN: Good. 7 MS KAUFMANN: I hope it will be clear from this how the 8 family put their case on the issue of whether the fatal 9 shooting by W80 was lawful or unlawful. You have our 10 written submissions that the selfsame matters establish 11 a violation of the negative duty not to take life, save 12 where absolutely necessary. 13 Even if you apply the same criminal law test -- or 14 rather by applying that criminal law test, and if you 15 are satisfied that W80 did not act in self defence, then 16 it will necessarily follow that to have shot him was 17 a violation of Article 2. 18 As to the positive obligation to minimise risks to 19 life, our submissions on the facts that we contend fall 20 to be found, which are relevant to the question of 21 whether reasonable steps to minimise life were taken, 22 are set out in paragraphs 358 to 361 of our written 23 submissions. There we identify each failing which we 24 submit either taken cumulatively, some or all of those, 25 demonstrate a breach of that obligation and are relevant</p> <p style="text-align: center;">Page 90</p>
<p>1 to answering your terms of reference. 2 I have addressed most of those in those paragraphs, 3 we simply draw them together. Those failings are 4 multiple, they are failings of a very serious kind, and 5 had reasonable steps been taken, ie had those steps been 6 taken which would have meant that those failings did not 7 occur, then the outcome might well have been, and we say 8 would have been, different. 9 Before I sit down, can I just address gross 10 negligence manslaughter, and I hope in doing so I will 11 answer your questions. 12 THE CHAIRMAN: Yes. 13 MS KAUFMANN: As you noted, it is not something that we 14 considered until we heard the evidence, but when we did 15 hear the evidence it became apparent to the family that 16 when the true measure of Mr Williams's incompetence and 17 failure to discharge the fundamental object of his 18 command function, minimising the risk to life of all 19 those concerned, truly emerged, it was entirely proper 20 that this verdict is considered by you, sir. 21 THE CHAIRMAN: I am not saying whether I agree or disagree, 22 but I do think with respect, Ms Kaufmann, in the spirit 23 of openness which has governed the way in which this 24 inquiry has been conducted, it might have been helpful 25 if Mr Butt had been forewarned so that he could have</p> <p style="text-align: center;">Page 91</p>	<p>1 anticipated that in the submissions which he initially 2 directed to me, and to you for that matter. 3 MS KAUFMANN: Yes, I do accept that and actually I do 4 apologise to Mr Butt, that would have been something we 5 should have done. 6 THE CHAIRMAN: Thank you. 7 MS KAUFMANN: The MPS have managed, in the short time 8 available to them, to respond to that and they have 9 helpfully set out their submissions on the law, as well 10 as on the conclusions you should draw on the facts. We 11 don't dissent to their analysis of the law in any way, 12 shape or form, save for in this one instance. As far as 13 a duty of care is concerned, the MPS accept that a duty 14 of care can and does arise in relation to Jermaine, and 15 they rely on Sir Michael Wright's characterisation of 16 that duty in the de Menezes inquest. It is set out at 17 paragraph 13 of their response submissions. 18 We do not accept that there is any basis in this 19 case to treat the duty of care as arising only at the 20 point at which Mr Williams sent the CTSFO into Bracknell 21 Close to extract. 22 At paragraph 13 Mr Wright limits the existence of 23 the duty of care, or the moment it comes into being, to 24 that point, effectively, of sending the officers in to 25 extract and we don't accept that.</p> <p style="text-align: center;">Page 92</p>

<p>1 Over the entire period of planning Mr Williams owed 2 a duty of care to all of those affected, especially 3 because it was clear from the outset that if an arrest 4 was effected of the occupants in the mission vehicle, it 5 would be by way of armed officers' extraction, or would 6 be very, very likely to be. So there was always, always 7 a contemplated and foreseeable risk that at the point of 8 interception, there would be a high risk, it would be 9 a high-risk situation in which life was threatened. So 10 that duty to take reasonable steps to minimise the risk 11 to life was one which was engaged at a much, much 12 earlier time.</p> <p>13 THE CHAIRMAN: Yes.</p> <p>14 MS KAUFMANN: We are satisfied that otherwise those 15 submissions are good, so we agree that it is appropriate 16 for you, sir, to approach the question of breach on 17 a Bolam basis, did his actions fall outside the range of 18 responses reasonably open to a TFC? We submit even on 19 a Bolam basis then those breaches do ... or rather the 20 failings that we identify do meet that high threshold, 21 standard of care. As to the failings that we say you, 22 sir, should take into account as being relevant to the 23 breach of that duty of care, these are identified in 24 paragraph 360 of our closing submissions, but most 25 especially those set out at paragraph 364 of our closing</p> <p style="text-align: center;">Page 93</p>	<p>1 submissions.</p> <p>2 Were they truly so exceptionally bad as to justify 3 the conclusion that Mr Williams's negligence was so 4 gross as to be criminal in nature, then in our 5 submission, yes, they do, because cumulatively, they 6 were manifestations of a far more fundamental failure, 7 namely a complete subversion of his duties as TFC to 8 minimise risk to the investigative imperatives.</p> <p>9 The fact that others who had responsibility to 10 supervise him failed to do so, which is one of the 11 matters that the MPS refer to, is neither here nor 12 there.</p> <p>13 The position, in any event, is entirely contrary to 14 that which the MPS take in relation to Mr Turner, 15 because of course it is Mr Turner who had the 16 responsibility to supervise him. Many of those failings 17 that we have identified occurred on the morning of 18 11 December. Those are the ones that are most proximate 19 obviously and some of the most serious.</p> <p>20 But the MPS submit that there is nothing in 21 Mr Turner's conduct that requires criticism on that 22 morning, that it was not necessary for him to 23 micromanage and supervise Mr Williams on that date, but 24 even if Mr Turner failed in some of his duties, that 25 doesn't take away the fundamental responsibility that</p> <p style="text-align: center;">Page 94</p>
<p>1 Mr Williams himself had to discharge his duties.</p> <p>2 As far as causation is concerned, the question is: 3 were his failings such that they more than minimally 4 contributed to Jermaine's death? Sir, you may have seen 5 that the IOPC, in making their decision as to what 6 action to recommend be taken in relation to Mr Williams 7 considered that the actions of W80 constituted a novus 8 actus interveniens and it was on that basis that they 9 didn't consider gross negligence manslaughter.</p> <p>10 In our respectful submission, that simply 11 misunderstands the position on causation here. The 12 question is one of more than minimal contribution, there 13 can be many different factors that contribute and there 14 is no question that the firearms enabled message, to 15 take but one example, the lack of evidential tipping 16 points and the resulting loss of opportunity to plan, 17 made more than minimal contributions to Jermaine's 18 death.</p> <p>19 Sir, that is all I want to say by way of closing on 20 behalf of the family.</p> <p>21 THE CHAIRMAN: Thank you very much indeed.</p> <p>22 MS KAUFMANN: Unless there is anything further I can do to 23 assist you.</p> <p>24 THE CHAIRMAN: Mr Butt, will you be happy if we start in 25 an hour?</p> <p style="text-align: center;">Page 95</p>	<p>1 MR BUTT: Of course, yes, sorry.</p> <p>2 THE CHAIRMAN: Don't worry --</p> <p>3 MR BUTT: Yes, of course.</p> <p>4 THE CHAIRMAN: We will start in one hour.</p> <p>5 MR BUTT: Sir, if it is convenient for you, I am sure 6 I don't require a full hour, we are not going to run 7 into time problems anyway so ...</p> <p>8 THE CHAIRMAN: No, we will have the same sort of timetable 9 this afternoon, an hour, a break and then an hour with 10 perhaps a trickle if necessary.</p> <p>11 Then the remaining submissions tomorrow.</p> <p>12 I am aware of course, Ms Kaufmann, that the family 13 will not be here hereafter. Thank you.</p> <p>14 (12.44 pm) (The Luncheon Adjournment)</p> <p>15 (1.45 pm)</p> <p>16 THE CHAIRMAN: Yes, Mr Butt.</p> <p>17 Take a break at or about 2.50 pm.</p> <p>18 Closing submissions by MR BUTT</p> <p>19 MR BUTT: Thank you, sir.</p> <p>20 I am going to address you at the outset quite 21 quickly in relation to the law and then turn to six 22 areas which are or are said to be potentially causative. 23 They are.</p> <p>24 The handling and dissemination of intelligence and 25</p> <p style="text-align: center;">Page 96</p>

<p>1 information before the deployment.</p> <p>2 The decision to allow the conspiracy to proceed to</p> <p>3 the point of arrest.</p> <p>4 The handling and dissemination of information and</p> <p>5 intelligence after the deployment.</p> <p>6 The decision to use the tactic: natural stop</p> <p>7 extraction.</p> <p>8 The implementation of that tactic.</p> <p>9 Then, finally, the performance of the key police</p> <p>10 firearms commanders in the case.</p> <p>11 To the extent that I have not addressed the topic by</p> <p>12 the matters above, I will also at the end briefly</p> <p>13 address you in relation to gross negligence</p> <p>14 manslaughter.</p> <p>15 THE CHAIRMAN: Thank you.</p> <p>16 MR BUTT: In terms of the law, we agree with all the</p> <p>17 propositions set out by your counsel, and in particular</p> <p>18 we agree, for the reasons that your team and Mr Penny</p> <p>19 put forward, that this inquiry should follow the</p> <p>20 approach taken in the Grainger Inquiry and apply the</p> <p>21 criminal law test for self defence.</p> <p>22 In terms of the law relating to Article 2, it is not</p> <p>23 controversial, it has been exhaustively set out across</p> <p>24 numerous opening and closing submissions from core</p> <p>25 participants.</p> <p style="text-align: center;">Page 97</p>	<p>1 In our written closing, we draw your attention to</p> <p>2 the observation in McCann at paragraph 25, that the</p> <p>3 accusation of the breach by a state of its obligation</p> <p>4 under Article 2 of the Convention to protect life is one</p> <p>5 of the utmost seriousness. We also make the point it is</p> <p>6 not at all the case that any mistake or error or</p> <p>7 oversight in the planning or execution of a firearms</p> <p>8 operation in which a life is taken will result in</p> <p>9 Article 2 being breached.</p> <p>10 The findings in McCann are instructive in that</p> <p>11 regard, and we have set out various paragraphs from it</p> <p>12 at paragraphs 9 to 12 of our written closing. The court</p> <p>13 held at paragraph 207 that what turned out to be</p> <p>14 erroneous information and instructions given to soldiers</p> <p>15 in effect rendered inevitable the use of lethal force,</p> <p>16 especially when those soldiers have been trained to</p> <p>17 shoot to kill.</p> <p>18 The position in McCann can be contrasted with two</p> <p>19 subsequent examples of UK firearms operations considered</p> <p>20 by the European Court and those are Bubbins and Brady,</p> <p>21 and of course it is the broad principle I rely upon and</p> <p>22 not the facts.</p> <p>23 In Bubbins v United Kingdom the deceased was shot</p> <p>24 dead by police following a siege at his home address.</p> <p>25 It is contained at tab 2 of the authorities bundle and</p> <p style="text-align: center;">Page 98</p>
<p>1 the relevant section is set out at paragraph 13 of our</p> <p>2 written submissions. Mr Bubbins's family argued the</p> <p>3 operation had been planned grossly incompetently and it</p> <p>4 was argued the manner in which the operation was planned</p> <p>5 and conducted inevitably led to his fatal shooting. The</p> <p>6 court rejected the argument there had been a breach of</p> <p>7 Article 2, but noted a series of regrettable errors at</p> <p>8 paragraph 146.</p> <p>9 We also cite Brady v United Kingdom, a case that has</p> <p>10 parallels with the tragic death of Mr Baker. In Brady,</p> <p>11 the police allowed a burglary to be carried out in order</p> <p>12 to arrest criminals in the act. The police rejected</p> <p>13 alternative plans either to disrupt the offence or to</p> <p>14 arrest on an earlier opportunity, on the basis that</p> <p>15 disruption would put the offence off to a later day and</p> <p>16 there was no evidence to arrest.</p> <p>17 Armed officers waited in darkness for the burglars</p> <p>18 to arrive and one was shot as the officer thought he had</p> <p>19 a gun, which turned out to be a torch. It emerged that</p> <p>20 various officers were not in the correct position at the</p> <p>21 time that the burglars entered the premises.</p> <p>22 We mention these two authorities because they</p> <p>23 reinforce it is not enough that regrettable errors are</p> <p>24 made or that operations could have been planned more</p> <p>25 efficiently. In McCann it was the fact that</p> <p style="text-align: center;">Page 99</p>	<p>1 a confrontation was caused in which lethal force was</p> <p>2 inevitable that led to a breach of Article 2. As the</p> <p>3 court stated in Brady, any circumstances in which</p> <p>4 an arrest is planned involving suspects who are armed or</p> <p>5 suspected of being armed, will involve some risk that</p> <p>6 shooting will take place or that police officers will</p> <p>7 find themselves in a position in which they believe</p> <p>8 their lives are in danger.</p> <p>9 In that case, despite finding that there had been</p> <p>10 mistakes, the court said errors of judgment or mistaken</p> <p>11 assessments unfortunate in retrospect will not per se</p> <p>12 entail responsibility under Article 2 of the Convention.</p> <p>13 In any event, sir, we submit that applying section 2</p> <p>14 of the Inquiries Act 2005, you cannot rule on whether</p> <p>15 there has been a breach of Article 2 in this case. As</p> <p>16 we have heard from Ms Kaufmann, that is because the MPS</p> <p>17 contend that to do so would breach section 2 which</p> <p>18 prohibits you from ruling on or determining any person's</p> <p>19 civil or criminal liability and to state in terms that</p> <p>20 Article 2 has been breached would be to rule on this</p> <p>21 point. But, of course, you are not inhibited in the</p> <p>22 discharge of your functions by any likelihood of</p> <p>23 liability being inferred from the facts that you</p> <p>24 determine or recommendations that you make. We agree</p> <p>25 with Mr Kaufmann on this point, that it may well mean</p> <p style="text-align: center;">Page 100</p>

25 (Pages 97 to 100)

<p>1 there is little between the MPS and the family as to the 2 practical significance.</p> <p>3 The inquiry must be fearless in looking for the 4 truth, and of course that would allow you to make 5 findings of fact or recommendations from which liability 6 could be inferred, including critical findings. But you 7 are prohibited from stating there has been a breach of 8 Article 2.</p> <p>9 In our submission, you will find assistance from 10 section 10 of the Coroners and Justice Act, which is of 11 similar effect and provides that any determination may 12 not be framed in such a way as to appear to determine 13 any question of criminal liability on the part of 14 a named person or civil liability.</p> <p>15 Ms Kaufmann helpfully sets out at paragraph 12 of 16 her supplementary submissions the explanatory note to 17 section 2 of the 2005 Act, which provides as follows at 18 paragraph 8:</p> <p>19 "The purpose of this section is to make clear that 20 inquiries under this Act have no power to determine 21 civil or criminal liability and must not purport to do 22 so."</p> <p>23 That makes it clear that you can not determine 24 liability but also you must not purport to do so. In 25 our submission, the use of that phrase within the</p> <p style="text-align: center;">Page 101</p>	<p>1 explanatory note makes absolutely clear that there was 2 no parliamentary intent to change the effect of 3 section 2 of the Inquiries Act to that of section 10 of 4 the Coroners and Justice Act, "Must not appear to" and 5 "must not purport to" mean exactly the same thing.</p> <p>6 Unlawful killing is a wholly different matter. To 7 say that someone has been unlawfully killed is not of 8 itself a determination of civil or criminal liability.</p> <p>9 I agree with Ms Kaufmann that it can be inferred from 10 that that there has been a civil wrong or a criminal 11 offence, but that is the distinction. It is not to 12 expressly state or to rule on the point.</p> <p>13 For those reasons, in our submission, you cannot 14 come to such a determination and we do submit that the 15 chief coroner or the then chief coroner's ruling in 16 Westminster, London Bridge and Fishmongers' Hall will be 17 of assistance to you in that regard.</p> <p>18 Finally on this point, we do note that Ms Kaufmann 19 relies at paragraph 14 on the fact that the current 20 chief coroner stated at paragraph 10.2 of his report in 21 the Grainger Inquiry:</p> <p>22 "This inquiry has established that GMP did not 23 conduct the armed deployment that led to the death of 24 Anthony Grainger in accordance with the requirements of 25 Article 2."</p> <p style="text-align: center;">Page 102</p>
<p>1 We make the following observations in that regard.</p> <p>2 First of all, Grainger is the only inquiry in which 3 such conclusion has been expressed.</p> <p>4 Secondly, there is no ruling on this point and that 5 one sentence at paragraph 10.2 is the only such 6 reference. As there has been no ruling on the point, it 7 does not carry any force one way or the other. Had it 8 been ruled upon, it could be some persuasive authority 9 in a case where this is a dispute between the parties, 10 but it was not.</p> <p>11 The final matter of law, as I say I will come to at 12 the end, and it concerns the question of gross 13 negligence manslaughter.</p> <p>14 Can I turn then to the first of the potentially 15 causative matters, the handling and dissemination of 16 information and intelligence before the deployment.</p> <p>17 Our submissions in this regard are primarily set out 18 at paragraph 30 to paragraph 42 of our written 19 submissions.</p> <p>20 For reasons that you, sir, will understand, there is 21 a difficulty in dealing with matters that relate to the 22 handling, recording and grading of certain intelligence 23 in open. It has been a challenge for you and for all 24 core participants, including the family, to deal with 25 evidence that you have heard in closed in a manner that</p> <p style="text-align: center;">Page 103</p>	<p>1 is fair and respects the Article 2 rights of the family.</p> <p>2 Critical to understanding this question, however, is 3 the evidence that you heard in closed over various 4 sessions.</p> <p>5 The family express understandable frustration about 6 why they do not have a clear answer as to the reasons 7 why intelligence was not recorded, graded or, for 8 instance, entered on to CRIMINTs and why only two pieces 9 of intelligence were broken out by way of a form of 10 words with a B/2/5 grading. There is a clear 11 explanation for all of these matters but it cannot be 12 given in open.</p> <p>13 The family quite rightly ask you to query why this 14 is so and ask you to treat with care answers that were 15 given about the difficulty in providing an answer in 16 open.</p> <p>17 Sir, all that I can say is that you have heard 18 evidence primarily from the MPS but also from the NCA, 19 which has explained why this is the case. We have both 20 addressed this in our closed submissions.</p> <p>21 There is no contradiction between the evidence of 22 Neil Williams and Ross McKibbin on this point. The SOP 23 as read to both witnesses makes clear that the TFC has 24 a responsibility to ensure that intelligence is 25 appropriately, and we ask you to note that word,</p> <p style="text-align: center;">Page 104</p>

26 (Pages 101 to 104)

<p>1 assessed and graded.</p> <p>2 There will be circumstances where a five by five by</p> <p>3 five grading is neither necessary nor appropriate.</p> <p>4 Likewise, and contrary to the family's submission at</p> <p>5 paragraph 104, there will be circumstances where</p> <p>6 a formal agreed form of words is unnecessary. This was</p> <p>7 the very point that Superintendent McKibbin was making</p> <p>8 in his evidence on 3 August, page 131, line 4.</p> <p>9 The MPS has responded to these concerns at</p> <p>10 paragraphs 53 to 58 of our closed written submissions.</p> <p>11 The family make reference to findings that were made</p> <p>12 in the Grainger Inquiry in relation to handling of this</p> <p>13 intelligence. Attempts to read across are extremely</p> <p>14 dangerous when core participants are not sighted on the</p> <p>15 closed evidence in that inquiry. It may well be that</p> <p>16 GMP were at fault in that regard, there is no reason to</p> <p>17 think though that this applies to the MPS.</p> <p>18 It suggested that a problem profile should have been</p> <p>19 created for the unknown subjects at paragraph 84 of the</p> <p>20 family's written closing, in line with APP on</p> <p>21 information management, the basis of this is not</p> <p>22 explained. We would ask you to have regard to the</p> <p>23 source for this suggestion, which is at COP53, page 5.</p> <p>24 There are two very short entries in APP that explain</p> <p>25 what a problem profile is and when it should be created.</p> <p style="text-align: center;">Page 105</p>	<p>1 It is entirely unclear how this would have been relevant</p> <p>2 or assisted in this case.</p> <p>3 The family observe that the intelligence profiles of</p> <p>4 Ozcan Eren and his immediate associates were not the</p> <p>5 most up to date and ask you to conclude this was</p> <p>6 a serious failing. It was not.</p> <p>7 The evidence was that the SFC asked that the TFC</p> <p>8 check if there was updated intelligence. He did and</p> <p>9 there was none. The one piece of intelligence not</p> <p>10 included in the profiles that has been updated that</p> <p>11 Ozcan Eren had on one occasion in July 2015 been in</p> <p>12 possession of a Luger, was relevant but didn't</p> <p>13 materially change the picture and certainly would not</p> <p>14 have altered, far less lowered, any risk assessment.</p> <p>15 In terms of disseminating and briefing the</p> <p>16 intelligence, the family submit that the briefing given</p> <p>17 to the AFOs at 3.00 am, during what was termed the</p> <p>18 tactical briefing given by V68, was inaccurate as</p> <p>19 a result of the failure by the TFC to grade the</p> <p>20 intelligence and issue a form of words.</p> <p>21 For reasons you have heard in closed, there was no</p> <p>22 such failure.</p> <p>23 For reasons that can be explored in open the content</p> <p>24 of that 3.00 am briefing was not inaccurate. The family</p> <p>25 appear to base their submission that this was inaccurate</p> <p style="text-align: center;">Page 106</p>
<p>1 upon an assumption which is set out at paragraph 179 of</p> <p>2 their closing in these terms:</p> <p>3 "The intelligence the MPS was in possession of, or</p> <p>4 could have been in possession of had those responsible</p> <p>5 taken steps reasonably open to them, was to the effect</p> <p>6 that the conspirators had repeatedly tried but failed to</p> <p>7 secure a firearm or otherwise contradicted the briefing</p> <p>8 actually given."</p> <p>9 That is the hypothetical upon which the family makes</p> <p>10 that submission.</p> <p>11 Whilst it is critical that you expose wrongdoing</p> <p>12 wherever that has occurred in this inquiry, it is</p> <p>13 equally important that you allay fears and suspicions of</p> <p>14 the same where they are unfounded. It is important that</p> <p>15 this inquiry corrects this hypothetical, as it is</p> <p>16 demonstrably wrong. With assistance from your team</p> <p>17 a revised gist was produced by those who heard the</p> <p>18 evidence in closed, it replaces the previous NCA gist</p> <p>19 and it is set out at paragraph 31 of our closing:</p> <p>20 "During the period following 29 October 2015</p> <p>21 intelligence was obtained that a number of individuals</p> <p>22 associated with Utara, including at least one individual</p> <p>23 associated with Ankaa, were attempting to source</p> <p>24 firearms and/or ammunition."</p> <p>25 Sir, you have heard all the evidence that underlines</p> <p style="text-align: center;">Page 107</p>	<p>1 this in closed. Your team would not have allowed a gist</p> <p>2 to be put forward that was misleading. The gist no</p> <p>3 longer includes the words in the NCA gist from 2018,</p> <p>4 that, despite numerous attempts, the conspirators were</p> <p>5 unsuccessful. The wording was obviously deliberately</p> <p>6 changed in the 2021 gist. Until the closed session</p> <p>7 there simply had been no opportunity to examine this</p> <p>8 material with the relevant witnesses.</p> <p>9 We know from the intelligence recorded in the FA2</p> <p>10 that those connected to Ankaa were in possession of</p> <p>11 firearms during the course of this operation. You have</p> <p>12 been able to enquire into that evidence in closed. The</p> <p>13 person in question was not a member of the mission team,</p> <p>14 but, per the FA2, intelligence received 29/30 November</p> <p>15 indicated that Sinan Ozger has been engaged in the</p> <p>16 movement and safekeeping of firearms and it was Ozger</p> <p>17 who performed the same function prior to Izzet Eren's</p> <p>18 arrest in possession of firearms.</p> <p>19 So the MPS had positive intelligence that the OCN's</p> <p>20 armourer was in possession of firearms just two weeks</p> <p>21 before the escape attempt when the OCN was, per the</p> <p>22 gist, trying to obtain firearms.</p> <p>23 The family submits at paragraphs 92 to 94 of their</p> <p>24 written closing that the briefing note provided to Wood</p> <p>25 Green Crown Court, which was used as a briefing note for</p> <p style="text-align: center;">Page 108</p>

27 (Pages 105 to 108)

<p>1 the 3.00 am tactical briefing, was misleading when it 2 stated, and I am going to ask that we bring up a copy of 3 the V68 briefing note, which is at IPC537, page 1: 4 "Reliable and high-graded intelligence indicates 5 that there is an ongoing conspiracy to assist Izzet Eren 6 in escaping from custody on Friday, 11 December 2015. 7 The intelligence suggest that those seeking to carry out 8 this offence will be in possession of firearms and other 9 weapons." 10 This must be read in combination with what is said 11 on the next page, if you could move on, please: 12 "Given the antecedents of this criminal network, and 13 the fact that any successful attempt would involve 14 significant duress to any custodians, it is assessed 15 that firearms will be used to effect the escape." 16 There is, with great respect, nothing in the 17 suggestion made by the family that DCI Williams was 18 dishonest when he said that there was no great 19 difference between this and the phrase he used in the 20 FA2, "Given the antecedents of the OCG, there is every 21 likelihood they would use firearms". 22 That is in fact pretty much word for word what we 23 see on the second page. Mr Williams was obviously right 24 in this regard. The briefing sheet said: 25 "Intelligence suggests the gang would be in</p> <p style="text-align: center;">Page 109</p>	<p>1 possession of a firearm." 2 It also said it was assessed that firearms would be 3 used to effect the escape, given the gang's antecedents. 4 That was the basis of the intelligence that suggested 5 a firearm would be used. The same wording in the FA2. 6 To suggest the difference, if there is one, can only 7 be explained by dishonesty, is, with respect, not 8 a proper submission. 9 In various parts of the family's written document 10 the wording has been changed in relation to this 11 intelligence, for instance at paragraph 121 where the 12 two sentences are run together and the word "suggest" 13 has been removed. It is, of course, important to bear 14 in mind the precise wording when considering this point. 15 Finally on this point, we note at paragraph 196 the 16 family say: 17 "Insofar as the inquiry finds that Mr Williams 18 should have conveyed that while there have been attempts 19 by a number of individuals associated with Operation 20 Utara, and at least one individual associated with 21 Ankaa, to source firearms and/or ammunition, it is 22 submitted this would have had a significant bearing upon 23 the threat assessment." 24 It is unclear what is meant in this paragraph, it is 25 assumed that because it says Mr Williams should have</p> <p style="text-align: center;">Page 110</p>
<p>1 conveyed that while there had been attempts, the author 2 has missed off words "but they were successful". If 3 that was the intention, then for the reasons we have 4 already given that would be wrong. 5 It is always incredibly difficult to produce a gist 6 that does not under or overstate the intelligence. 7 As at present it is not proposed there be any closed 8 oral submissions, all I can say is that we have briefly 9 addressed the relevant intelligence at paragraphs 36 to 10 42 of our closed submissions which explains why the gist 11 was amended. 12 The CTSFOs were briefed with intelligence at 3.00 am 13 which reflected what the MPS knew at that time. We know 14 how S105 understood what he was told in briefing, 15 because you can see from the note he made at the time -- 16 the reference, if you need it, is IPC89, page 4: 17 "[Believed] may be in poss of F [firearm]." 18 All that the firearms officers were told at the main 19 briefing at 5.00 am about intel as to firearms was that 20 the weapons that Eren and Amoyaw-Gyamfi had previously 21 been arrested in possession of, and they were given the 22 appropriate warning, "Treat these people as armed until 23 we know otherwise". The officers were not told at any 24 stage it was known the subjects would be in possession 25 of firearms. As your experts say, given the</p> <p style="text-align: center;">Page 111</p>	<p>1 intelligence, the warning to treat them as armed was 2 entirely correct. 3 S105 told the inquiry that he asked at the end of 4 the 5.00 am briefing if anything was known about the 5 type of weapons the gang would have and he was told this 6 was not known. That was Day 10, page 65. 7 It is suggested at times in the family's submission 8 that there was a failure to identify the conspirators 9 before 11 December. We deal with this at paragraphs 36 10 to 42 of our closing. The identity of the three 11 occupants of the car were not known before two of them 12 were arrested. The fact that there were two IC3 males, 13 one linked to the letter N, and one Turkish could not 14 possibly have identified any of those ultimately in the 15 car. 16 There were three intelligence-led surveillance 17 deployments on Ozcan Eren and by intelligence led, of 18 course what we mean is if the police had reason to think 19 that following a suspect might lead to useful 20 information, they will commit the extensive resources 21 required to do so. This happened on 19, 25 November and 22 9 December. It would not have been possible to have 23 followed Ozcan Eren or any suspect, including CT 24 suspects, 24/7 and to deploy teams without 25 an intelligence reason would have been a waste of</p> <p style="text-align: center;">Page 112</p>

<p>1 resources and have risked compromise.</p> <p>2 The family query at paragraph 107 why cell site</p> <p>3 evidence didn't lead the MPS to Woody's of London, the</p> <p>4 sport and fishing shop in Wembley that we knew</p> <p>5 Ozcan Eren likely visited before the day before the</p> <p>6 first aborted attempt. There was, however, no way of</p> <p>7 knowing until the replica Uzi was seized that it had</p> <p>8 been bought from Woody's, far less when. And cell site</p> <p>9 evidence would not have shown Ozcan's phone was at</p> <p>10 Woody's, it would have shown it was somewhere in</p> <p>11 Wembley.</p> <p>12 The same can be said for the suggestion that as</p> <p>13 Mr Mason claimed, that he met Ozcan Eren in person on</p> <p>14 two occasions the police should have been led to him.</p> <p>15 We deal with that in our submissions at paragraph 40.</p> <p>16 Assuming Mason was telling the truth, these were on his</p> <p>17 evidence chance meetings, once when Eren turned up</p> <p>18 unexpectedly at his house, when he thought he was</p> <p>19 meeting Cihan Eren and once when the two bump into each</p> <p>20 other at the barbers. Absent 24/7 surveillance of the</p> <p>21 entire period, there was no way the police could</p> <p>22 reasonably have been led to Nathan Mason.</p> <p>23 Finally, on intelligence pre-deployment, the family</p> <p>24 at paragraph 102 identify consequences of intelligence</p> <p>25 gaps and express concern about an apparent failure to</p> <p style="text-align: center;">Page 113</p>	<p>1 obtain photographs of Bracknell Close before the</p> <p>2 deployment.</p> <p>3 To the extent that this is based upon</p> <p>4 Ronan O'Conner's evidence, that he identified Bracknell</p> <p>5 Close as a possible layup point for any attack. Sir, we</p> <p>6 will just ask that you look at that evidence with care;</p> <p>7 not now but it is Day 19, page 91, and it comes about</p> <p>8 because of a misunderstanding when it was put to</p> <p>9 Mr O'Conner that Bracknell Close is where the rear gates</p> <p>10 of Wood Green Crown Court are, which they are not.</p> <p>11 He was saying no more than Bracknell Close was</p> <p>12 a potential area and if the team were to be shown</p> <p>13 photographs of Bracknell Close, they would have to have</p> <p>14 been shown pictures of every quiet road in the whole</p> <p>15 area.</p> <p>16 Can I turn to the second question: was it reasonable</p> <p>17 to allow the conspiracy to proceed to the point of</p> <p>18 arrest? This, of course, must be contrasted from asking</p> <p>19 whether, if events had played out differently, it would</p> <p>20 not have been possible to have continued with the</p> <p>21 planned deployment. Your conclusion on this question</p> <p>22 could therefore be different to your conclusion as to</p> <p>23 whether NOMS HQ or Serco should have been informed, even</p> <p>24 if you decide this would have caused either body to have</p> <p>25 prevented arrest from taking place.</p> <p style="text-align: center;">Page 114</p>
<p>1 We deal with the issue of NOMS HQ at paragraphs 43</p> <p>2 to 57 and Serco at 97 to 107 of our closing submission.</p> <p>3 In terms of NOMS HQ, it is not accepted that there was</p> <p>4 any failure by the SIO to directly inform NOMS HQ, and</p> <p>5 if there was such a failure, it was by the prison</p> <p>6 service and not by the police.</p> <p>7 Neither DI Murray nor DI Mayes were aware of the</p> <p>8 protocol which the NOMS report claims was apparently</p> <p>9 breached. That is unsurprising, because the NOMS report</p> <p>10 expressly says it was not formally recorded anywhere.</p> <p>11 Indeed when Mr Nichols was asked whether he was aware of</p> <p>12 the protocols on Day 6 at page 136, he said he was aware</p> <p>13 but hadn't read them, suggesting that he wrongly thought</p> <p>14 they were written down, rather than an informal</p> <p>15 understanding as the report says was the position at the</p> <p>16 time.</p> <p>17 It is quite impossible in our submission to blame</p> <p>18 police officers for not following an informal protocol</p> <p>19 that is not recorded anywhere.</p> <p>20 In any event, as you heard from Mr Nichols, he did</p> <p>21 not keep the information to himself. He told his line</p> <p>22 manager, Emily Martin, after the very first meeting, and</p> <p>23 then he spoke to her again on 8 December when he thought</p> <p>24 the operation was likely to go ahead. They then both</p> <p>25 spoke to the governing governor, Gary Monaghan, because</p> <p style="text-align: center;">Page 115</p>	<p>1 in the words of Mr Nichols he thought, and this was NOMS</p> <p>2 not Serco as suggested by the family, he thought NOMS</p> <p>3 had a right to know. Mr Nichols was, he said,</p> <p>4 100 per cent clear that he told Mr Monaghan that NOMS HQ</p> <p>5 had not been informed and he was 100 per cent clear that</p> <p>6 Mr Monaghan said he would speak to NOMS HQ. We know</p> <p>7 Mr Monaghan did not do so and Mr Nichols told you that</p> <p>8 he, Mr Monaghan, accepts that Mr Nichols's account must</p> <p>9 be correct.</p> <p>10 The references in the evidence are at paragraphs 48</p> <p>11 to 50 of our closing.</p> <p>12 If there was a failure to inform NOMS HQ, it self</p> <p>13 evidently was a result of what Mr Monaghan accepts was</p> <p>14 a mistake on his part. It was not the fault of</p> <p>15 Inspectors Murray or Mayes.</p> <p>16 If there were any doubt on this point, the email</p> <p>17 that DI Murray sent to the prison would have left</p> <p>18 Mr Nichols in no doubt that he could have spoken to</p> <p>19 DI Murray if he was at all unclear as to what he could</p> <p>20 or could not do. The reference to that email and the</p> <p>21 evidence in that regard is at paragraph 46 of our</p> <p>22 closing submission.</p> <p>23 You heard conflicting evidence as to whether</p> <p>24 Mr Nichols was told about the aborted attempt on</p> <p>25 29 October. DI Murray could not recall telling</p> <p style="text-align: center;">Page 116</p>

29 (Pages 113 to 116)

<p>1 Mr Nichols this, but expressly did not accept that that 2 meant he didn't do so. On the contrary, he noted he had 3 no reason not to in his evidence and that is summarised 4 at paragraph 52 of our closing. Mr Nichols of course 5 did say in evidence that he was not aware of the 6 29 October attempt, but he was recollecting 7 a conversation from six years ago that he made no note 8 of at the time. 9 If he was not informed of this, the consequences are 10 not at all clear. 11 At Day 6, pages 91 and 109, Mr Nichols said he would 12 probably have put Mr Eren on the escape list. He then 13 later said he would have done so if he had known about 14 the previous attempt. When he was asked questions by 15 both the family and by the MPS, Mr Nichols explained 16 that there was an internal escape list, where prisoners 17 wear different clothes and an E list for external 18 movers. He said to Ms Kaufmann and to me that had he 19 known of the 29 October aborted intelligence plan, he 20 would have put Mr Eren on the external, because there 21 was no intel to support that he would escape from the 22 prison custody in the prison and the practical effect of 23 it would have been exactly the same. 24 I entirely accept, sir, that when you asked him 25 questions, Mr Nichols said he would have placed him on</p> <p style="text-align: center;">Page 117</p>	<p>1 what you termed the whistle and bells escape list for 28 2 days, which would be reviewed at the end of that period. 3 Even if we assume that is right, Ms Kaufmann 4 attempted to determine why intelligence about a previous 5 aborted escape would justify taking that step when 6 intelligence about a prospective plan that was still 7 extant would not. 8 Mr Nichols could give no logical answer, apart from 9 stating the risk was outside of the establishment. 10 There is in truth no logical reason why historical 11 intelligence about an escape plot would justify Mr Eren 12 being placed on the whistle and bells list but future 13 intelligence would not. In fact the reverse would make 14 sense. A future risk is one that needs to be dealt 15 with, a past risk has already been and gone. 16 We ask that you look at the family's closing 17 submission very closely at paragraph 58(c) in that 18 regard, because Ms Kaufmann sets out the condition for 19 category A exceptional risk and it is this: 20 "Credible information or intelligence that an escape 21 attempt is being planned and that the threat is such 22 that the individual requires conditions of heightened 23 security in order to mitigate this risk." 24 That is exactly what the prison service had, even 25 with the prospective intelligence. Unsurprisingly there</p> <p style="text-align: center;">Page 118</p>
<p>1 is no requirement in any of the three classifications 2 for intelligence of a past risk or past attempt. 3 The prison service had all the information they 4 needed to decide what to do with Mr Eren. Had they been 5 in any doubt, they could have at his express invitation 6 requested more information from DI Murray. NOMS HQ had 7 the means of knowing, but they were not informed because 8 of the mistake by Mr Monaghan. It would be quite wrong 9 to blame DI Murray for anything in that regard. 10 In terms of Serco, there was no obligation formal or 11 informal on the police to inform Serco of the operation. 12 There was an obvious risk of compromise had the police 13 done so. Serco did not have a confidential unit at the 14 time and there is no secure means of speaking to 15 someone, senior or junior, simply by virtue of the fact 16 that they have formerly been a police officer. Much has 17 been said about corruption at Serco. The MPS has never 18 said, neither has any witness, that Serco is a corrupt 19 organisation. The risk however of non-vetted employees 20 in any organisation leaking information deliberately or 21 by accident is obvious. A good example of this can be 22 seen on the probe. The conspirators thought that they 23 knew the Serco duress procedures. In the words of 24 Nathan Mason, who had experience of being taken to Wood 25 Green Crown Court by Serco:</p> <p style="text-align: center;">Page 119</p>	<p>1 "A couple of them [he said, by which he means Serco 2 guards] told me, as soon as they see a gun in their face 3 ..." 4 And Jermaine Baker finishes the sentence: 5 "... they put their hands up straight away." 6 That is at page 15 of the probe transcript. 7 This was obviously sensitive information, whether it 8 is correct or not, that they had received from Serco 9 employees. The family's submission at paragraph 80, 10 that Serco's risk assessment would have inevitably 11 caused them to decline to cooperate, does not reflect 12 the evidence. Mr Masters from Serco said it was likely 13 this would be the case, but that Serco would first have 14 wanted to know more about the intelligence and that 15 Serco would have required significant protective 16 measures before agreeing to participate in an operation 17 of this nature. 18 Mr Masters says no more than it would have been 19 desirable for Serco to have been informed, but he makes 20 no particular complaint that they were not, recognising 21 the exceptional circumstances of the case and that he 22 has no understanding of the multiple factors that would 23 have informed the police decision not to give Serco 24 advanced notice. 25 Leaving aside the consequences had external agencies</p> <p style="text-align: center;">Page 120</p>

<p>1 been involved, was it reasonable for police to have 2 allowed the operation to run, having regard to the 3 short- and longer-term risks? Was it unreasonable not 4 to disrupt the plot, with the consequence that the 5 criminals involved would not be brought to justice and 6 there would be a possibility that an attempt would be 7 made at a later date.</p> <p>8 The family submit at paragraphs 58 to 60 of their 9 written closing, a point made orally by Ms Kaufmann, 10 that steps taken by the prison service in respect of 11 an exceptional risk cat A prisoner would have entirely 12 addressed the risk of a later escape plot. They do not 13 however set out what these steps are or could possibly 14 be.</p> <p>15 Without armed protection from the police there is no 16 means of protecting unarmed prison service or Serco 17 drivers or guards transporting prisoners. It is no 18 doubt correct that steps could have been taken that 19 could have prevented Izzet Eren from escaping from 20 within the prison, but no witness has explained what 21 steps could be taken to prevent him from escaping or to 22 prevent an attempted plot if he had to leave the prison 23 estate in an emergency.</p> <p>24 It is not just a question of whether he would have 25 been freed, it is the danger that would result from</p> <p style="text-align: center;">Page 121</p>	<p>1 armed criminals attacking the van. If Mr Eren had 2 an apparently serious injury, such as a feigned heart 3 attack or feigned internal bleeding, then he would have 4 to have been taken to hospital externally regardless of 5 the security category. This was confirmed by Mr Nichols 6 in evidence on Day 6, page 78, even at Belmarsh.</p> <p>7 There could of course have been provision for armed 8 support, including on an urgent basis, but that would 9 not allow for the kind of planning that was present 10 during Operation Ankaa. Prison guards would never be 11 armed. If the van was attacked by criminals with real 12 guns, possibly automatic weapons such as Eren had on 13 13 October, then even if the attempt was foiled, the 14 risk to life would be severe. This was something the 15 policing experts agreed with. They agreed that a sudden 16 apparent critical illness would require a hospital visit 17 and they could not say how the public would be kept safe 18 were this to occur, Day 23, page 31. They accepted that 19 merely disrupting would risk putting the plot off to 20 another time, when the police didn't have control, 21 Day 23, page 31. And they accepted it would create 22 a risk of intervention with victims present, Day 23, 23 page 32.</p> <p>24 They accepted this could mean that the AFOs 25 responding would be ARV trained only, rather than CTSFO</p> <p style="text-align: center;">Page 122</p>
<p>1 trained, meaning they would not be trained in the 2 tactics that the emergency response would require and 3 they agreed if this happened and somebody died as 4 a result, the police could be said to have been at 5 fault. That was Day 23, page 21.</p> <p>6 There was no reason to think that disruption would 7 remove the criminal's intent, even if Eren became 8 a cat A prisoner. The experts have agreed the risk 9 would not dissipate, even before they learned during 10 their evidence that Mr Eren had gone on to escape from 11 prison in Turkey. Of course I accept we know nothing 12 about the conditions of his escape or how he was held in 13 Turkey or corruption problems there.</p> <p>14 What it manifestly shows is disruption of the plot 15 did not in any way diminish his intent to escape.</p> <p>16 The commanders were specifically enjoined to 17 consider under APP whether action taken to mitigate risk 18 in the short term may only serve to displace or delay 19 that risk and may not address the longer-term public 20 safety considerations.</p> <p>21 It may only be possible to effectively eliminate 22 risk to the public through the detention, successful 23 prosecution and subsequent lengthy imprisonment of the 24 subjects, particularly where they are committed or 25 repeat offenders. It may not be possible to develop</p> <p style="text-align: center;">Page 123</p>	<p>1 a plan capable of securing sufficient evidence without 2 risk.</p> <p>3 Your experts also agreed that disruption would have 4 risked jeopardising police intelligence and it would 5 have meant that those involved in very serious criminal 6 activity would not have been arrested. But the police 7 also had intelligence that a gun was likely to be used 8 on 11 December and that the criminals were trying to 9 source one at the time of the planning. You heard the 10 evidence from Nathan Mason and Gokay Sogucakli that that 11 was indeed the plan, so far as at least some of them 12 were concerned.</p> <p>13 If the police were merely to disrupt, that gun would 14 have remained in criminal circulation and in all 15 likelihood would in due course be used in another 16 gangland shooting.</p> <p>17 The police in this regard therefore were not just 18 entitled to consider whether the longer-term benefits 19 would outweigh the short-term risk, but they were 20 obliged to do so by way of what SPP describes as 21 an extended duty of care. You have been taken to this 22 part of APP on numerous occasions, it is at COP24, 23 page 10, I don't ask that we go to it, I am not going to 24 read it out.</p> <p>25 The guidance strongly tells in favour of allowing</p> <p style="text-align: center;">Page 124</p>

31 (Pages 121 to 124)

<p>1 operations to proceed, but says that commanders should 2 seek to implement appropriate safeguards to minimise 3 short-term risks where possible. The policing experts 4 agreed this guidance was introduced after the Rodney 5 Inquiry in order to protect police commanders who make 6 decisions such as this, the intent clearly was not to 7 inhibit operations such as this from being run in the 8 future.</p> <p>9 The policing experts expressed a view that with 10 hindsight there was significant scope to revisit this 11 guidance and make it more appropriate to today's 12 circumstances. When asked how, they said it should 13 better address the potential downside of the decision, 14 and the balance between Article 2 and SPP. The 15 reference is at paragraphs 111 and 112 of our closing.</p> <p>16 If that is correct, that would be a national 17 recommendation which would change the strong steer in 18 APP away from allowing operations like this to run, but 19 that would not of course be relevant to your question as 20 to whether it was reasonable at the time, as your 21 experts of course agreed.</p> <p>22 Whilst the MPS recognise that there are areas where 23 the experts have been critical of the Met commanders, 24 they have not expressed a view that the operation should 25 not have proceeded to the point of allowing the</p> <p style="text-align: center;">Page 125</p>	<p>1 conspiracy to be underway on 11 December.</p> <p>2 The experts were of the view that the operation was 3 high risk but also high benefit. Day 22, page 114 to 4 115, with Mr Arundale adding that the evidence was that 5 they were putting in place the right mitigating features 6 to reduce the risks. That is of course the requirement 7 under APP that we have looked at.</p> <p>8 Both were at pains to stress they were not against 9 even high-risk operations going ahead, and this critical 10 point Mr Burrows indicated that if he had been in 11 command, he might have replicated each and every aspect 12 of the operation, aside from possibly the Serco staff 13 being allowed to travel on the van, which we will come 14 to shortly.</p> <p>15 Day 23, at page 71, he said:</p> <p>16 "I need to link this answer straight back to 17 sustained public protection. I can understand why this 18 operation was mounted. I can understand all the reasons 19 why we would go for the conspiracy, the big picture 20 arrests if possible. I can understand why two MASTS 21 teams, the surveillance, et cetera, was there. All 22 I can do is give the answer that I properly gave 23 yesterday, which is if I was in command, if the option 24 was we can replace them with police officers and we will 25 have to work out how to do it, I would have considered</p> <p style="text-align: center;">Page 126</p>
<p>1 it a possibility."</p> <p>2 Mr Burrows then said if he couldn't run it without 3 replacing the Serco guards he wouldn't have allowed it, 4 but he said that was just his personal view.</p> <p>5 On this point, the reasonableness of allowing it to 6 go ahead, Mr Arundale did not disagree and to similar 7 effect, he said this:</p> <p>8 "The evidence appears to be that they were putting 9 the right mitigation factors in place, but it was always 10 going to be a high-risk operation, particularly if for 11 some reason they were blindsided, a term they have used 12 in their statements in respect of the Serco vehicle."</p> <p>13 That evidence from both witnesses on this critical 14 point is in accordance with what Mr Hartley said, and 15 the experts said in their report and in evidence that 16 they indicate where they disagree with Mr Hartley and 17 they did not disagree with what he said, at IPC385, 18 page 14.</p> <p>19 The options considered would only mitigate risk in 20 the very short term and potentially lead to greater harm 21 in the future when the police had no control and 22 opportunity to intervene to bring the sustained public 23 protection. Finding: advanced opportunities were 24 explored and the correct decisions were made to maintain 25 the current operation as the best method to achieve</p> <p style="text-align: center;">Page 127</p>	<p>1 strategy. There was no early intervention option 2 available consistent with the strategy.</p> <p>3 Sir, I of course accept that you are going to place 4 less weight on what Mr Hartley says than on what your 5 experts said, who gave evidence before you. However, 6 where those experts said in terms they indicate where 7 they disagree with Mr Hartley, where they have not 8 disagreed with him and where in fact this evidence from 9 him accords with their own, it points uniformly towards 10 a conclusion that it was reasonable to allow this 11 operation to proceed, subject to the potential question 12 of replacing Serco with AFOs.</p> <p>13 Thank you very much, Mr Coates.</p> <p>14 When I reference the experts' evidence on this 15 question, I of course also reference the caveat that 16 Mr Burrows in particular had in relation to Serco's 17 involvement and whether the guards should have been 18 replaced with undercover officers or covert officers. 19 There are two initial points to make in relation to 20 Serco, and both are rather obvious.</p> <p>21 The first is, in the event there was not any risk to 22 the Serco van, the attack was going to come from KM13 23 Audi and it never got near the Serco van. The 24 imperative in this regard was set out in the FA2 and the 25 FA3, and it was front and centre in the TFC's log. Each</p> <p style="text-align: center;">Page 128</p>

<p>1 of these documents stressed the TFC must have control 2 over the operation and the van and the criminals must 3 not be permitted to come close together. All three 4 documents recognised that if this could not be 5 guaranteed, then the protection package would go overt 6 and they say in terms, "... which would frustrate 7 evidential opportunities but this is not the main 8 objective".</p> <p>9 It is very important to recognise this was 10 a mitigation not just to reduce the danger to Serco, but 11 also to prevent the danger the conspirators would have 12 created for themselves if they had been able to attack 13 the van.</p> <p>14 The chances of a suspect being shot are so much 15 higher at this point and it is wrong to suggest, as the 16 family do, that nothing was done to lower the risk to 17 conspirators. The geographical tipping point was the 18 greatest possible protection for the suspects. If the 19 van and the Audi had come together, then this would have 20 presented the best possible evidence, because the 21 conspirators would have been caught in the act but it 22 would have increased the danger to Serco and to the 23 prisoners and most particularly to the suspects.</p> <p>24 It was for this reason, the most high-risk option of 25 an intervention was not just ruled out, as we can see</p> <p style="text-align: center;">Page 129</p>	<p>1 recorded in the FA2, FA3 and FA5, but elaborate planning 2 was put in place to prevent it ever from happening.</p> <p>3 The inquiry experts, critically on this point, 4 accepted that the MPS plan to keep the victims apart 5 from the conspirators worked and applauded the MPS, SFC 6 and TFC for ensuring the two did not get close, 7 recognising that had the van being brought into contact 8 with the Audi, then the victims would have been present.</p> <p>9 The second point is the possible risk to Serco that 10 the MPS minimised by the tactical plan, could not of 11 course be relevant to the tragic death of 12 Jermaine Baker. Even if you were to disagree with the 13 MPS on this point, it could not be relevant to questions 14 of causation in this inquiry.</p> <p>15 Finally on this point, there is an important and 16 difficult issue explored with the experts, and it is 17 central to the conclusion in McCann that we looked at 18 earlier, that Article 2 had been breached by virtue of 19 the fact that when the soldiers and terrorist came 20 together, the use of lethal force would have been all 21 but inevitable in the circumstances. The problem is 22 this, to replace Serco guards with AFOs in this 23 situation would risk a similar situation presenting.</p> <p>24 If a criminal was induced to believe that the van 25 was being driven by an unarmed Serco guard, but in fact</p> <p style="text-align: center;">Page 130</p>
<p>1 it was a covert AFO and the robber pointed an apparent 2 firearm at him, it would be all but inevitable that the 3 AFO would shoot him. Mr Burrows, having originally said 4 he couldn't see any reason why the guards were not 5 swapped out, did concede that he could see the Article 2 6 considerations that would arise here. Day 23, page 73, 7 line 10.</p> <p>8 Sir, it is our submission that the evidence strongly 9 supports the conclusion that it was reasonable to let 10 the operation run and that in the words of Mr Arundale, 11 the evidence is the right mitigations were in place. It 12 has never been disputed the criteria for the deployment 13 of firearms officers under APP was amply met, that being 14 the case in relation to the 11 December 2015 deployment.</p> <p>15 Can I turn then to handling of evidence post the 16 5.00 am briefing. I am going to turn to that as 17 a central issue and in relation to how intelligence and 18 evidence received from the TFC was handled and then 19 disseminated after the main briefings.</p> <p>20 This will obviously involve important questions in 21 relation to: first of all, the 6.58 intelligence; 22 secondly, the use of intelligence from the probe; 23 thirdly, the firearms enabled transmission; and, 24 fourthly, the use of the surveillance team.</p> <p>25 First, the 06.58 intelligence update. Can I first</p> <p style="text-align: center;">Page 131</p>	<p>1 correct a very important point at paragraph 198 of the 2 family's closing submission.</p> <p>3 It is stated here that shortly before 10.00 pm the 4 MPS obtained this intel and that the failure to pass it 5 on to FE19 that night was a critical failure.</p> <p>6 That is not correct. If that is not evident from 7 the open evidence, as I believe it is, it is a point 8 that has been clearly raised in closed. It is very 9 important to state at the outset that there is no basis 10 to suggest that that intelligence had been passed on 11 earlier and there was any failure for it to be acted 12 upon until it was received by FE19 at 6.58 am.</p> <p>13 The second important point at the outset is this. 14 It is not the MPS position, and never has been, that 15 evidence such as a TFC had about the possible possession 16 of imitation firearms should never be disseminated. As 17 every witness agreed, who was asked on this point, from 18 your experts to the College of Policing experts or the 19 College of Policing witness, it must be considered on 20 a case-by-case basis.</p> <p>21 Mr Williams said on this point that when he received 22 the update at 6.58 am, he did not want to take 23 a knee-jerk reaction but to wait as the intelligence was 24 by 6.58 somewhat stale:</p> <p>25 "My decision was to wait for further updates that</p> <p style="text-align: center;">Page 132</p>

<p>1 I might have received, or an indication from the probe 2 that would either rebut or confirm that intelligence." 3 As there was ample time to run on the operation 4 before there was any chance of amber being declared, 5 that of itself could not possibly be criticised. 6 There is no question but that a TFC has to make 7 a judgment about how much intelligence is to be passed 8 on. Mr Arundale said, on Day 23, page 39, that there 9 are difficult questions about how much you brief, as 10 there can be overload. DCI Williams sought to strike 11 a balance, as he said, in relation to what was passed on 12 about shooting the lock. He said: 13 "I didn't want to influence firearms officers in 14 terms of thinking imitation and most definitely not that 15 there was a potential for shots." 16 The risk that a real firearm could have been 17 sourced, notwithstanding the 6.58 intelligence, cannot 18 be understated, and this places a heavy responsibility 19 upon the TFC. You heard evidence from Nathan Mason and 20 Gokay Sogucakli, which amply demonstrates this. 21 Whatever Ozcan Eren wished or was able to procure, it is 22 clear that some of those in the mission car wanted 23 a real gun regardless. According to Mr Sogucakli, both 24 Mr Mason and Mr Baker wanted a real gun to be used on 25 the job and there had been an attempt to procure one</p> <p style="text-align: center;">Page 133</p>	<p>1 from Love Lane in Tottenham. Mr Mason by contrast 2 claimed that Sogucakli wanted and expected a real gun to 3 be in the car. 4 That this information was only revealed during this 5 inquiry highlights the unpredictability of this type of 6 criminality and the very real possibility that a firearm 7 could have been present on 11 December 2015, whatever 8 the intelligence available to the police suggested. 9 Nobody has suggested that this intel should be passed on 10 in its raw form. The suggestion has been made, which 11 has been adopted by the family, that it should have been 12 passed on but with a heavy health warning. Various 13 witnesses have attempted to articulate this, and of 14 course I accept a form of words could be found, albeit 15 one that is a bit of a mouthful. What is clear is that 16 if the intelligence had been passed on, it would not 17 have altered the threat assessment of the CTSFOs and it 18 would not have altered the outcome of the operation. 19 That is not speculation, far less is it 20 an unsustainable proposition, as the family submit. The 21 question was explored with all of the CTSFOs. None of 22 them were asked: should this sort of intelligence be 23 briefed as a matter of policy? They were asked: 24 "If it had been briefed, would it have helped you or 25 assisted you or made a difference to have learnt that</p> <p style="text-align: center;">Page 134</p>
<p>1 there was intelligence regarding imitation firearms?" 2 And every one of the CTSFOs said it would not have 3 made a difference. The reason they all gave was they 4 would treat firearms as real unless proved otherwise, 5 including W80, at Day 21, page 100, line 15. That 6 accords with what the experts said their approach would 7 have been, per Mr Burrows who said: 8 "I fully accept that if someone points a gun at me 9 in situations like this, I am going to treat it as real, 10 unless I know someone has said for definite it is not." 11 Of course the same would apply if someone believed 12 that a criminal suspect was about to produce a gun, you 13 would assume that it was real. 14 Therefore had the imitation firearms intelligence 15 been briefed with a health warning, regardless of the 16 wording or the formulation of words, it would not have 17 changed the position. This then leads on to the 18 question about the handling of the intelligence from the 19 probe and whether that confirmed or cast doubt upon the 20 6.58 intel that had been obtained from the night before. 21 Sir, as I am moving on to a new topic, would that be 22 a convenient moment? 23 THE CHAIRMAN: It is up to you, I am entirely in your hands. 24 MR BUTT: I could move on to deal with the probe 25 intelligence and take a break at that stage?</p> <p style="text-align: center;">Page 135</p>	<p>1 THE CHAIRMAN: How long is it going to take you to deal with 2 the probe intelligence? 3 MR BUTT: Around 15 or 20 minutes I imagine. 4 THE CHAIRMAN: Then we will take our break now. 5 Shall we say 2.55? 6 MR BUTT: Thank you. 7 THE CHAIRMAN: Thank you. 8 (2.40 pm) 9 (A short adjournment) 10 (2.56 pm) 11 MR BUTT: On timing, I am just under an hour and I am on 12 course to finish with a little overrun. As I was saying 13 before you came in, the hotter it gets, the shorter I am 14 likely to be. 15 THE CHAIRMAN: Talking about the air, Mr Butt? 16 MR BUTT: Everything, sir. 17 THE CHAIRMAN: I am expecting you to finish by about 4.00. 18 MR BUTT: Yes, about 4.00. 19 THE CHAIRMAN: Thank you. 20 MR BUTT: In terms of probe, can I just say a few words 21 briefly about the CMP. As you have seen, we have set 22 our submissions out at 126 to 131 of our closing and of 23 course we accept that the CMP could and should have been 24 set up differently and in a more advantageous way. 25 However, we do not accept that the manner in which</p> <p style="text-align: center;">Page 136</p>

34 (Pages 133 to 136)

<p>1 the equipment was installed must have caused a failure 2 of the playback function and we submit that in fact 3 conflates two different issues. The equipment was 4 tested in advance of the operation. The back end, the 5 CMP equipment was tested within the CMP on 4 December. 6 That is within the evidence from Brian Whitaker. While 7 at that stage it did not involve checking it could 8 connect to the equipment installed in the Audi, that too 9 was done days ahead of the operation on 8 December and 10 the Obelisk log confirms this, the entry dated 11 8 December at 12.07 reads: 12 "FE [front end] audio product proved to BE [back 13 end] at C3000." 14 The references for all of those documents are 15 MPS3996 at pages 14 and 15. Mr Whitaker's statement is 16 at MPS3800, page 2. 17 There was no issue with the end-to-end connection 18 that day. The only fault identified was with the back 19 end, ie the CMP connection and was limited to the 20 playback function not working. EG39's evidence was that 21 the touchscreen slider bar used to operate the playback 22 was not responding and he compared that to when software 23 or when a computer freezes, even though the main system 24 is still running in the background. The remedy, he 25 said, if there was one, that could have been taken that</p> <p style="text-align: center;">Page 137</p>	<p>1 day, would have been to turn the equipment on and off, 2 which would involve the unacceptable risk of losing the 3 live feed function. 4 Undoubtedly, technology can fail in this manner and 5 Mr Brown didn't seek to suggest otherwise, of course. 6 He noted there might be several reasons that could 7 cause the playback function to fail and a particular one 8 relating to hardware was the drive heads seizing. He 9 also said there could have been a failure in the 10 touchscreen technology -- which was not as good then as 11 it is today -- or potentially user error. 12 He suggested that EG39 could have tried replacing 13 the touchscreen with a normal keyboard monitor and mouse 14 if they were available, but he did not suggest that EG39 15 was wrong not to take any further action to restore the 16 equipment in the circumstances. Mr Whitaker, the 17 strategic engineering adviser from the Met, agreed that 18 EG39 was right not to seek to interfere with the 19 equipment in the circumstances. 20 The fact that no fault was found when the hardware 21 was later recovered and tested is not evidence that 22 blame for the function must have lain with EG39. The 23 equipment would obviously have been unplugged before it 24 was removed from the CMP and extensively rebooted before 25 testing. That, of course, was the basic remedy that</p> <p style="text-align: center;">Page 138</p>
<p>1 EG39 thought could have been attempted but he didn't 2 want to implement during the live operation for obvious 3 reasons. 4 That the equipment worked after having been switched 5 on and off could just as well be said to support EG39's 6 diagnosis. Whilst the MPS of course accept the 7 split-feed configuration would have been better, it 8 cannot be said whether it would have worked or not had 9 it been set up differently. 10 Even if we proceed on the assumption that a split 11 feed would have ensured a viable playback function on 12 the day, it is no more than speculation as to whether 13 this would have materially improved the information 14 recorded within the CMP. The family in effect submit 15 that (a) had the review function been working, and (b) 16 even if it had not, the evidence from the probe should 17 have put the TFC in no doubt that the occupants of the 18 car only had one firearm and that it was an imitation 19 firearm. It is that proposition that the family then 20 use to say that it was unreasonable not to brief the 21 imitation firearm intelligence. 22 With respect, that may be the family's submission 23 but it does not accord with the evidence. There is 24 a need to approach this question with realism. Even if 25 the CMP had been run perfectly, and the review function</p> <p style="text-align: center;">Page 139</p>	<p>1 had been available to the officers, it would never have 2 been possible to produce the transcript the police 3 prepared for the criminal trial and from which we have 4 all worked. This was produced by several officers 5 listening to enhanced audio over many, many days. 6 DCI Williams was keeping an open mind in relation to 7 whether the occupants of the vehicle would have real or 8 imitation firearms as he received intelligence from the 9 probe. This would have remained the case had he been 10 told additional information about not bringing the 11 shottey or the real thing. 12 As the TFC explained, even if he had interpreted 13 that which was being said as a definite statement that 14 they did not have the shottey or the big thing, that 15 would not mean that they would not have a different kind 16 of firearm, either at that time or brought to them 17 later. The risk of a firearm being produced was 18 substantially increased, not by the apparent thought 19 that someone else had got into the car but by the 20 existence of an apparent plan to meet with another 21 vehicle that we can see discussed on the probe. 22 DCI Williams explained this seemed to suggest a firearms 23 exchange and what other purpose could there be for 24 a meet on the morning of the escape plot itself. The 25 TFC was aware of information which could suggest</p> <p style="text-align: center;">Page 140</p>

<p>1 air-powered weaponry, such as specifically the reference 2 to a canister, though of course that could refer to 3 other non-air-powered weapons, but also he was aware 4 there had been discussion of shooting the lock three 5 times, and he interpreted that as suggesting a real 6 firearm.</p> <p>7 He was not the only person to think that. That was 8 also the view of the inquiry policing experts, at 9 paragraph 634 of their report, who had the benefit of 10 the enhanced recording and the transcript and time to 11 consider what was being said in detail.</p> <p>12 It would be artificial to only consider the impact 13 of the missed intelligence pointing away from a real 14 firearm without also acknowledging that DCI Williams was 15 not aware, because it wasn't passed on to him, of 16 further information that did suggest a real firearms 17 capability. This included Jermaine Baker stating that 18 he was chosen by Ozcan because he always rides with 19 a burner, meaning a gun, and the reference to, "First 20 door on the right, boom, boom". Even if those words 21 were said after state amber was called, they were 22 certainly long before the cars pulled into Bracknell 23 Close and at least three minutes beforehand, and had 24 that information been heard by the TFC, he could have 25 still briefed it.</p> <p style="text-align: center;">Page 141</p>	<p>1 Whilst there was information he was not told that 2 can be interpreted as pointing towards an imitation, 3 there was also information he was not told that pointed 4 towards strongly, not just the presence of a real gun 5 but the intended use of a real gun.</p> <p>6 Even if the transcript had been available to the 7 TFC, he explained he would have taken the same course of 8 action, Day 13, page 214, line 12. He is criticised for 9 saying that by the family but that accords with what 10 others said.</p> <p>11 We have referenced how many of the mistranscriptions 12 that occurred that day were repeated by Mr Hawthorn when 13 he attempted to transcribe in a witness statement from 14 a recording that he made in slow time and without the 15 note from anyone else in the CMP.</p> <p>16 But the point is perhaps best illustrated by the 17 evidence from ACC Hartley and the inquiry experts, who 18 also reviewed the recording and the transcript 19 repeatedly and could bring their operational experience 20 to bear on the question.</p> <p>21 Sir, you might think that if the experts could not 22 conclude with the luxury of time and a transcript that 23 there was no real gun in the car, then it would be 24 manifestly unfair to criticise the TFC for not doing 25 better on the day.</p> <p style="text-align: center;">Page 142</p>
<p>1 ACC Hartley was provided with a copy of the 2 recording, which he listened to multiple times.</p> <p>3 He said that, despite repeated listening, he was 4 still in doubt as to what was being said and what the 5 occupants' intentions were. Specifically, even after 6 repeated listening, he said he wasn't sure if the 7 occupants were saying, "The shottey, we are not getting 8 it", or, "The shottey, we are getting it".</p> <p>9 His overall conclusion was that the safe assumption 10 is the gang is preparing to make the assault and has 11 an expectation of the supply and possession of firearms.</p> <p>12 That is at IPC385, page 21.</p> <p>13 ACC Hartley considers the full exchange about 14 shooting the lock and then the comment that comes 15 afterwards:</p> <p>16 "What is the ting going to do? Nothing."</p> <p>17 He said that possibly relates to the firearm's lack 18 of impact on an armoured door. His conclusion at 19 page 22 of this document is an expectation from 20 a command assessment to very much anticipate a live 21 firearm.</p> <p>22 He said that repeated playing of what has been 23 transcribed as "It is best to have two tings you know", 24 is impossible to be differentiated from the word 25 "teams", from which a safe assumption would be a second</p> <p style="text-align: center;">Page 143</p>	<p>1 vehicle corroborated by mobile contact and/or the 2 exchange of firearms.</p> <p>3 Exactly the view that those listening in the CMP 4 came to, exactly the view that the TFC came to when that 5 was passed on to him.</p> <p>6 ACC Hartley concluded on the next page at 23: 7 "The dynamic assessments from the audio monitoring 8 are passed to the TFC in a timely manner and as accurate 9 as can reasonably be expected."</p> <p>10 That accords with the view of the inquiry experts, 11 who had listened to the recording many times. They said 12 the conversation regarding firearms absolutely could be 13 interpreted in two ways. Day 23, page 44, line 12.</p> <p>14 You could not therefore conclude that it was 15 unreasonable for the TFC to have taken from the probe 16 that the occupants of the car would or might be in 17 possession of firearms when the offence was committed, 18 by which I mean real firearms. The evidence from those 19 who have reviewed this recording and the transcript is 20 either this was the correct interpretation, that they 21 did have firearms, or that it could have been read 22 either way.</p> <p>23 In the circumstances of this case, including the 24 relatively dated nature of the intelligence when it was 25 received after the briefings at 6.58, the ambiguity of</p> <p style="text-align: center;">Page 144</p>

<p>1 the information at best being received over the probe, 2 the nature of the criminal enterprise being attempted 3 and what was known about the broader firearms 4 capabilities of the gang organising it, the TFC decision 5 not to brief the information was at least a reasonable 6 one. 7 Can I move on to the firearms enabled transmission. 8 We accepted in opening it would have been preferable if 9 the phrase "firearms enabled" had not have been used, as 10 this is not a phrase to find in APP or in the curriculum 11 nor is it a phrase that was agreed upon in advance. 12 Those who authorised and transmitted the update 13 understood that it could relate to a real or 14 an imitation firearm. The CTSFs plainly interpreted it 15 to mean the conspirators were in possession of a real 16 firearm. The mechanism by which this was distributed is 17 a little unusual. It was not a proactive decision by 18 the TFC to put the update out. The surveillance 19 commander asked whether this could be conveyed to the 20 surveillance officers to reflect the update heard on the 21 probe. DCI Williams agreed and the transmission was 22 made over the surveillance channel where it was also 23 heard by the CTSFs. You will need to determine to what 24 extent this had an impact upon the matters you are 25 enquiring into.</p> <p style="text-align: center;">Page 145</p>	<p>1 In our submission, the evidence is it did not have 2 any significant impact, and most certainly could not be 3 said to have been causative, and that was the conclusion 4 of others who have reviewed this case and who have been 5 instructed as experts. 6 Mr Arundale and Mr Burrows agreed that the use of 7 the term did not appear to have increased the threat 8 assessment of the CTSFs, as it merely reaffirmed what 9 they said they already believed. That was Day 23, 10 page 46, lines 14 to 22, and because their risk 11 assessments were generally already high. 12 As the update was made at around 7.30 in the 13 morning, they also agreed there was ample time for any 14 of the firearms officers to ask for clarification as to 15 what it meant, but none was sought. The view of the 16 policing experts was shared by ACC Hartley, who stated 17 that whilst firearms enabled is not trained or 18 recognised terminology, it is plain English to 19 surveillance officers of what the surveillance commander 20 considered the latest position on the armed threat to 21 be. 22 As to the effect of the firearms enabled 23 transmission, he said: 24 "The circulation of 'firearms enabled' at 7.30 does 25 not bring any new information to the officers. They</p> <p style="text-align: center;">Page 146</p>
<p>1 were already aware they were on authority to face 2 potentially armed offenders, and this brings no further 3 detail of weaponry, location or accessibility. This 4 acts as a reminder of what was known already. It is 5 a legitimate and accurate circulation." 6 The CTSFs, those who were asked, all said that the 7 firearms enabled transmission did not affect their risk 8 assessment, apart from W109 and R116, who said, both of 9 them, the transmission slightly increased their threat 10 and risk assessment. 11 The transmission did not have a significant effect 12 upon W80's threat assessment. At the time of the 13 5.00 am briefing, he said his risk assessment was very 14 high, pretty near the top, Day 21, pages 81 to 82. Upon 15 hearing the firearms enabled transmission, his 16 assessment was still at the very upper limits, Day 21, 17 page 100, where it remained as he entered Bracknell 18 Close, Day 21, page 125. 19 It is entirely correct that W80 was asked a series 20 of hypothetical questions, concluding with what the 21 effect would have been had he been told (1) the 6.58 22 imitation firearms intelligence, and (2) that firearms 23 enabled did not necessarily mean a real firearm. 24 He stated his risk assessment would still have -- 25 that was his expression, "It would still have been</p> <p style="text-align: center;">Page 147</p>	<p>1 high", which CTI contrasted with very high, and he 2 agreed. But that is not the intelligence plus heavy 3 health warning envisaged by the expert and it is hard to 4 imagine how such an update could have been worded 5 without the accepted risk of over briefing. 6 Had this been said, to brief the 6.58 imitation 7 intelligence, and also say that firearms enabled does 8 not necessarily mean real firearm, it would have put the 9 commanders in a very difficult position if they had 10 briefed that information, and then they had heard the 11 reference to "always riding with a burner", or the "boom 12 boom" conversation shortly after state amber. So whilst 13 it is understood why those hypothetical questions were 14 asked, it must be appreciated it is very difficult to 15 retrospectively conduct this exercise, especially 16 dealing with such fine margins as very high versus high. 17 The evidence does not support a conclusion that the 18 firearms enabled transmission led to any significant 19 risk in the CTSFs' threat and risk assessment. This 20 applies as much to W80 as to the other officers and that 21 was the evidence of the inquiry experts. 22 Viewed together, it would be quite impossible to say 23 that either the failure to transmit the 6.58 24 intelligence or the decision to brief the firearms 25 enabled transmission, were either (a) unreasonable or</p> <p style="text-align: center;">Page 148</p>

37 (Pages 145 to 148)

<p>1 (b) had an actual or possible impact upon the outcome. 2 It is to engage in speculation to seek to answer that 3 question. 4 Can I move on to the surveillance deployment. The 5 family submit that the surveillance officers' 6 interpretation that the Audi engaged in 7 anti-surveillance was wrong. They submit therefore that 8 there was a missed opportunity to deploy officers into 9 Bracknell Close from after 8.00 am. This is wholly 10 based upon evidence from one officer, DC Reddy, who you 11 will recall was in the CMP but also had access to 12 a police radio. He said: 13 "I was also listening to the main radio channel and 14 noted the concerns of the surveillance team, that the 15 vehicle appeared to be conducting anti-surveillance 16 manoeuvres. I was informed by the listening officers 17 that the occupants of the vehicle did not appear 18 concerned and were joking about the fact they were 19 constantly getting lost. I relayed this to the SIO and 20 the surveillance support within the operations room." 21 It cannot seriously be suggested that this operation 22 from an officer in the CMP should have caused the TFC to 23 have ignored the evidence to opposite effect from the 24 surveillance team. 25 You heard overwhelming evidence from the highly</p> <p style="text-align: center;">Page 149</p>	<p>1 trained specialist surveillance officers that the Audi 2 was engaged in anti-surveillance, mainly from the 3 unmistakable manner in which the car was being driven. 4 This is summarised in our submission at paragraph 181, 5 and includes evidence from Chris Davies who was of the 6 view the Audi was definitely involved in 7 anti-surveillance. Notwithstanding the fact that he had 8 been provided with the update from DC Reddy about the 9 subjects joking about being lost. 10 If there were any doubt on this point, FE10, who was 11 the surveillance OFC and present on the ground watching 12 the Audi, gave the clearest possible evidence, Day 14, 13 page 168 to 169, where he dealt with the issue raised by 14 DC Reddy in terms: 15 "Question: if you had been told that in fact rather 16 than being twitchy, the occupants of the vehicle were 17 joking about being lost in the car, would that have 18 influenced your decision as to how close you would have 19 asked your men to move in?" 20 He said: 21 "Not really, because in my experience, sometimes, 22 when you have got, say, three people in the car that are 23 a gang, involved in that type of criminal behaviour, 24 sometimes it is like a bit of banter, they don't want to 25 lose face with somebody else, so you cannot always take</p> <p style="text-align: center;">Page 150</p>
<p>1 it as gospel what they are saying. They might be saying 2 we are lost. It might appear they are joking, whereas 3 any of them might be thinking I think the police might 4 be with us but they don't want to say anything. So from 5 my point of view, I would always err on the side of 6 caution, unless we knew 100 per cent they were happy. 7 But all I tell you was that their behaviour on that day 8 for me, as an experienced surveillance officer, it was 9 anti-surveillance. They were not lost. They were not 10 mucking about. They were clearly 100 per cent 11 conducting anti-surveillance, hence me saying, 'Team, 12 back off, just give them some space, we don't want to 13 compromise the operation'. 14 To suggest that DC Reddy, having heard others 15 discussing what was on the probe, should have been taken 16 alone to countermand what was being said by the 17 specialist surveillance officers, whose training told 18 them from their own observations it was 19 anti-surveillance, is unsustainable. 20 Additionally, the content of the probe contradicts 21 what the family submit about the occupants joking and 22 therefore not being surveillance aware. 23 Obviously they did not want to be caught, hence why 24 they were eye about, as FE11 put it, but it is not just 25 one single comment about builders that we can see on the</p> <p style="text-align: center;">Page 151</p>	<p>1 probe, there are repeated references to thinking a car 2 in front of them are feds. There is reference to, "If 3 we see the police, as soon as we see them, they is 4 gone", and there is reference to both residents and 5 builders watching them. It was correctly perceived by 6 the officers on the ground that they were twitchy, eyes 7 about and engaging in anti-surveillance. 8 Whether you look at what was known at the time or 9 even what is known now, there is no basis to conclude 10 that the decision by the surveillance team to back off 11 was unreasonable. Neither did it in any event have any 12 causative effect. 13 Can I move on to firearms tactics and, before I turn 14 to natural stop extraction, can I address you very 15 briefly on intervention. 16 It has been suggested at times that the decisive 17 action taken at around 9.00 am was an intervention or 18 akin to an intervention. It was not. As this does not 19 seem to be a live issue in the family's submissions 20 I propose to spend no further time on the point, but you 21 have our written submissions at paragraphs 166 to 167, 22 as to the reasons why this is important to the MPS. 23 As to extraction, the family state at paragraph 134, 24 and again in oral submissions today, that the FA5, 25 included the option of contain and call out, though</p> <p style="text-align: center;">Page 152</p>

<p>1 notably this was with reference to persons in 2 a building. And it was plain that no choice of tactic 3 was on the table for consideration with respect to 4 a vehicle interception. 5 Sir, if that were correct, then the proposition that 6 the tactic was prejudged would have some force. 7 Plainly, however, it is incorrect. 8 As you heard from Superintendent Turner, S48 and 9 DCI Williams, the FA5 did include containment and call 10 out as a tactical option and it included it specifically 11 upon a vehicle. Can I ask you to look briefly at 12 IPC1133, page 10. 13 This is the FA5 relevant to the deployment on 14 11 December. This specifically states in relation to 15 vehicle tactics once the vehicle has come to a rest, the 16 tactics include containment and call out. It 17 specifically says that on some occasions it may be 18 appropriate not to immediately extract the occupants but 19 to contain them and call them out under cover. 20 Sir, it is very important that the suggestion that 21 the FA5 did not include a tactical option of containment 22 and call out on a vehicle is not accepted. It is simply 23 wrong, and you heard evidence from the commanders and 24 the tactical adviser it was included in the FA5 and you 25 have it in front of you now.</p> <p style="text-align: center;">Page 153</p>	<p>1 The inquiry experts would of course have picked up 2 on such a failure if there was one. But they agreed on 3 Day 23, 62, that the starting point as to the tactic, 4 whatever it was going to be, would have to begin with 5 the cars pulling up in fast time to block the Audi in. 6 So whatever tactic was performed on a vehicle, there 7 would have been no opportunity to clear the public from 8 Bracknell Close without alerting the occupants. There 9 could not have been a slow-time tactic in the manner 10 suggested at times for the family. 11 To the extent that the MPS have been criticised for 12 selecting extraction, you will note that every witness 13 who expressed a view in this case, including all of the 14 CTSFOs asked, the TFC, the SFC, the OFCs, the tactical 15 adviser and Kevin Nicholson, who said he was firmly of 16 this view, they all said that extraction was the correct 17 tactic in the circumstances that presented on Bracknell 18 Close. 19 When you specifically asked the policing experts: 20 did they say that extraction was not a reasonable 21 option? They did not say so. 22 As per APP, the tactic was chosen by the TFC shortly 23 before state amber. He said he chose extraction from 24 the two potential options of extraction and contain and 25 call out. Day 13, page 190 to 192. We have set out in</p> <p style="text-align: center;">Page 154</p>
<p>1 opening the reason why extraction was the appropriate 2 tactic and numerous witnesses have explained this in 3 evidence, including Kevin Nicholson, independently, on 4 the last day of evidence, Day 29, pages 198 to page 201. 5 The family suggest that, because the commanders and 6 the firearms officers did not have a full picture of the 7 location of the car, the number of occupants and the 8 layout of Bracknell Close, they were not able to make 9 any informed decision as to what tactic to use. That is 10 not accepted. At the point of state amber, the 11 commanders knew the car was in a residential parking 12 bay. They knew the general layout of the area from 13 paper and online maps. They knew there were three or 14 four occupants in the car. They knew there were other 15 cars parked nearby and that there were buildings in the 16 vicinity. They knew there were residents in houses who, 17 given the time of day, could be coming or going at short 18 notice. Absent any suggestion that those in the car 19 were emotionally or mentally distressed, which they were 20 not, the only viable tactic applying the curriculum was 21 extraction. 22 Nobody has seriously suggested in evidence it was 23 the wrong tactic. Far less that to implement it was 24 unreasonable. A more difficult question concerns 25 whether there was a culture within the MPS to shun</p> <p style="text-align: center;">Page 155</p>	<p>1 contain and call out, in circumstances where it might be 2 the appropriate tactic. 3 The MPS recognises why it would cause you concern 4 that several CTSFOs stated that containment and call out 5 would be wholly impractical in London or similar. 6 The evidence also showed, of course, the majority of 7 CTSFOs had not performed this tactic, containment and 8 call out, on a vehicle. That however must be balanced 9 against the fact that DCI Williams, Day 13, pages 190 to 10 192, and S48, Day 9, pages 119 to 121, both said that 11 the two tactics were actively considered and extraction 12 was only selected once it was known the arrests would 13 take place on Bracknell Close. 14 There can be no doubt that all firearms officers are 15 trained in all relevant tactics and that includes 16 containment and call out. You have seen, sir, bespoke 17 MPS training videos demonstrating the tactic and 18 training material showing how it should be implemented 19 and the CTSFOs confirmed the tactic is well rehearsed in 20 their training. 21 As Chief Inspector Taylor stated, when you asked for 22 his unbiased view as to whether there was a disposition 23 towards extraction, he said he wholeheartedly disagreed, 24 drawing on his extensive experience across all levels of 25 MPS firearms during his career. We set the evidence out</p> <p style="text-align: center;">Page 156</p>

<p>1 at page 174 of our closing submissions.</p> <p>2 As to whether there is an operational</p> <p>3 pre-disposition towards extraction, Chief Inspector</p> <p>4 Taylor made the important point that in this inquiry,</p> <p>5 you, sir, have heard evidence from the top tier of the</p> <p>6 triangle, namely CTSFOs who deal with the most dangerous</p> <p>7 armed criminals. It is unsurprising that the operations</p> <p>8 that CTSFOs are involved in are the ones that lend</p> <p>9 themselves to the use of extraction as opposed to armed</p> <p>10 enquiry or containment and call out. Chief Inspector</p> <p>11 Taylor confirmed he had used the whole range of tactics</p> <p>12 in his career and the notion there is a cultural bias is</p> <p>13 simply not true.</p> <p>14 There was considerable independent support for the</p> <p>15 utility of extraction in a MASTS operation from the NPCC</p> <p>16 and the College of Policing. The references are at</p> <p>17 paragraphs 177 to 178 of our closing.</p> <p>18 DCC Chesterman said in evidence that in 2013 he</p> <p>19 commissioned a review into the use of the enforced stop</p> <p>20 tactic. That review concluded that the approved tactics</p> <p>21 currently being utilised are the most effective, viable</p> <p>22 and proportionate options. This was expressed as</p> <p>23 a reference to enforced stop extraction. The review</p> <p>24 further noted it was unsurprising that there was</p> <p>25 an increased likelihood of extraction from a MASTS</p> <p style="text-align: center;">Page 157</p>	<p>1 deployment. A similar picture was seen internationally</p> <p>2 in the Atlas review that extraction was the most</p> <p>3 commonly used tactic for a MASTS platform.</p> <p>4 Finally in relation to the question of a cultural or</p> <p>5 operational bias, DCC Chesterman said that urban areas</p> <p>6 are typically unsuitable for containment and call out</p> <p>7 and it may well be that in large urban areas enforced</p> <p>8 stop/extraction is the best option.</p> <p>9 Kevin Nicholson said on this point if the vehicle</p> <p>10 had been parked in a country lane or a farm somewhere,</p> <p>11 then containment and call out might have been</p> <p>12 appropriate, because you can exclude members of the</p> <p>13 public. It might be useful to consider the independent</p> <p>14 evidence of Mr Nicholson and DCC Chesterman when you</p> <p>15 consider the concern of Mr Burrows, when he said that he</p> <p>16 was astounded to hear in London, including the leafy</p> <p>17 lanes, side streets and cul de sacs that you can never</p> <p>18 do containment and call out.</p> <p>19 The reality is of course the kind of criminality</p> <p>20 Utara and Ankaa were designed to combat is rarely</p> <p>21 committed on leafy lanes, as was repeatedly explained by</p> <p>22 every witness who was asked: a residential cul de sac or</p> <p>23 similar would not generally be appropriate to perform</p> <p>24 a vehicle option contain and call out, because of the</p> <p>25 inability to protect members of the public in the</p> <p style="text-align: center;">Page 158</p>
<p>1 vicinity.</p> <p>2 If a working strategy led to the selection of this</p> <p>3 tactic, it would increase the risk to the public in</p> <p>4 an effort to decrease the risk to the subjects and this</p> <p>5 strategy would be flawed. As Superintendent McKibbin</p> <p>6 explained, a prospective TFC would fail the TFC course</p> <p>7 for an error of this kind, Day 29, page 70, line 2.</p> <p>8 In terms of the implementation of the tactic, it was</p> <p>9 carried out in accordance with training. The Audi had</p> <p>10 a BMW on the right, as it was approached by the</p> <p>11 officers, but obstacles of this nature are something for</p> <p>12 which the officers are well trained, including, as</p> <p>13 Superintendent McKibbin said, where the car is against</p> <p>14 a brick wall, Day 29, page 117, line 5.</p> <p>15 You will note, sir, that S111, the Alpha Car team</p> <p>16 leader said that he was aware of the location of the BMW</p> <p>17 and was not surprised by it and he said it was a normal</p> <p>18 parking distance from the target car, Day 18, page 46,</p> <p>19 line 8.</p> <p>20 W80 confirmed that six initial officers were enough</p> <p>21 to control the occupants of the car whilst waiting for</p> <p>22 initially the drivers to join and he said they would</p> <p>23 come over very quickly.</p> <p>24 The extraction was performed entirely in accordance</p> <p>25 with the relevant MASTS training that deals with cars</p> <p style="text-align: center;">Page 159</p>	<p>1 with multiple occupants. You can see that within the</p> <p>2 curriculum at COP4, page 26. This document stresses</p> <p>3 that in a MASTS operation it may be possible to deal</p> <p>4 with several occupants simultaneously, the content</p> <p>5 recognises that environmental or operational factors may</p> <p>6 cause a tactic to be varied and that it is not possible</p> <p>7 to provide definitive guidance as to which officer will</p> <p>8 perform the role. The content specifically states that</p> <p>9 the success of the tactics requires coordination,</p> <p>10 surprise and assertive control. When conducting</p> <p>11 an extraction, there are two general responsibilities,</p> <p>12 cover and approach. This could include a cover officer</p> <p>13 and an approach officer. However, there may be</p> <p>14 environmental or other constraints which limit the</p> <p>15 number of officers deployed. In such circumstances,</p> <p>16 a prioritisation of roles will be required and</p> <p>17 an officer may perform a dual role of cover and</p> <p>18 approach. That is precisely what the officers did when</p> <p>19 dynamically deploying into Bracknell Close.</p> <p>20 A point was explored with Mr O'Conner as to whether</p> <p>21 he was correct in applying his training to initially</p> <p>22 deal with the builders and when he was taken to the</p> <p>23 curriculum dealing with an extraction, it was apparent</p> <p>24 he did exactly what he was trained to do.</p> <p>25 It is notable there has been no suggestion to the</p> <p style="text-align: center;">Page 160</p>

40 (Pages 157 to 160)

<p>1 contrary by the IOPC or by the inquiry experts, who not 2 suggest the extraction was performed other than in 3 accordance with training or was in any way deficient. 4 Sir, before I deal with the final topic, can I just 5 look at the performance of the key police actors in this 6 case. 7 It is inevitable in a case such as this, where 8 Mr Baker's family are dealing with an immeasurable loss 9 that positions become polarised. However, at various 10 points in the family's closing submissions, officers are 11 accused of hubris, arrogance, a lack of humility and, 12 repeatedly, dishonesty. This is not justified. 13 In particular, where dishonesty is suggested, this 14 must only be advanced where there is a proper basis to 15 do so. There is none in this case. The police 16 witnesses you have heard from have been fully 17 cooperative and have sought to assist your inquiry as 18 best they can. Even in inquisitorial proceedings 19 witnesses are entitled to respond if it is to be 20 suggested that they have lied and that has not occurred 21 in this case. 22 A great deal has been said about so-called double 23 hatting and the MPS would just ask that you take a step 24 back in this regard and look at what APP and the 25 curriculum actually say about this vitally important</p> <p style="text-align: center;">Page 161</p>	<p>1 area before you draw any of the conclusions the family 2 urge upon you. 3 The first point that you will note is that double 4 hatting is not in fact mentioned anywhere in APP or in 5 the curriculum, though it is, I accept, a commonly used 6 term, understood by police officers. The only guidance 7 that you will find in this regard is at APP, COP24, 8 page 4. It says no more than that the function of the 9 SFC or TFC must not be undertaken by the SIO responsible 10 for the investigation of the offences for which the 11 firearms operation is taking place. 12 It then says: 13 "Decision making, it is essential that objectivity 14 and oversight are clearly demonstrated in the 15 decision-making process. Separation of roles and 16 clarity of responsibility is essential for the provision 17 of effective command and tactical advice. 18 This content is reproduced in module C2 of the 19 curriculum, but there is no further content or guidance. 20 The suggestion from the family that the TFC must 21 somehow be an amicus, entirely insulated from any 22 question relating to the broader policing operation is 23 entirely unsupported by the guidance and is totally at 24 odds with the requirement for the TFC and the SFC to 25 consider sustained public protection.</p> <p style="text-align: center;">Page 162</p>
<p>1 Mr Williams was criticised for being passionate 2 about working to protect the people of London and saying 3 that was relevant to his role as a TFC. He was entirely 4 right to do so. What he was saying accorded exactly 5 with what sustained public protection says, tactical 6 firearms commanders not only can consider but are 7 obliged to consider. 8 Before you come to any conclusion that the TFC or 9 SIO were performing roles that should have been the 10 province of the other, we would ask you to identify 11 first of all precisely what prohibition in APP or the 12 curriculum is said to have been breached. 13 Secondly, that you identify precisely what these 14 roles were and whether they had any real far less 15 causative effect on the operation, because apart from 16 DI Murray undertaking some of the consultation with 17 criminal justice partners, it is difficult to see what 18 the alleged blurring of roles actually is. 19 We do not, for example, understand on what basis the 20 family have suggested at paragraph 47, that the SIO was 21 responsible for tasking S48. That is not what the 22 reference is cited by the family at their paragraphs 41 23 or 47 provide. 24 Furthermore, there are two important matters stated 25 by the family on the issue of double hatting which</p> <p style="text-align: center;">Page 163</p>	<p>1 require correction. 2 The first is this. At paragraph 47 it is said that 3 Mr Turner and Mr Williams were in Mr Murray's chain of 4 command. 5 The second is, at paragraph 48, and this is more 6 serious, it is said that Mr Williams had been involved 7 in the investigation of the OCN in Utara. Both 8 suggestions are repeated elsewhere and they are both 9 wrong. 10 Superintendent Turner was on the Flying Squad, 11 a wholly different command, and most importantly, 12 DCI Williams was never an SIO on the central task force, 13 not on Utara and not on any other investigation. Since 14 moving to the task force on promotion he did not act as 15 an SIO at all. So the family's fundamental proposition 16 that Mr Williams was confusing his role, having acted as 17 an SIO on Utara or into this OCN is completely wrong. 18 His role, as a chief inspector on the central task 19 force, did not involve him being an SIO at all. But as 20 we have seen from APP, there is no stricture against the 21 SFC, TFC or SIO being in a line management structure, 22 and, also, it would have been unobjectionable if the TFC 23 had been an SIO on other parts of Utara. In 2015 that 24 wouldn't have been a problem at all, and, as of today, 25 that would simply require a record to be made of the</p> <p style="text-align: center;">Page 164</p>

41 (Pages 161 to 164)

<p>1 fact.</p> <p>2 In terms of the tactical adviser, it is very</p> <p>3 important that the TFC took tactical advice as he is</p> <p>4 required to do so. In any firearms operation, the</p> <p>5 tactical adviser will play a key role. Whilst questions</p> <p>6 were appropriately posed as to S48's performance in</p> <p>7 opening, there has not been any sustainable criticism of</p> <p>8 him in evidence, or in closing, apart from the incorrect</p> <p>9 suggestion he didn't include containment and call out as</p> <p>10 a vehicle option.</p> <p>11 The inquiry experts agreed with the IOPC report that</p> <p>12 S48's tactical advice was thoroughly considered, well</p> <p>13 recorded and consistent with national training and</p> <p>14 guidance. This was stated in the expert's report at</p> <p>15 paragraph 416, and they confirmed this when they gave</p> <p>16 evidence, and they established there was no caveat to</p> <p>17 this as far as S48 was concerned, but they had other</p> <p>18 concerns about the IOPC's use of language.</p> <p>19 Sir, the experts' support for the advice provided by</p> <p>20 S48 in the FA5 is highly significant. It was S48's</p> <p>21 advice that option 2 allowed the operation to run and</p> <p>22 intercept the subjects once there is sufficiency of</p> <p>23 evidence was the recommended option and the option most</p> <p>24 likely to achieve the strategic intention. That is at</p> <p>25 pages 16 to 17 of the FA5.</p> <p style="text-align: center;">Page 165</p>	<p>1 If the experts' view in relation to this advice were</p> <p>2 accepted, that it was thoroughly considered, well</p> <p>3 recorded and consistent with national training and</p> <p>4 guidance, it could not seriously be suggested that a TFC</p> <p>5 who followed that advice and allowed the conspiracy to</p> <p>6 run to the point of arrest, was acting unreasonably.</p> <p>7 In terms of the TFC, we have put our submissions in</p> <p>8 this regard at paragraph 72 to 85 of our closing. We</p> <p>9 deal with the IOPC decision to refer DCI Williams for</p> <p>10 simple as opposed to gross misconduct at paragraph 73.</p> <p>11 I don't propose to say any more on that point, as it is</p> <p>12 not a matter you are being asked to determine for</p> <p>13 obvious reasons. I also don't propose to address you on</p> <p>14 his decision to retire, beyond saying it is obviously</p> <p>15 normal --</p> <p>16 THE CHAIRMAN: It didn't feature this morning?</p> <p>17 MR BUTT: Sorry, sir.</p> <p>18 THE CHAIRMAN: It didn't feature this morning, so you don't</p> <p>19 need to.</p> <p>20 MR BUTT: Thank you, sir.</p> <p>21 It is accepted there were errors on the FA2, for</p> <p>22 which the TFC has apologised. These include the fact</p> <p>23 that earlier iterations of the form bear the title</p> <p>24 Operation Morguld and Operation Ankaa, corrected when</p> <p>25 the form was updated on 10 December, and an incorrect</p> <p style="text-align: center;">Page 166</p>
<p>1 reference to the TSU deployment on 11 December.</p> <p>2 As with the FA3 however, it has not been suggested</p> <p>3 that these errors affect the validity of the decision to</p> <p>4 deploy AFOs, they plainly do not.</p> <p>5 There has been questioning in relation to the use of</p> <p>6 cut and paste when preparing these forms. That which</p> <p>7 has been cut and pasted was material which is unlikely</p> <p>8 to differ between forms.</p> <p>9 This inquiry did not examine with the TFC the extent</p> <p>10 to which there had been cut and paste between FA2s in</p> <p>11 Morguld and Ankaa. DCI Williams simply said he would</p> <p>12 have cut and pasted some parts and then made amendments</p> <p>13 where necessary. There is no evidence that</p> <p>14 operation-specific content was transferred from</p> <p>15 a Morguld FA2 to the Ankaa documents.</p> <p>16 The inquiry has rightly heard evidence on the</p> <p>17 question of multidimensional risk assessments. These</p> <p>18 were highlighted by ACC Hartley in his report and</p> <p>19 featured in the evidence from the policing experts and</p> <p>20 also the College of Policing. Of course it is accepted</p> <p>21 that multidimensional risk assessments are an important</p> <p>22 part of the planning process.</p> <p>23 The evidence however is that both in 2015 and at</p> <p>24 present, the templates that are used nationally, which</p> <p>25 in the MPS are incorporated into the FA2 and FA3 forms,</p> <p style="text-align: center;">Page 167</p>	<p>1 do not lend themselves to conducting multidimensional</p> <p>2 risk assessments and also that such assessments were not</p> <p>3 common in 2015. That was the evidence of S48,</p> <p>4 Kevin Nicholson and DAC Taylor. We provided the</p> <p>5 references to that evidence at our closing at</p> <p>6 paragraph 77.</p> <p>7 To the extent that the multidimensional risk</p> <p>8 assessment was not recorded on the FA forms therefore,</p> <p>9 was clearly something that was common at the time</p> <p>10 because of shortcomings in the templates that didn't</p> <p>11 lend themselves to performing these assessments.</p> <p>12 Notwithstanding the difficulty in recording such</p> <p>13 an assessment on the FA forms, the TFC did conduct</p> <p>14 a multidimensional threat assessment which put the risk</p> <p>15 to all parties as low up to the point of state amber,</p> <p>16 whereupon it increased to medium for subjects and armed</p> <p>17 police officers. The family are wrong to state at</p> <p>18 paragraph 64 that the commanders said the risk</p> <p>19 assessment must be from a fixed point only. Both</p> <p>20 DCI Williams and DI Smith projected their assessment to</p> <p>21 medium at the point of state amber.</p> <p>22 Whilst the inquiry experts were of the view that the</p> <p>23 appropriate assessment was low, rising to high at the</p> <p>24 point of interception, this is inevitably a subjective</p> <p>25 assessment. As to whether Mr Williams was reasonable,</p> <p style="text-align: center;">Page 168</p>

42 (Pages 165 to 168)

<p>1 S48, himself a specialist TFC, put the risk assessment 2 at low rising to medium at the point of interception 3 too. Mr Hartley concluded the threat assessment was 4 accurately defined, fair and proportionate. Which 5 suggests there is at least a range of opinion on the 6 point. 7 The contrast between the assessment of the TFC and 8 that of the firearms officers is examined in detail at 9 our submissions at paragraphs 79 to 81. It is 10 unsurprising that CTSFOs would often have a higher 11 subjective assessment of risk than the commanders and 12 that they would apply this at the point of contact and 13 when assessing the risk of non-compliance. The evidence 14 of the CTSFOs was that they saw the TFC's structured 15 risk assessment as separate from their own and/or that 16 they approached all armed operations as high risk. 17 V68 for example said that the corporate risk 18 assessment was totally different to his and not really 19 relevant to his role. 20 P2 explained that TFC's risk assessment was very 21 different to his, as he considered all firearms 22 operations high risk. 23 Such an approach is understandable, as the risk that 24 is being assessed is that the individual officer would 25 be shot whilst on duty that day but it is in our</p> <p style="text-align: center;">Page 169</p>	<p>1 submission an unhelpful exercise to compare a CTSFO's 2 assessment with the TFC's, as they are not comparing 3 like with like. 4 In terms of recording his multidimensional 5 assessment, the TFC kept a running log, which recorded 6 in real time the risk to all parties during the 7 operation, and Superintendent McKibbin explained that is 8 consistent with what is taught on the TFC course, 9 Day 29, page 63. This is precisely the area that the 10 College is consulting on to produce a national template 11 to assist in this process. I have addressed the fact 12 there was no FA1 at 84 to 85 of our submissions. It 13 should have completed, it provides an audit function, 14 but the failure to require one, which was the TFC's 15 role, could not have effected the lawfulness of the 16 deployment or the outcome in this case. 17 As to the strategic firearms commander, it is 18 important to examine his role by reference to what is 19 set out within APP. It is not the role of the SFC to 20 sit on the shoulders of the TFC. The SFC is expressly 21 prohibited from interfering in tactical command in any 22 way. Instead, his role is to determine strategic 23 objectives and set any tactical parameters to obtain 24 strategic oversight and overall command and 25 responsibility.</p> <p style="text-align: center;">Page 170</p>
<p>1 The SFC plainly performed those roles as required 2 under APP. 3 Mr Williams was clear in his evidence that he had no 4 concerns at all about Superintendent Turner being 5 available to him during the operation. Whilst 6 "intrusive" is not a word in fact used in APP, there is 7 evidence of the SFC being intrusive in his oversight 8 role, in particular during the planning phase, which 9 included: first of all, requiring the TFC to produce 10 an updated version of the FA2; making further changes to 11 the FA2 after it had been submitted; and the SFC was 12 available to the TFC at all times, including during 13 planning meetings, briefings and on the day of the 14 operation itself. 15 The SFC is not required to be physically present 16 during an operation, as demonstrated by the fact that in 17 some forces the SFC can be an assistant or a deputy 18 chief constable. 19 Whilst the inquiry experts were critical of the SFC, 20 they accepted that he set bespoke tactical parameters 21 for the operation and that there was evidence of 22 intrusive supervision, that's at Day 23, pages 82 to 83. 23 It is accepted that there are errors on the FA3, for 24 which Superintendent Turner has apologised. None of 25 these affect the validity of the document, nor undermine</p> <p style="text-align: center;">Page 171</p>	<p>1 the lawfulness of the decision to deploy firearms. That 2 decision to authorise a deployment is perhaps the most 3 important function of the SFC, as without his authority, 4 firearms officers cannot be lawfully deployed. The 5 inquiry experts were unequivocal in their conclusion 6 that the criteria for the deployment of firearms 7 officers were met and that it would be wrong to deploy 8 armed officers in the circumstances of this case. This 9 applied to both the 8 December and 11 December 10 deployments. Indeed, sir, you stopped questioning on 11 that point as it was not in dispute. 12 We address the evidence of Ms Hall of the IOPC in 13 our written closing, who was invited to express a view 14 about the SFC, which she said she did from memory. In 15 doing so, she referred to Mr Hartley's report when 16 saying that Superintendent Turner's conduct was poor, 17 but not in breach of the professional standards. 18 That was not at all what the expert that she 19 instructed said. 20 In terms of how the SFC performed, Mr Hartley said 21 the SFC is appropriately intrusive, objective and 22 supportive. Resourcing the operation, ensuring 23 accreditation and fitness for role with the TFC and 24 approving C3000 for command and control function. 25 Further reference is made to the SFC's conduct by</p> <p style="text-align: center;">Page 172</p>

43 (Pages 169 to 172)

<p>1 ACC Hartley, all of which is to his credit.</p> <p>2 The family are critical of the SFC for not recording</p> <p>3 the planning process until the FA forms were completed</p> <p>4 later in the operation, and say this was entirely</p> <p>5 unsatisfactory. Sir, you heard evidence from</p> <p>6 Kevin Nicholson that there was at the time no obligation</p> <p>7 to record the planning process outside of the FA forms,</p> <p>8 and that is a matter which the College of Policing are</p> <p>9 currently looking into.</p> <p>10 As with all of these matters, it would be unfair to</p> <p>11 criticise any of the commanders, if not by reference to</p> <p>12 the standards that applied at the time.</p> <p>13 The evidence available to the IOPC did not suggest</p> <p>14 that Superintendent Turner's conduct was poor, nor does</p> <p>15 the evidence before this inquiry. It was not and the</p> <p>16 report of Mr Hartley is highly supportive of the SFC and</p> <p>17 the TFC and this should be considered alongside the</p> <p>18 evidence of Mr Arundale and Mr Burrows.</p> <p>19 Sir, can I go on to address the question of gross</p> <p>20 negligence manslaughter.</p> <p>21 THE CHAIRMAN: Yes.</p> <p>22 MR BUTT: Can I take first the question of the duty of care.</p> <p>23 THE CHAIRMAN: Yes.</p> <p>24 MR BUTT: Sir, we have taken you to Sir Michael Wright's</p> <p>25 ruling in the de Menezes Inquiry and it is important to</p> <p style="text-align: center;">Page 173</p>	<p>1 note that the first question he considered was whether</p> <p>2 there was a duty of care.</p> <p>3 He said, and this is at paragraph 13 of our</p> <p>4 supplementary submissions:</p> <p>5 "A police officer can owe a duty of care, the</p> <p>6 content would be to take reasonable care to ensure that</p> <p>7 such an interception took place in a location and at</p> <p>8 a time as to minimise, as far as reasonably practicable,</p> <p>9 the risk of unnecessary injury to the subject of the</p> <p>10 intervention, officers concerned and others.</p> <p>11 "In this case, the duty would not arise before the</p> <p>12 point at which firearms officers were ordered to move</p> <p>13 through with a view to performing an interception."</p> <p>14 Whilst the family say they do not agree with the</p> <p>15 ambit of that duty as cast in de Menezes, no reason for</p> <p>16 disagreeing has been given. What is not in dispute is</p> <p>17 that you, sir, would have to define what the ambit of</p> <p>18 the duty of care was. The family's submission is that</p> <p>19 it is consistent with Article 2 of the Convention. That</p> <p>20 cannot possibly be right. There must be a clearly</p> <p>21 defined duty and in our reason there is no basis at all</p> <p>22 to differentiate this situation from that in de Menezes</p> <p>23 and to apply any definition aside from that which</p> <p>24 Sir Michael applied in those proceedings.</p> <p>25 The second question concerns breach of a duty of</p> <p style="text-align: center;">Page 174</p>
<p>1 care, and I can take it very briefly because my learned</p> <p>2 friend indicates that she agrees that to breach a duty,</p> <p>3 you must be satisfied that a Bolam breach is made out.</p> <p>4 That is to say, in order to prove the TFC breached</p> <p>5 that duty, it must be shown that there are no</p> <p>6 responsible trained TFCs who would regard the relevant</p> <p>7 conduct as being acceptable. That is the section we</p> <p>8 have taken directly from the guidance on the CPS website</p> <p>9 citing Bolam v Friern Hospital.</p> <p>10 What is important to note though is that is not the</p> <p>11 test for gross negligence. That is merely the second</p> <p>12 question: if you find there is a duty, has that duty</p> <p>13 been breached?</p> <p>14 Thirdly, there must be an obvious risk of death.</p> <p>15 An obvious risk is one that is present, clear and</p> <p>16 unambiguous, immediately apparent, striking and glaring,</p> <p>17 rather than something that might have become apparent</p> <p>18 upon further investigation. It is the breach of duty</p> <p>19 that the suspect must reasonably have foreseen would</p> <p>20 create that obvious risk of death. The risk must be not</p> <p>21 of increasing the risk of death, it must be death in</p> <p>22 terms of causation. It must be proved the breach</p> <p>23 actually made a more than minimal causal contribution to</p> <p>24 death, increasing the risk of death is not enough. That</p> <p>25 is per de Menezes at paragraph 32.</p> <p style="text-align: center;">Page 175</p>	<p>1 Sir, in our submission, quite aside from any</p> <p>2 question about the duty of care and foreseeability,</p> <p>3 causation presents a complete obstacle to submitting on</p> <p>4 the facts of this case that the TFC is or could be</p> <p>5 guilty of gross negligence manslaughter.</p> <p>6 Virtual all of the cases that are cited in relation</p> <p>7 to gross negligence concern medical negligence, and in</p> <p>8 cases such as that, it is possible to have expert</p> <p>9 evidence which is able to show, had it not been for the</p> <p>10 breach of duty, such a percentage chance of death would</p> <p>11 not have been created.</p> <p>12 In a case in which the conclusion of the tragic</p> <p>13 facts of this case is that a firearms officer fired</p> <p>14 a bullet, it is impossible to reach any firm conclusion</p> <p>15 on these facts in relation to causation, and especially</p> <p>16 when the allegation relates to such fine margins as</p> <p>17 someone's risk assessment being very high, rather than</p> <p>18 high.</p> <p>19 Applying these facts to the death of Jermaine Baker,</p> <p>20 the following submissions are apparent.</p> <p>21 The first is, matters that relate to the</p> <p>22 investigation or to the SIO or to the SFC are not</p> <p>23 relevant, as they would be relatable to the alleged</p> <p>24 default of another.</p> <p>25 Secondly, any alleged default that results to the</p> <p style="text-align: center;">Page 176</p>

44 (Pages 173 to 176)

<p>1 management of the CMP cannot be attributed to the TFC, 2 as the family submit that such breaches relate to the 3 SIO and/or the TFC. 4 Thirdly, the family's submission the TFC missed 5 important information from the probe is not relevant in 6 relation to gross negligence manslaughter. 7 Fourthly, there is no support beyond assertion in 8 the family's submission for the proposition that any 9 alleged failure of the TFC could come close to the 10 exceptional threshold of grossness. 11 Sir, you will be well familiar with the law in 12 relation to this. The breach must be truly 13 exceptionally bad. It must have been so bad, so 14 obviously wrong, that having regard to the risk of death 15 involved it can properly be condemned as criminal. 16 THE CHAIRMAN: As to which no witness has been asked to 17 express an opinion? 18 MR BUTT: Exactly, sir, yes. 19 In that regard, you will note that in the case of 20 Sellu the Court of Appeal noted the importance of expert 21 evidence in relation to the question of grossness, that 22 the jury -- or in this case you, sir, sitting as the 23 tribunal of fact -- cannot simply be asked to come to 24 its own conclusion. There is no evidence either from 25 asking other TFCs, asking the TFC himself or asking any</p> <p style="text-align: center;">Page 177</p>	<p>1 of the experts that could possibly assist you in 2 relation to the grossness of the breach. 3 Turning to the matters that have been identified. 4 Sir, you must in our submission confine yourself to the 5 particular matters identified by the family, it would be 6 dangerous to try to distill from an over 100-page 7 submission what could be breaches. The Court of Appeal 8 have been very clear of the need for them to be 9 identified, and the risk is obvious, if you don't 10 identify the specific breaches, you could be abrogating 11 conduct from a number of actors or it could fall outside 12 the duty of care. 13 The family suggest, first of all, failures in 14 management and handling of intelligence are responsible. 15 That is different from their (b), which relates to 16 the briefing of intelligence. That comes back to the 17 point defined at paragraph 360(d), that this resulted in 18 the misrepresentation of the intelligence picture to 19 Wood Green Crown Court and more significantly in 20 relation to Jermaine's life, the CTSFOs, as the 21 briefings they received on the morning of 11 December 22 wrongly caused or permitted the message to be conveyed 23 to the CTSFOs that the intelligence was high grade and 24 reliable that those in the mission vehicle would be 25 carrying real weapons.</p> <p style="text-align: center;">Page 178</p>
<p>1 Sir, I have addressed you at length on these points 2 already as to why the content of the 3.00 am and 5.00 am 3 briefings were not misleading and I rely on those same 4 submission as to why this could not be a breach of that 5 duty by the TFC. 6 Even if you were to conclude that there were 7 failures in how the TFC managed and handled relevant 8 intelligence, there has been no attempt to explain how 9 it was reasonably foreseeable that those failures could 10 give rise to an obvious, unmistakable risk of death, far 11 less that they caused death. 12 If it were a breach, it is not of a kind that could 13 be characterised as exceptionally bad in line with the 14 law I have summarised already. 15 More generalised complaints about a failure to grade 16 intelligence or break it out by CRIMINT or agree a form 17 of words have already been addressed in open and closed 18 intelligence. 19 Secondly, the family rely upon failure to ensure 20 up-to-date briefing to CTSFOs of change in the 21 intelligence picture before their deployment. This is 22 based upon the family's starting position at 23 paragraph 179 that the intelligence was wrong, because 24 it did not mention the fact that the conspirators had 25 tried but failed to secure a firearm or otherwise</p> <p style="text-align: center;">Page 179</p>	<p>1 contradicted the briefing that was given. I have 2 already set out why by reference to the revised gist and 3 the evidence you have heard in closed that hypothetical 4 starting position is wrong. 5 Even if you were to conclude the TFC should have 6 disseminated the 6.58 intelligence, the evidence does 7 not support a conclusion this was a decision no 8 reasonable TFC would have made. He was supported in 9 this by S105, now a TFC, and by S48, himself 10 a specialist TFC. Furthermore, that decision was not 11 causative. All of the CTSFOs were one way in saying 12 that had they been told this intelligence, it would not 13 have made a difference to them, as they would continue to 14 treat a firearm as real unless it was proved to be 15 otherwise. 16 Finally, sir, even if you did conclude the decision 17 not to brief the 6.58 intelligence was a breach of the 18 duty of care, which of course could not be expressly 19 recorded as findings, for the reasons I have already 20 explained, it could not be said to be a truly 21 exceptional breach. The TFC had to make a difficult 22 decision as to whether to provide information to the 23 firearms team when he was in possession of changing and 24 on any view contradictory information. 25 Whilst APP provides general guidance on the content</p> <p style="text-align: center;">Page 180</p>

45 (Pages 177 to 180)

<p>1 of briefings, neither APP nor the curriculum provide 2 guidance on what to do with the difficult question of 3 briefing intelligence about imitation firearms. The 4 experts agreed this was an area worthy of more detailed 5 consideration by the College of Policing. 6 The second aspect of the pre-deployment briefings 7 relates to the 7.30 firearms enabled transmission. 8 I have made submissions as to why that was a proper 9 course for the TFC to take. 10 As with the 6.58 intelligence however, even if you 11 were of a different view, the conduct comes nowhere near 12 the threshold for a breach of duty. It comes nowhere 13 near something that no reasonable TFC would have done. 14 Others would have done the same, ACC Hartley for 15 instance was of the view that the circulation of the 16 firearms enabled at 7.30 does not bring any new 17 information to the officers, they were already aware 18 they were on authority to face potentially armed 19 offenders. This acts as a reminder of what was known is 20 already, it is legitimate and accurate circulation. 21 Even if you disagreed with that, sir, it supports 22 the proposition that what he did was something 23 a reasonable TFC could have done. 24 The highest that the inquiry experts put it is it 25 was an unfortunate use of terminology and a fairly</p> <p style="text-align: center;">Page 181</p>	<p>1 significant issue. That was at Day 22, page 159. 2 That comes nowhere near the standard required for 3 a breach of duty and certainly nowhere near the truly 4 exceptionally bad level required for a gross breach of 5 duty. 6 It cannot seriously be suggested the transmission 7 would have presented an obvious risk of death. It 8 simply did not. The TFC and others in C3000 who were 9 involved in that transmission themselves understood the 10 term to relate to either an imitation or a real firearm. 11 Whilst the CTSFOs understood it related to the 12 precedence of a real gun, the overwhelming balance of 13 their evidence is it did not increase their threat 14 assessment and that is a point the experts raised in 15 their report and confirmed in their oral evidence. 16 If the people who made the transmission thought it 17 could relate to real or imitation, and if all the people 18 who received that transmission say either it did not 19 increase their risk assessment or only did so slightly, 20 it is inconceivable how an argument could be made that 21 a TFC would foresee an obvious risk of death resulting 22 from making that transmission, even if it related to 23 a breach of duty. 24 The highest the case can be put in relation to 25 causation is the answer W80 gave, that if he had been</p> <p style="text-align: center;">Page 182</p>
<p>1 told the imitation firearms intelligence and the 2 firearms enabled did not mean necessarily a real 3 firearm, his risk assessment would have been high but 4 not very high. 5 Sir, taking it at its highest, that could come 6 nowhere near on the part of the TFC reasonable 7 foreseeability of an obvious risk of death. 8 The third point the family raise relates to tipping 9 points. Sir, we have set these out in our written 10 submissions. 11 THE CHAIRMAN: Yes. 12 MR BUTT: In short, the family explain it was in fact the 13 role of the SIO to establish tipping points. It would 14 have been wholly wrong for the tactical firearms 15 commander to have done so. If that is correct, then 16 that failure cannot be attributed to the TFC. That 17 would be a complete answer to this point. Even if that 18 were not right and you were able to conclude that the 19 TFC failed to set evidential tipping points and that 20 that was in some way his fault, the consequence of that 21 is far from clear. 22 The family appear to suggest that had tipping points 23 been set, and had all of the information been passed on 24 to the tactical firearms commander, then he would have 25 been able to devote all of his resources to planning the</p> <p style="text-align: center;">Page 183</p>	<p>1 interception between 7.30 and 9.00 am, rather than still 2 listening out at the same time for further evidence. 3 Sir, in our submission, taken on its own or in 4 combination with other matters, that comes nowhere near 5 grossness of breach and it is quite impossible to see 6 any causative effect of that. 7 The final point the family raise relates to 8 surveillance. Sir, I have already addressed you in 9 relation to that. 10 THE CHAIRMAN: Yes. 11 MR BUTT: It would have been unreasonable for the TFC to 12 have decided not to have heeded the advice of his 13 surveillance team. In any event, had the surveillance 14 deployment gone forward, it is impossible to say there 15 was any causative effect in relation to this. 16 Sir, I have put in comprehensive written submissions 17 in relation to the question of gross negligence. In the 18 time I have available I cannot address it in detail, but 19 I would ask you to study those submissions with care. 20 There is a reason why nothing was put to the TFC 21 that could possibly substantiate gross negligence 22 manslaughter. That is because such a proposition would 23 have been unsustainable. 24 THE CHAIRMAN: I am not sure about that. I think the reason 25 is because it didn't occur to anybody.</p> <p style="text-align: center;">Page 184</p>

<p>1 MR BUTT: Well --</p> <p>2 THE CHAIRMAN: I think, if I may respectfully say so, if it</p> <p>3 had occurred to anybody sooner, then experts would have</p> <p>4 been asked to express their opinion on the nature of the</p> <p>5 breach if any were established.</p> <p>6 MR BUTT: Yes.</p> <p>7 THE CHAIRMAN: But there we are.</p> <p>8 MR BUTT: Sir, it amounts to the same thing in my</p> <p>9 submission. It occurred to no one sooner because the</p> <p>10 proposition is unarguable. There is no obligation to</p> <p>11 put a case in inquisitorial proceedings.</p> <p>12 THE CHAIRMAN: No, I appreciate that. I am learning that</p> <p>13 every day, Mr Butt.</p> <p>14 MR BUTT: However, in fairness to the tactical firearms</p> <p>15 commander, one would expect, if this serious allegation</p> <p>16 were to be made, he would be given a chance to respond</p> <p>17 but, sir, in my submission, you do not need to descend</p> <p>18 into difficult questions about whether evidence ought to</p> <p>19 be reopened, because there is no arguable basis to</p> <p>20 submit that there has been gross negligence manslaughter</p> <p>21 in this case.</p> <p>22 THE CHAIRMAN: Thank you.</p> <p>23 MR BUTT: Sir, can I just finally say -- I discussed this</p> <p>24 with my learned friends -- there are a number of</p> <p>25 discrete recommendations which are made in the report in</p> <p style="text-align: center;">Page 185</p>	<p>1 relation to, for example, e-disclosure. We would like</p> <p>2 to respond in writing within four weeks, because to do</p> <p>3 so we can do so more sensibly.</p> <p>4 THE CHAIRMAN: I am perfectly content with that, as long as</p> <p>5 there are no objections.</p> <p>6 MR BUTT: There is, however, one point that I do need to</p> <p>7 address now and it relates to the question of race.</p> <p>8 THE CHAIRMAN: That has not been raised since Day 1,</p> <p>9 Mr Butt.</p> <p>10 MR BUTT: It was raised in the written submissions.</p> <p>11 THE CHAIRMAN: I'm sorry, Ms Kaufmann has corrected me by</p> <p>12 a shake or a nod of her head.</p> <p>13 Yes.</p> <p>14 MR BUTT: There is not a shred of evidence to say that</p> <p>15 Mr Baker's race did or might have contributed to his</p> <p>16 death. This also was not explored with any witness and</p> <p>17 I think I can say with some confidence that is because</p> <p>18 it would not have been a proper question to have put and</p> <p>19 you would not have allowed your counsel to put unfounded</p> <p>20 suggestions and accusations.</p> <p>21 THE CHAIRMAN: I have the point.</p> <p>22 MR BUTT: You have been asked to come to a finding that it</p> <p>23 might have contributed to Jermaine Baker's death, based</p> <p>24 upon raw statistics contained in one paragraph of</p> <p>25 a witness statement from Ross McKibbin. To make that</p> <p style="text-align: center;">Page 186</p>
<p>1 submission is wholly unfounded. To state the obvious,</p> <p>2 you would need to address difficult questions about the</p> <p>3 reliability of such a small data sample --</p> <p>4 THE CHAIRMAN: I'm sorry, if I can be allowed to make</p> <p>5 an observation which comes from someone who has a bit of</p> <p>6 experience of criminal advocacy, which involves</p> <p>7 inevitably accusatorial processes rather than</p> <p>8 inquisitorial processes. The length of time for which</p> <p>9 W80 had Jermaine Baker in his sight would have made it</p> <p>10 extremely difficult, would it not, for anyone in his</p> <p>11 position to have formed a view that would have enabled</p> <p>12 him or anyone to say that he had been shot because of</p> <p>13 his colour?</p> <p>14 MR BUTT: Sir, yes.</p> <p>15 Even if something could be said --</p> <p>16 THE CHAIRMAN: If I may say so, it is a point which the</p> <p>17 length of time in this case has more than one edge to</p> <p>18 it, as a piece of evidence, it is a point to which</p> <p>19 Ms Kaufmann has perfectly properly referred and upon</p> <p>20 which she places reliance in relation to the</p> <p>21 self-defence argument, because of the length of time</p> <p>22 which elapsed between the bangs and the fatal bang, but</p> <p>23 it is what is sauce for the goose is sauce for the</p> <p>24 gander, it seems to me, as far as that is concerned.</p> <p>25 MR BUTT: I address it simply because a finding that race</p> <p style="text-align: center;">Page 187</p>	<p>1 might have contributed would be an incendiary one,</p> <p>2 however it is one that is not founded by any evidence.</p> <p>3 THE CHAIRMAN: No.</p> <p>4 MR BUTT: Finally can I say this, in our written closing</p> <p>5 submissions we expressed our sincere gratitude to</p> <p>6 Mr Baker's family for the manner in which they conducted</p> <p>7 themselves in these proceedings. We stand by every word</p> <p>8 of that. It has contributed to an atmosphere in this</p> <p>9 hearing room that has been unusual for difficult</p> <p>10 proceedings of this kind and it is right that we</p> <p>11 formally express that, because it has been of great</p> <p>12 assistance to all core participants, including my client</p> <p>13 and their witnesses.</p> <p>14 THE CHAIRMAN: I am sure that will be conveyed to them.</p> <p>15 MR BUTT: Sir, those are my submissions.</p> <p>16 THE CHAIRMAN: Did you want to say something, Ms Kaufmann?</p> <p>17 MS KAUFMANN: I am very sorry, and I hesitate to rise, but</p> <p>18 there was just one point that I wanted to bring up, and</p> <p>19 either for Ms Blackwell to clarify it with you at some</p> <p>20 other point.</p> <p>21 It was just in relation to one of the authorities</p> <p>22 that you both discussed and an interchange about gross</p> <p>23 negligence manslaughter and whether or not there needs</p> <p>24 to be expert evidence on the question of grossness,</p> <p>25 which is what you were both --</p> <p style="text-align: center;">Page 188</p>

47 (Pages 185 to 188)

<p>1 THE CHAIRMAN: I didn't say there needed to be, I said one 2 could have expected it. 3 MS KAUFMANN: On the question of grossness, the case law 4 I think is clear that no, one should expected that but 5 where the expert evidence is necessary is on the 6 question of whether or not the failure was something 7 which was a breach of duty because it fell outside the 8 bounds of reasonable decision making. That is where one 9 needs expert evidence, not on the grossness. 10 THE CHAIRMAN: Ms Blackwell will have an opportunity to 11 address me on matters of law at the conclusion of all 12 submissions and I would be grateful to her if she took 13 it up then. 14 Did you want to say anything else now? 15 MS BLACKWELL: Only to invite you to adjourn Wednesday 16 morning, when we will begin with submissions by Mr Penny 17 on behalf of W80. 18 THE CHAIRMAN: Mr Penny, can I send you away with a thought 19 to consider, please. 20 Do you accept on behalf of your client that as 21 distinct from any conclusion which I may reach in 22 relation to unlawful killing, I am entitled to express 23 an opinion as to the reasonableness of W80's belief or 24 action in my report, and do you accept that those 25 comments could be included in the chapter of my report</p> <p style="text-align: center;">Page 189</p>	<p>1 described as narrative conclusions? 2 I am not asking to you answer me now, but I would 3 invite you to consider it for Wednesday. 4 MR PENNY: Thank you. 5 THE CHAIRMAN: Thank you very much. 6 10.00 Wednesday. 7 (4.16 pm) 8 (The Inquiry adjourned until 10.00 am on Wednesday, 9 8 September 2021) 10 11 12 13 14 15 16 17 18 19 20 21 22 23 24 25</p> <p style="text-align: center;">Page 190</p>
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<p>1 2 3 INDEX 4 5 Closing submissions by MS KAUFMANN3 6 Closing submissions by MR BUTT96 7 8 9 10 11 12 13 14 15 16 17 18 19 20 21 22 23 24 25</p> <p style="text-align: center;">Page 191</p>	
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<p>A</p> <p>A-pillar 76:11</p> <p>A1 35:16</p> <p>A1/406 50:17</p> <p>abandoning 66:18</p> <p>ability 13:25 63:18 88:23</p> <p>abject 27:19</p> <p>able 2:10 32:20 35:14 39:15 48:13 69:22 72:4 88:22 108:12 129:12 133:21 155:8 176:9 183:18,25</p> <p>abort 66:15</p> <p>aborted 113:6 116:24 117:19 118:5</p> <p>abrogating 178:10</p> <p>abrogation 28:3</p> <p>absence 9:9 32:11 37:1</p> <p>absent 41:23 113:20 155:18</p> <p>absolute 42:8 61:5 64:22</p> <p>absolutely 6:16 8:15 12:1 24:12 30:24 37:6 40:2 52:12 61:24 68:9 75:1 76:18 77:24 79:9 86:22 89:5 90:12 102:1 144:12</p> <p>abundantly 60:21</p> <p>ACC 142:17 143:1 143:13 144:6 146:16 167:18 173:1 181:14</p> <p>accept 8:22,24 31:15 40:2,4,6 42:15 47:2 48:12 58:4 64:17 74:15 86:1 92:3,13,18 92:25 117:1,24 123:11 128:3 134:14 135:8 136:23,25 139:6</p>	<p>162:5 189:20,24</p> <p>acceptable 11:18 51:8,13 175:7</p> <p>accepted 19:14 75:5 115:3 122:18,21,24 130:4 145:8 148:5 153:22 155:10 166:2,21 167:20 171:20,23</p> <p>accepts 57:12 116:8,13</p> <p>access 79:6 149:11</p> <p>accessibility 147:3</p> <p>accident 119:21</p> <p>accord 139:23</p> <p>accorded 163:4</p> <p>accords 128:9 135:6 142:9 144:10</p> <p>account 55:18 68:7 74:11 76:22 79:20,22 83:2,21 84:2,3,4,6,13,19 85:2 93:22 116:8</p> <p>accreditation 172:23</p> <p>accredited 88:24</p> <p>accurate 46:25 49:16 65:2,10 68:13 144:8 147:5 181:20</p> <p>accurately 49:9,22 169:4</p> <p>accusation 98:3</p> <p>accusations 186:20</p> <p>accusatorial 187:7</p> <p>accused 161:11</p> <p>achieve 22:5,24 51:10 71:9 89:1 127:25 165:24</p> <p>acknowledging 141:14</p> <p>act 9:14 20:1 63:24 90:15 99:12 100:14 101:10,17 101:20 102:3,4 129:21 164:14</p>	<p>acted 12:13,14 85:21 132:11 164:16</p> <p>acting 7:2 166:6</p> <p>action 18:21 89:25 95:6 123:17 138:15 142:8 152:17 189:24</p> <p>actions 5:12 14:6 74:1 84:13 93:17 95:7</p> <p>active 19:16</p> <p>actively 156:11</p> <p>activities 34:3</p> <p>activity 124:6</p> <p>actors 161:5 178:11</p> <p>acts 147:4 181:19</p> <p>actual 36:25 71:14 149:1</p> <p>actus 95:8</p> <p>add 62:24</p> <p>added 80:13</p> <p>adding 126:4</p> <p>addition 17:9 68:22</p> <p>additional 140:10</p> <p>Additionally 151:20</p> <p>address 1:14,24 2:4 4:5 7:22 12:19 17:11 25:11 28:17 30:12 33:14,16 36:17 40:1 41:16 42:14 43:9 48:22 49:25 65:6 91:9 96:21 97:13 98:24 123:19 125:13 152:14 166:13 172:12 173:19 184:18 186:7 187:2,25 189:11</p> <p>addressed 23:8 29:11 63:15 70:21 91:2 97:11 104:20 111:9 121:12 170:11</p>	<p>179:1,17 184:8</p> <p>addresses 34:5</p> <p>addressing 1:20 53:17 65:21</p> <p>adequate 26:15</p> <p>adequately 16:25</p> <p>adjourn 189:15</p> <p>adjourned 190:8</p> <p>adjournment 44:11 96:15 136:9</p> <p>adjustments 40:23</p> <p>admitted 52:4,23</p> <p>adopted 134:11</p> <p>advance 27:11 29:6 66:21 67:3 85:9 137:4 145:11</p> <p>advanced 27:9 120:24 127:23 161:14</p> <p>advantageous 136:24</p> <p>advice 21:24 50:15 162:17 165:3,12 165:19,21 166:1 166:5 184:12</p> <p>adviser 20:3 138:17 153:24 154:15 165:2,5</p> <p>advocacy 187:6</p> <p>affect 47:1 147:7 167:3 171:25</p> <p>AFO 131:1,3</p> <p>AFOs 106:17 122:24 128:12 130:22 167:4</p> <p>afraid 3:23</p> <p>afternoon 5:6 96:9</p> <p>agencies 120:25</p> <p>ago 117:7</p> <p>agree 10:2 91:21 93:15 97:16,18 100:24 102:9 174:14 179:16</p> <p>agreed 7:4,6 74:6 74:11,22 75:5,13 75:17 77:8 78:14 81:1 105:6</p>	<p>122:15,15 123:3 123:8 124:3 125:4,21 132:17 138:17 145:11,21 146:6,13 148:2 154:2 165:11 181:4</p> <p>agreeing 17:22 41:11 120:16</p> <p>agrees 175:2</p> <p>ahead 13:18 115:24 126:9 127:6 137:9</p> <p>aid 17:18</p> <p>aim 25:8 51:10</p> <p>air 136:15</p> <p>air-powered 141:1</p> <p>akin 152:18</p> <p>albeit 29:17 37:25 47:23 48:18 50:7 60:11 62:6 134:14</p> <p>alerting 154:8</p> <p>allay 107:13</p> <p>allegation 176:16 185:15</p> <p>alleged 163:18 176:23,25 177:9</p> <p>allied 25:4 27:16</p> <p>allow 4:7 13:18 39:10,16,19 41:1 97:2 101:4 114:17 122:9 128:10</p> <p>allowed 8:16 16:19 56:14 87:11 99:11 108:1 121:2 126:13 127:3 165:21 166:5 186:19 187:4</p> <p>allowing 19:1 26:14 29:2 124:25 125:18,25 127:5</p> <p>alongside 173:17</p> <p>Alpha 159:15</p> <p>altered 106:14 134:17,18</p>
---	---	--	--	--

<p>alternative 99:13 amber 41:3,15 53:6 70:4 133:4 141:21 148:12 154:23 155:10 168:15,21 ambiguity 144:25 ambit 174:15,17 ambush 39:11 amended 111:11 amendments 167:12 amicus 162:21 ammunition 46:9 107:24 110:21 amount 73:18 amounted 5:19 9:25 10:4 amounts 185:8 Amoyaw-Gyamfi 111:20 ample 58:14 61:7 61:12,12 133:3 146:13 amplification 81:10 amply 131:13 133:20 analyse 54:6 analysis 18:4 36:11 37:2 74:14 92:11 and/or 17:1 107:24 110:21 144:1 169:15 177:3 anecdotal 29:20 Ankaa 32:7 33:21 37:5 107:23 108:10 110:21 122:10 158:20 166:24 167:11,15 answer 39:22 47:12,14 73:20 91:11 104:6,15 118:8 126:16,22 149:2 182:25 183:17 190:2 answered 33:2</p>	<p>answering 91:1 answers 104:14 antecedents 36:7 109:12,20 110:3 Anthony 102:24 anti-surveillance 63:13 67:24 68:4 68:17 149:7,15 150:2,7 151:9,11 151:19 152:7 anticipate 143:20 anticipated 92:1 anybody 5:4 55:7 63:8 184:25 185:3 anyway 2:7 96:7 AP 13:3 21:19 88:25 AP's 21:6 apart 10:22 35:16 37:16 68:17 118:8 130:4 147:8 163:15 165:8 apologise 92:4 apologised 166:22 171:24 APP 13:3 21:5,19 88:25 105:20,24 123:17 124:22 125:18 126:7 131:13 145:10 154:22 161:24 162:4,7 163:11 164:20 170:19 171:2,6 180:25 181:1 appalling 38:17 appallingly 86:10 apparent 91:15 113:25 122:16 131:1 140:18,20 160:23 175:16,17 176:20 apparently 115:8 122:2 Appeal 177:20 178:7 appear 37:25</p>	<p>101:12 102:4 106:25 146:7 149:17 151:2 183:22 appeared 149:15 appears 127:8 applauded 130:5 application 28:7 35:19,25 45:15 applied 13:14 16:4 25:15 59:8 172:9 173:12 174:24 applies 105:17 148:20 apply 13:20 51:11 89:3 90:13 97:20 135:11 169:12 174:23 applying 23:11 42:5 90:14 100:13 155:20 160:21 176:19 appointed 60:1 appreciate 2:2 185:12 appreciated 148:14 appreciation 51:5 apprehend 20:16 approach 9:16,18 16:12 17:20,22 32:6,16 38:17 42:2 93:16 97:20 135:6 139:24 160:12,13,18 169:23 approached 32:12 86:2,11 159:10 169:16 appropriate 5:11 6:25 13:7 18:14 25:4,15 49:11,12 54:23 93:15 105:3 111:22 125:2,11 153:18 155:1 156:2 158:12,23 168:23 appropriately 104:25 165:6</p>	<p>172:21 approved 157:20 approving 172:24 approximate 1:21 arc 86:15 area 40:1 72:7,10 75:23 76:23 77:14 78:16 80:10 84:23,25 114:12,15 155:12 162:1 170:9 181:4 areas 2:5 96:23 125:22 158:5,7 arguable 185:19 argue 48:19 argued 99:2,4 argument 99:6 182:20 187:21 arises 6:9 12:16 54:21 arising 9:6 21:8 92:19 armed 19:13,15 21:12 36:20 37:21 43:14 66:10 67:6,9 69:11 76:17 93:5 99:17 100:4,5 102:23 111:22 112:1 121:15 122:1,7,11 146:20 147:2 157:7,9 168:16 169:16 172:8 181:18 armoured 143:18 armourer 108:20 arms 77:11,24 78:2,4 arose 6:13,17 9:24 20:10 58:25 arrangements 37:6 38:1,3 arrest 19:13,15 51:21 66:11,12 66:17 93:3 97:3 99:12,14,16 100:4 108:18</p>	<p>114:18,25 166:6 arrested 111:21 112:12 124:6 arrests 17:15 18:14 52:2 126:20 156:12 arrive 99:18 arrived 30:19 65:25 arrogance 32:5 161:11 article 2:16 6:6,9 7:6 8:5,13,21 9:13,21 10:4,13 10:24 12:6,10 21:14 28:4 42:1 42:4 49:10 51:12 52:18 64:5 90:17 97:22 98:4,9 99:7 100:2,12,15 100:20 101:8 102:25 104:1 125:14 130:18 131:5 174:19 articulate 134:13 artificial 141:12 Arundale 14:2 21:5,25 26:6 28:9 30:11 32:18 41:19 51:4 52:14 69:16 74:10 126:4 127:6 131:10 133:8 146:6 173:18 Arundale's 40:9 ARV 122:25 aside 41:11 120:25 126:12 174:23 176:1 asked 42:7 70:16 73:2 84:3 106:7 112:3 115:11 117:14,24 125:12 132:17 134:22,23 145:19 147:6,19 148:14 150:19 154:14,19 156:21 158:22 166:12 177:16,23 185:4</p>
---	---	---	---	--

186:22 asking 53:16 67:18 70:3 114:18 177:25,25,25 190:2 asleep 61:12 aspect 50:20 126:11 181:6 assault 143:10 assert 68:10 asserting 83:1 assertion 82:21 177:7 assertive 160:10 assess 28:14 assessed 40:18 105:1 109:14 110:2 169:24 assessing 169:13 assessment 23:16 28:8,12,21 40:17 40:19 41:2,2,15 41:17,25 46:12 48:6,9 49:21 65:4,12 69:25 71:23 106:14 110:23 120:10 134:17 143:20 146:8 147:8,10 147:12,13,16,24 148:19 168:8,13 168:14,19,20,23 168:25 169:1,3,7 169:11,15,18,20 170:2,5 176:17 182:14,19 183:3 assessments 13:8 16:18 46:15 47:3 64:21 100:11 144:7 146:11 167:17,21 168:2 168:2,11 assist 18:13 33:24 36:4 57:8 65:19 95:23 109:5 161:17 170:11 178:1 assistance 101:9 102:17 107:16	188:12 assistant 171:17 assisted 20:2 106:2 134:25 associated 52:3 107:22,23 110:19 110:20 associates 34:4 36:16 106:4 assume 5:3 62:12 118:3 135:13 assumed 24:14,19 110:25 Assuming 113:16 assumption 24:11 107:1 139:10 143:9,25 assumptions 44:7 astounded 158:16 Atlas 158:2 atmosphere 188:8 attaching 46:17 attack 88:14 114:5 122:3 128:22 129:12 attacked 122:11 attacking 122:1 attempt 5:22 14:8 19:16 32:2 108:21 109:13 113:6 116:24 117:6,14 118:21 119:2 121:6 122:13 133:25 179:8 attempted 26:19 118:4 121:22 134:13 139:1 142:13 145:2 attempting 56:21 107:23 attempts 34:8 35:1 47:16,20,25 48:1 48:3 71:19 105:13 108:4 110:18 111:1 attending 29:18 attention 43:19 74:10,15 98:1	attributed 177:1 183:16 Audi 64:23 70:11 70:13,14 74:25 128:23 129:19 130:8 137:8 149:6 150:1,6,12 154:5 159:9 audio 37:24 50:1 60:15,19 61:2 74:18,22 76:14 137:12 140:5 144:7 audit 14:3 40:5 170:13 auditory 81:9,9 August 105:8 author 111:1 authorise 20:1 172:2 authorised 6:14 57:6 64:2 88:25 145:12 authorities 29:12 98:25 99:22 188:21 authority 39:15,19 103:8 147:1 172:3 181:18 automatic 122:12 available 18:3 25:14,21 27:12 30:25 36:9 53:14 57:4 59:19 60:7 67:5 70:8 92:8 128:2 134:8 138:14 140:1 142:6 171:5,12 173:13 184:18 avert 23:24 avoid 32:2 aware 96:12 115:7 115:11,12 117:5 140:25 141:3,15 147:1 151:22 159:16 181:17 awful 3:23 <hr/> B <hr/> b 139:15 149:1	178:15 B/2/5 104:10 back 1:3 9:2 12:9 20:20 59:14 67:21 70:22 71:18 72:6,7,18 75:20,20,24 76:1 78:19,24 79:8,10 80:15 126:16 137:4,12,18 151:12 152:10 161:24 178:16 background 137:24 backstop 52:9 bad 3:7 94:2 177:13,13 179:13 182:4 bag 77:17 78:1,11 78:15 79:5,13,18 80:2,16,17 83:8,8 84:6,10,19 Baker 99:10 120:4 130:12 133:24 141:17 176:19 187:9 Baker's 161:8 186:15,23 188:6 balance 17:1 22:22 27:21 51:14 125:14 133:11 182:12 balanced 156:8 balancing 18:19 27:22 28:1 bang 81:12 187:22 bangs 75:4,9 187:22 banter 150:24 bar 137:21 barbers 113:20 base 106:25 based 24:10 29:21 47:15 64:8 74:22 114:3 149:10 179:22 186:23 bases 6:10,20 59:4 basic 14:4,19 32:11 41:22	138:25 basically 61:11 basing 47:13 basis 10:11,13,14 10:14 12:12 14:10,25 29:20 35:11 48:8 84:16 88:8,9 92:18 93:17,19 95:8 99:14 105:21 110:4 122:8 132:9,20 152:9 161:14 163:19 174:21 185:19 bay 155:12 bear 67:14 110:13 142:20 166:23 bearing 11:17,19 47:7 70:21 110:22 beggars 70:11 behalf 1:9,11,14 4:17 95:20 189:17,20 behaviour 83:7 150:23 151:7 belief 2:13,14,14 62:4,6,8 70:12 83:22 84:7,21 85:20 86:16 88:8 189:23 beliefs 68:15 believe 11:11 73:14,16 79:17 80:11 87:17 100:7 130:24 132:7 believed 25:20 36:8 54:10 67:23 71:24 83:11 84:9 84:16 87:23 88:13 111:17 135:11 146:9 believing 88:6 bells 118:1,12 Belmarsh 25:10 122:6 bench 58:23 benefit 17:1 30:1
--	---	--	---	---

126:3 141:9	65:16,25 66:9,23	106:15,16,18,24	burglars 99:17,21	capable 57:14
benefits 28:2	92:20 114:1,4,9	107:7 108:24,25	burglary 99:11	124:1
124:18	114:11,13 141:22	109:1,3,24	burner 141:19	car 56:12 72:24
bespoke 156:16	147:17 149:9	111:14,19 112:4	148:11	73:14 112:11,15
171:20	154:8,17 155:8	131:16 147:13	Burrows 22:10,14	133:22 134:3
best 24:1 51:20	156:13 160:19	148:5 178:16	23:4 26:6 28:9	139:18 140:19
52:22 127:25	Brady 98:20 99:9	179:20 180:1	30:11,14 31:4	142:23 144:16
129:20 142:16	99:10 100:3	181:3	32:18 39:6 41:5	150:3,17,22
143:23 145:1	breach 3:8 6:11,15	briefings 44:19	66:10 69:17	152:1 155:7,11
158:8 161:18	6:16 90:25 93:16	46:13 47:4	74:10 81:4	155:14,18 159:13
better 63:18	93:23 98:3 99:6	131:19 144:25	126:10 127:2	159:15,18,21
125:13 139:7	100:2,15,17	171:13 178:21	128:16 131:3	carbine 73:19
142:25	101:7 172:17	179:3 181:1,6	135:7 146:6	care 31:16,22
beyond 84:1	174:25 175:2,3	briefly 7:3 8:22	158:15 173:18	43:10 92:13,14
166:14 177:7	175:18,22 176:10	17:13 42:14 90:3	Burrows's 83:13	92:19,23 93:2,21
bias 157:12 158:5	177:12 178:2	97:12 111:8	Butt 91:25 92:4	93:23 104:14
big 126:19 140:14	179:4,12 180:17	136:21 152:15	95:24 96:1,3,5,17	114:6 124:21
bigger 36:14	180:21 181:12	153:11 175:1	96:19,20 97:16	173:22 174:2,5,6
bit 63:11 134:15	182:3,4,23 184:5	bring 109:2	135:24 136:3,6	174:18 175:1
150:24 187:5	185:5 189:7	127:22 142:19	136:11,15,16,18	176:2 178:12
Blackwell 1:5,8,11	breached 98:9	146:25 181:16	136:20 166:17,20	180:18 184:19
1:13,18 2:1	100:20 115:9	188:18	173:22,24 177:18	career 156:25
73:13 188:19	130:18 163:12	bringing 30:7	183:12 184:11	157:12
189:10,15	175:4,13	61:23 72:18	185:1,6,8,13,14	carefully 16:8 49:7
Blackwell's 42:2	breaches 93:19	140:10	185:23 186:6,9	53:15 64:12
blame 115:17	177:2 178:7,10	brings 147:2	186:10,14,22	carried 20:22
119:9 138:22	break 1:22 3:18	broad 10:15 98:21	187:14,25 188:4	30:17 99:11
bleeding 122:3	19:9 44:2,3 96:9	broader 145:3	188:15 191:6	159:9
blindsided 127:11	96:18 135:25	162:22	Butt's 3:3	carry 24:4 27:22
block 154:5	136:4 179:16	broken 35:3 104:9		36:2 40:16 46:3
blocks 41:22	breakout 19:16	Brookes 74:8,13	C	52:18 103:7
blurring 20:10	Brian 137:6	75:16	C2 162:18	109:7
21:6 22:15 53:8	brick 159:14	brought 11:10	C3000 38:2 49:24	carrying 178:25
53:10 163:18	Bridge 9:18	29:16 41:9 121:5	57:3,3,11 137:13	cars 141:22 154:5
BMW 70:19	102:16	130:7 140:16	172:24 182:8	155:15 159:25
159:10,16	bridging 33:25	Brown 57:13	calibrate 18:25	case 5:9,9 13:17
bodies 29:12 32:13	brief 37:25 48:17	58:10,12 59:7	call 42:15 43:1,11	61:8 90:8 92:19
38:18	49:22 84:3 133:9	138:5	67:7 69:20	97:10 98:6 99:9
body 76:21 114:24	139:20 145:5	Bubbins 98:20,23	152:25 153:9,16	100:9,15 103:9
Bolam 93:17,19	148:6,24 180:17	Bubbins's 99:2	153:19,22 154:25	104:19 106:2
175:3,9	briefed 35:22,23	builders 68:18	156:1,4,8,16	120:13,21 131:14
boom 141:20,20	47:5 49:4,11	151:25 152:5	157:10 158:6,11	140:9 144:23
148:11,12	86:4 111:12	155:15 160:22	158:18,24 165:9	146:4 154:13
bore 54:5	134:23,24 135:15	building 41:22	called 31:8 41:3	161:6,7,15,21
bottom 55:3	141:25 148:10	42:21,24 153:2	70:5 141:21	170:16 172:8
bought 113:8	briefing 44:17,21	bullet 76:13 78:17	canister 141:2	174:11 176:4,12
bound 47:8	45:2,4,9,11,18	78:18 176:14	capabilities 57:16	176:13 177:19,22
bounds 189:8	48:10 49:9,16	bump 113:19	145:4	182:24 185:11,21
Bracknell 61:10	65:10 84:12	bundle 98:25	capability 57:22	187:17 189:3
			141:17	

case-by-case 132:20 cases 176:6,8 cast 135:19 174:15 cat 121:11 123:8 catch 21:10 81:11 catches 46:8 categorised 25:6 category 25:2,6,11 118:19 122:5 caught 46:7 129:21 151:23 causal 175:23 causation 3:10 95:2,11 130:14 175:22 176:3,15 182:25 causative 96:23 103:15 146:3 152:12 163:15 180:11 184:6,15 cause 59:5 81:17 138:7 156:3 160:6 caused 20:12 59:2 76:12 80:10 100:1 114:24 120:11 137:1 149:22 178:22 179:11 caution 43:16 151:6 cavalier 32:6 caveat 128:15 165:16 cell 18:4 113:2,8 cent 116:4,5 151:6 151:10 centimetres 76:8 central 24:12 37:6 130:17 131:17 164:12,18 centre 128:25 certain 103:22 certainly 25:22 30:5 106:13 141:22 146:2 182:3 certainty 61:5	cetera 126:21 chain 19:25 164:3 chair 37:12 75:20 CHAIRMAN 1:3 1:7,10,12,16,19 2:2 3:16,25 4:9 4:25 5:14 12:21 44:1,7,16 90:4,6 91:12,21 92:6 93:13 95:21,24 96:2,4,8,17 97:15 135:23 136:1,4,7 136:15,17,19 166:16,18 173:21 173:23 177:16 183:11 184:10,24 185:2,7,12,22 186:4,8,11,21 187:4,16 188:3 188:14,16 189:1 189:10,18 190:5 challenge 103:23 chance 89:17 113:17 133:4 176:10 185:16 chances 51:23 73:25 89:10 129:14 change 102:2 106:13 125:17 179:20 changed 27:13 108:6 110:10 135:17 changes 171:10 changing 180:23 channel 145:22 149:13 chapter 189:25 characterisation 92:15 characterised 30:14 179:13 check 16:5 106:8 checking 137:7 chest 72:7,10 76:23 77:13,17 78:11,16 79:18 80:3,5,6,10,16	83:9 84:19,23,25 Chesterman 157:18 158:5,14 chief 102:15,15,20 156:21 157:3,10 164:18 171:18 children 68:25 choice 7:19 66:24 153:2 choosing 4:10 66:18 chose 154:23 chosen 16:10 19:24 22:21 87:12 141:18 154:22 Chris 150:5 Cihan 113:19 circles 30:6 circulation 124:14 146:24 147:5 181:15,20 circumstances 10:23 11:8,9,11 11:12 25:24 30:23 48:21 56:16,19 83:23 100:3 105:2,5 120:21 125:12 130:21 138:16,19 144:23 154:17 156:1 160:15 172:8 cite 99:9 cited 163:22 176:6 citing 175:9 civil 100:19 101:14 101:21 102:8,10 CJA 8:25 claimed 113:13 134:2 claims 115:8 clarification 39:23 146:14 clarify 35:11 188:19 clarity 21:22 61:5 67:12 162:16 classification 25:2	25:3,4,13,14 classifications 119:1 clear 2:21 12:1 16:15 21:6,16,17 21:21 22:3,5 31:1 33:20 34:13 46:11,21 51:4 52:20 58:8 59:15 60:18,21 61:2,20 64:10 68:16 69:17 70:16 75:1 76:14 77:11 89:5 90:7 93:3 101:19 101:23 102:1 104:6,10,23 116:4,5 117:10 133:22 134:15 154:7 171:3 175:15 178:8 183:21 189:4 cleared 58:24 clearest 150:12 clearly 21:20 25:25 50:15 125:6 132:8 151:10 162:14 168:9 174:20 click 81:10,10 client 188:12 189:20 close 22:20 43:19 61:11,23 65:16 65:25 66:9,23 68:23 74:14 81:22 92:21 114:1,5,9,11,13 129:3 130:6 141:23 147:18 149:9 150:18 154:8,18 155:8 156:13 160:19 177:9 closed 26:13 103:25 104:3,20 105:10,15 106:21 107:18 108:1,6 108:12 111:7,10 132:8 179:17	180:3 closely 118:17 closer 1:23 closing 1:6 2:22 3:19 25:12 31:7 36:10 44:15,20 48:11 93:24,25 95:19 96:19 97:24 98:1,12 105:20 107:2,19 108:24 112:10 115:2 116:11,22 117:4 118:16 121:9 125:15 132:2 136:22 157:1,17 161:10 165:8 166:8 168:5 172:13 188:4 191:5,6 closings 5:17 clothes 117:17 CMP 50:1 54:5 57:3,10 58:13 59:21,25,25 60:16 61:18 62:15,16 136:21 136:23 137:5,5 137:19 138:24 139:14,25 142:15 144:3 149:11,22 177:1 coalface 86:1 Coates 128:13 coconspirators 54:12 code 11:5,6,13,16 13:4 coincidence 85:23 collate 36:9 collation 17:20 33:23 colleague 73:7 colleagues 73:21 73:23 89:7,9 collection 34:1 collectively 9:25 College 132:18,19 157:16 167:20 170:10 173:8
--	--	--	---	---

181:5 colour 187:13 combat 158:20 combination 109:10 184:4 combine 74:17 come 3:11 33:6 37:17 43:24 44:17 55:2 63:11 63:16 64:25 66:5 87:18 102:14 103:11 126:13 128:22 129:3,19 153:15 159:23 163:8 177:9,23 183:5 186:22 comes 42:11 81:1 92:23 114:7 143:14 178:16 181:11,12 182:2 184:4 187:5 coming 7:21 20:20 33:13 54:9 80:15 155:17 command 13:2 15:21 16:17,19 16:22 17:6 18:15 19:24,25 20:10 21:23 22:1,22 23:1 38:3 49:15 52:18 57:4 91:18 126:11,23 143:20 162:17 164:4,11 170:21,24 172:24 commanded 15:24 16:7 20:5 commander 54:19 54:25 145:19 146:19 170:17 183:15,24 185:15 commanders 27:25 54:19 97:10 123:16 125:1,5,23 148:9 153:23 155:5,11 163:6 168:18 169:11 173:11 commanding 60:10	commenced 5:20 37:4 comment 143:14 151:25 commented 41:19 comments 20:21 189:25 commission 35:17 commissioned 157:19 commit 53:21 112:20 committed 123:24 144:17 158:21 common 46:23 74:18 168:3,9 commonly 158:3 162:5 communicated 5:2 communication 14:5 companies 31:5 compare 79:20 170:1 compared 137:22 comparing 170:2 compellingly 43:10 competent 58:1 60:3,4,16,17 62:16 88:19 competently 58:9 60:6 compiled 45:6 complacency 14:20 15:23 37:8 complaint 120:20 complaints 179:15 complete 3:21 28:3 94:7 176:3 183:17 completed 5:5 33:8 40:4,18,25 50:22 75:12 88:3 88:6 170:13 173:3 completely 27:3 31:7 40:20 45:10 57:9,18 60:9	64:14 164:17 completing 42:7 89:21 completion 28:18 39:25 40:7,10,16 compliance 35:2 45:6 compliant 41:14 73:15 comply 21:14 34:21 35:14 82:25 88:10 89:16,18 complying 72:15 85:6 88:7,16 compounded 35:19 comprehend 57:18 61:14 comprehensive 184:16 compromise 113:1 119:12 151:13 computer 137:23 concede 131:5 concept 18:19 23:5 concern 30:14 68:19 113:25 156:3 158:15 176:7 concerned 6:19 7:6 10:7 14:22 23:20 91:19 92:13 95:2 124:12 149:18 165:17 174:10 187:24 concerning 32:19 concerns 21:8 29:21 31:1,1 103:12 105:9 149:14 155:24 165:18 171:4 174:25 concerted 18:6 concession 43:15 48:24 49:9 concessions 59:22 conclude 106:5	142:22 144:14 152:9 179:6 180:5,16 183:18 concluded 144:6 157:20 169:3 concluding 147:20 conclusion 6:5 8:12 36:19 66:3 94:3 103:3 114:21,22 128:10 130:17 131:9 143:9,18 146:3 148:17 163:8 172:5 176:12,14 177:24 180:7 189:11,21 conclusions 7:25 74:2 79:20 92:10 162:1 190:1 concocted 89:14 concoction 82:15 82:22,23 condemned 177:15 condition 51:1 118:18 conditions 118:22 123:12 conduct 10:25 11:14,18 16:17 94:21 102:23 148:15 168:13 172:16,25 173:14 175:7 178:11 181:11 conducted 5:1 13:15 19:6 41:17 91:24 99:5 188:6 conducting 149:15 151:11 160:10 168:1 confidence 74:19 186:17 confidential 119:13 configuration 139:7 confine 178:4 confirm 2:10 54:8	133:2 confirmed 122:5 135:19 156:19 157:11 159:20 165:15 182:15 confirms 137:10 conflates 137:3 conflicting 116:23 confrontation 100:1 confusing 164:16 connect 137:8 connected 108:10 connection 137:17 137:19 consequence 87:3 121:4 183:20 consequences 64:18 113:24 117:9 120:25 consider 4:16 5:11 12:4,5 13:18 22:22 26:25 27:19 29:18 31:19 47:8 95:9 123:17 124:18 141:11,12 158:13 158:15 162:25 163:6,7 189:19 190:3 considerable 9:1 157:14 consideration 23:9 23:19 24:8,10 26:16 32:22 42:1 42:8 43:6 153:3 181:5 considerations 123:20 131:6 considered 19:11 23:23 24:7 26:12 28:2,6 33:7 41:22 42:16,17 42:19 52:22 73:2 73:3 91:14,20 95:7 98:19 126:25 127:19 132:19 146:20 156:11 165:12
---	---	---	---	---

166:2 169:21 173:17 174:1 considering 110:14 considers 143:13 consisted 42:4 consistent 15:5 19:18 26:15 43:3 46:24 75:6 76:25 78:16 80:18 85:4 85:16 128:2 165:13 166:3 170:8 174:19 consistently 60:22 conspiracy 15:18 18:8 26:14 27:8 29:11 31:24 34:17 38:19 39:4 53:21 54:10 97:2 109:5 114:17 126:1,19 166:5 conspirators 33:6 34:18 36:6 47:17 107:6 108:4 112:8 119:22 129:11,17,21 130:5 145:15 179:24 constable 171:18 constantly 149:19 constituted 95:7 constitutes 8:13 constraints 160:14 constructive 22:7 consultant 39:17 consultation 163:16 consulted 32:14 consulting 170:10 contact 50:25 76:8 82:7 130:7 144:1 169:12 contain 67:7 69:22 152:25 153:19 154:24 156:1 158:24 contained 98:25 186:24 containing 46:9	containment 42:15 43:1,11 69:20 153:9,16,21 156:4,7,16 157:10 158:6,11 158:18 165:9 contemplated 42:5 93:7 contemporaneous 15:10 contend 5:18,25 15:11 58:8 64:1 64:19,20 78:4 87:15 90:19 100:17 content 7:11 44:21 55:25 106:23 151:20 160:4,8 162:18,19 167:14 174:6 179:2 180:25 186:4 contention 7:8 contents 77:16 context 11:22 19:16 23:2 28:6 29:9 46:1,5 contingencies 28:23 41:21 contingency 13:8 continue 56:15 66:16 180:13 continued 5:22 114:20 contraband 30:8 contradicted 107:7 180:1 contradiction 104:21 contradictory 36:17 180:24 contradicts 151:20 contrary 28:19 58:7 64:18 87:22 94:13 105:4 117:2 161:1 contrast 74:14 83:10,25 134:1 169:7 contrasted 98:18	114:18 148:1 contravention 34:12 contribute 95:13 contributed 6:3 95:4 186:15,23 188:1,8 contributing 47:2 contribution 6:22 95:12 175:23 contributions 95:17 control 18:2 32:20 38:2 56:6,14 122:20 127:21 129:1 159:21 160:10 172:24 controversial 97:23 convenient 96:5 135:22 Convention 6:7 98:4 100:12 174:19 conversation 117:7 144:12 148:12 converted 4:21 conveyed 39:10 46:5 110:18 111:1 145:19 178:22 188:14 cooperate 32:3 120:11 cooperation 29:13 38:21 cooperative 161:17 coordination 160:9 COP24 124:22 162:7 COP4 160:2 COP53 105:23 copy 109:2 143:1 core 1:9,11,16,19 5:10 97:24 103:24 105:14 188:12	coroner 9:3 12:11 102:15,20 coroner's 102:15 Coroners 101:10 102:4 coronial 8:25 corporate 13:12 30:10 31:3,12 169:17 correct 49:14 99:20 112:2 116:9 120:8 121:18 125:16 127:24 132:1,6 144:20 147:19 153:5 154:16 160:21 183:15 corrected 166:24 186:11 correction 164:1 correctly 59:5,16 71:17,21 152:5 corrects 107:15 corroborated 144:1 corrupt 29:24 119:18 corruption 26:10 29:19,22 30:2,3,4 30:9,13 37:3 119:17 123:13 counsel 1:19,24 97:17 186:19 countermand 151:16 country 158:10 counts 26:19,22 couple 75:3 120:1 course 2:6,11,22 4:5,7 8:6 12:23 21:11 34:25 35:13 47:19,21 47:24 52:23 60:25 62:2 67:1 69:6 78:10 88:21 89:25 94:15 96:1 96:3,12 98:21 100:21 101:4 108:11 110:13	112:18 114:18 117:4 122:7 123:11 124:15 125:19,21 126:6 128:3,15 130:11 134:14 135:11 136:12,23 138:5 138:25 139:6 141:2 142:7 154:1 156:6 158:19 159:6 167:20 170:8 180:18 181:9 court 23:6 36:1 38:16,21 39:10 45:15 65:15,16 98:12,20 99:6 100:3,10 108:25 114:10 119:25 177:20 178:7,19 cover 2:6 82:1 86:18 153:19 160:12,12,17 covert 128:18 131:1 CPs 10:6 50:15 175:8 crafted 16:8 create 122:21 175:20 created 105:19,25 129:12 176:11 credence 83:2 Credible 118:20 credit 173:1 criminal 6:24 10:8 15:17 17:10 22:3 29:6 30:5 34:4 38:15 50:7 90:13 90:14 94:4 97:21 100:19 101:13,21 102:8,10 109:12 124:5,14 130:24 135:12 140:3 145:2 150:23 163:17 177:15 187:6 criminal's 123:7 criminality 134:6
---	--	---	--	--

158:19 criminals 21:11,11 99:12 121:5 122:1,11 124:8 129:2 157:7 CRIMINT 34:23 179:16 CRIMINTs 104:8 criteria 26:1 131:12 172:6 criterion 35:18 critical 30:11 47:7 49:25 50:10 71:9 101:6 104:2 107:11 122:16 125:23 126:9 127:13 132:5 171:19 173:2 critically 130:3 criticise 142:24 173:11 criticised 133:5 142:8 154:11 163:1 criticism 40:3 94:21 165:7 criticisms 28:8 40:7 cross 82:5 cross-checking 37:2 crossing 82:6 Crown 35:25 38:16,21 45:15 108:25 114:10 119:25 178:19 crucial 84:18 CT 112:23 CTI 7:5 148:1 CTSFO 56:11 84:12 88:19 92:20 122:25 CTSFO's 170:1 CTSFOs 35:21 37:7 42:25 44:23 45:16 46:11 48:16 49:1,15 55:3 63:25 64:21 64:22 71:4,8	88:21 111:12 134:17,21 135:2 145:14,23 146:8 147:6 154:14 156:4,7,19 157:6 157:8 169:10,14 178:20,23 179:20 180:11 182:11 CTSFOs' 148:19 cul 158:17,22 cultural 157:12 158:4 culture 155:25 cumulatively 90:24 94:5 current 102:19 127:25 currently 73:7 157:21 173:9 curriculum 145:10 155:20 160:2,23 161:25 162:5,19 163:12 181:1 cursor 24:8 29:17 custodians 109:14 custody 39:7,14 109:6 117:22 cut 62:23 167:6,7 167:10,12 cynical 32:4	dashboard 79:24 82:13,17 88:2 data 187:3 database 34:23 date 36:16 94:23 106:5 121:7 dated 77:2 137:10 144:24 Davies 150:5 day 19:8 24:16,23 24:23 26:2,12 33:11,11 36:25 59:17 99:15 112:6 113:5 114:7 115:12 117:11 122:6,18 122:21,22 123:5 126:3,15 131:6 133:8 135:5 137:18 138:1 139:12 142:8,12 142:25 144:13 146:9 147:14,16 147:18 150:12 151:7 154:3,25 155:4,4,17 156:9 156:10 159:7,14 159:18 169:25 170:9 171:13,22 182:1 185:13 186:8 days 118:2 137:9 140:5 DC 149:10 150:8 150:14 151:14 DCC 157:18 158:5 158:14 DCI 35:6 109:17 133:10 140:6,22 141:14 145:21 153:9 156:9 164:12 166:9 167:11 168:20 de 92:16 158:17,22 173:25 174:15,22 175:25 dead 5:24 98:24 deadline 61:17 deal 3:12 4:9 26:7	27:17 33:16,17 59:24 71:6 74:9 74:9,19 103:24 112:9 113:15 115:1 135:24 136:1 157:6 160:3,22 161:4 161:22 166:9 dealing 26:3 71:22 103:21 148:16 160:23 161:8 deals 159:25 dealt 35:2 72:3 86:12 118:14 150:13 death 6:3,23 10:18 11:1 95:4,18 99:10 102:23 130:11 175:14,20 175:21,21,24,24 176:10,19 177:14 179:10,11 182:7 182:21 183:7 186:16,23 debate 32:15 debrief 23:5 decades 21:8,16 22:1 deceased 98:23 December 14:1 15:16 17:17,19 18:10 25:20,23 26:18 27:10 29:6 34:3 35:22 37:18 37:24 38:1 43:24 44:13,17 45:3 47:4 59:1 94:18 109:6 112:9,22 115:23 124:8 126:1 131:14 134:7 137:5,9,11 153:14 166:25 167:1 172:9,9 178:21 decide 114:24 119:4 decided 29:14,15 32:16,17 63:23 80:14 184:12	deciding 29:1 80:21 decision 10:21 13:5 17:18 18:8 18:10,16 19:5 23:11,13,17 24:13,21 27:12 29:21 30:15,17 30:18,23 32:1,8 32:10 39:8,9 42:10 71:16 83:3 85:13,14 86:8,10 87:13 95:5 97:2 97:6 120:23 125:13 132:25 145:4,17 148:24 150:18 152:10 155:9 162:13 166:9,14 167:3 172:1,2 180:7,10 180:16,22 189:8 decision-making 21:21 162:15 decisions 30:20 58:16 86:11 125:6 127:24 decisive 85:4 152:16 declared 53:5 133:4 decline 120:11 decrease 57:1 159:4 deep 4:18 deeply 17:10 30:11 37:7 default 176:24,25 defence 2:9 7:2 9:9 12:14 90:15 97:21 deficient 161:3 define 174:17 defined 169:4 174:21 178:17 definite 135:10 140:13 definitely 133:14 150:6 definition 174:23
	D			
	D 191:3 d'etre 20:23 DAC 168:4 damage 76:12 78:17 danger 73:12,22 89:8 100:8 121:25 129:10,11 129:22 dangerous 24:23 25:7 39:3 43:20 87:10 105:14 157:6 178:6 dangerously 35:23 dark 31:3 darkness 99:17 dash 80:8 87:21 88:2			

definitive 160:7	81:25 82:9 190:1	differ 167:8	discharge 12:3	103:15
delay 4:20 123:18	describes 124:20	difference 2:17	17:6 27:3 31:17	dissent 92:11
deliberate 32:2	designed 158:20	7:23 8:8,9 83:19	42:12 91:17 95:1	dissipate 123:9
82:22	desirable 120:19	109:19 110:6	100:22	distance 76:7
deliberately 7:1	desire 20:16	134:25 135:3	discharged 70:7	81:15,20,25 82:1
79:10 83:6 108:5	desired 22:6 51:7	different 10:14	discharging 11:22	159:18
119:20	despite 13:17	21:13 26:11,17	73:3	distill 178:6
deliberations	15:10 34:10	27:4,11 51:5	disclose 85:12	distinct 189:21
14:11,16 23:12	48:15 100:9	64:14 72:1 91:8	disclosed 47:23	distinction 8:15
24:4	108:4 143:3	95:13 102:6	discourtesy 5:4,14	47:22 102:11
deliverable 22:8	detail 10:17 13:10	114:22 117:17	discrete 185:25	distinguishing
delivered 45:2	17:11 25:12	137:3 140:15	discretion 10:15	41:11
demonstrably	27:18 32:8 40:1	164:11 169:18,21	10:15 12:7	distortions 83:18
107:16	44:20 45:1 51:19	178:15 180:13	discuss 19:20	distraction 89:20
demonstrate 30:18	59:23,24 141:11	181:11	discussed 29:17	distressed 155:19
49:7 82:24 90:25	147:3 169:8	differentiate	54:18 140:21	distributed 145:16
demonstrated	184:18	174:22	185:23 188:22	document 110:9
21:20 32:11	detailed 36:11	differentiated	discussing 151:15	143:19 160:2
162:14 171:16	48:25 58:5 181:4	143:24	discussion 32:15	171:25
demonstrates	details 62:20	differently 114:19	38:1 52:5 141:4	documentary 15:7
31:14 43:11	detected 59:18	136:24 139:9	Discussions 58:15	documentation
133:20	detention 123:22	difficult 111:5	dishonest 109:18	15:11 45:5,6
demonstrating	determination	130:16 133:9	dishonesty 110:7	documented 28:16
156:17	101:11 102:8,14	148:9,14 155:24	161:12,13	documents 129:1
deploy 88:22	determine 49:18	163:17 180:21	displace 123:18	129:4 137:14
112:24 149:8	74:16 100:24	181:2 185:18	disposition 156:22	167:15
167:4 172:1,7	101:12,20,23	187:2,10 188:9	disproportionate	doing 18:22 23:17
deployed 29:5	118:4 145:23	difficulty 71:23	85:22	69:6 72:9,11,14
43:20 51:22	166:12 170:22	103:21 104:15	dispute 2:19 7:11	78:9 84:24 88:1
160:15 172:4	determining 27:1	168:12	9:23 10:6 75:2	88:11 91:10
deploying 160:19	27:20 100:18	diminish 123:15	103:9 172:11	142:24 172:15
deployment 14:15	develop 33:22	dipping 16:6	174:16	door 71:13,18,21
37:6,22 51:24	123:25	direct 52:17 63:15	disputed 131:12	72:4 86:14,19,19
57:7 97:1,5	developed 27:14	directed 29:1 50:6	disrupt 99:13	87:5,7 141:20
102:23 103:16	33:24	86:25 92:2	121:4 124:13	143:18
114:2,21 131:12	development 37:2	direction 80:17	disrupted 24:15	doors 71:18 86:20
131:14 149:4	89:2	directly 33:10	disrupting 16:25	double 20:14
153:13 158:1	devices 37:24	56:18 115:4	23:16 122:19	161:22 162:3
167:1 170:16	devote 183:25	175:8	disruption 17:2,2	163:25
172:2,6 179:21	devoted 15:17	disagree 48:22	26:1 99:15 123:6	doubt 3:12 15:22
184:14	34:11 37:22	91:21 127:6,16	123:14 124:3	20:8 35:18 74:23
deployments	61:23 63:2,3	127:17 128:7	disseminated	84:1 86:6 116:16
21:12 88:23	DI 115:7,7 116:17	130:12	131:19 132:16	116:18 119:5
112:17 172:10	116:19,25 119:6	disagreed 128:8	180:6	121:18 135:19
deposed 34:2	119:9 163:16	156:23 181:21	disseminating	139:17 143:4
deputy 171:17	168:20	disagreeing	106:15	150:10 156:14
descend 185:17	diagnosis 139:6	174:16	dissemination	downside 125:13
described 21:5	died 5:18 6:2,5	disappearance	33:18,23 35:20	Dr 74:13 75:16
65:11 79:13 81:8	123:3	85:8	64:2 96:25 97:4	draw 45:19 74:3

79:21 91:3 92:10 98:1 162:1 drawing 156:24 drawn 8:15 36:7 drive 21:10 38:18 138:8 driven 16:20 130:25 150:3 driver 32:23 drivers 121:17 159:22 driving 20:18,24 drugs 30:8 drum 16:16 drummed 84:12 dual 160:17 due 59:1 124:15 dumbfounded 40:21 duress 109:14 119:23 duties 7:7 12:2 17:8 28:1,3 70:7 94:7,24 95:1 duty 12:4,5 31:16 31:22 35:14 49:15 54:25 64:4 90:11 92:13,13 92:16,19,23 93:2 93:10,23 124:21 169:25 173:22 174:2,5,11,15,18 174:21,25 175:2 175:5,12,12,18 176:2,10 178:12 179:5 180:18 181:12 182:3,5 182:23 189:7 dwelt 58:5 dynamic 144:7 dynamically 160:19	132:11 166:23 early 29:14 58:14 70:3 128:1 earth 4:20 9:12 easily 57:14 easy 2:9 edge 187:17 effect 15:18 27:8 46:19 47:20 56:21 65:3,6 98:15 101:11 102:2 107:5 109:15 110:3 117:22 127:7 139:14 146:22 147:11,21 149:23 152:12 163:15 184:6,15 effected 52:3 70:22 93:4 170:15 effective 21:23 157:21 162:17 effectively 51:23 92:24 123:21 effects 81:25 efficiently 99:25 effort 18:6 159:4 EG39 58:22 138:12,14,18,22 139:1 EG39's 57:16,23 59:2 137:20 139:5 egregious 6:4 eight 10:17 either 9:25 12:5 25:21 59:4,16 66:21 73:6 76:1 88:8,9 90:24 99:13 114:24 133:2 140:16 144:20,22 148:23 148:25 177:24 182:10,18 188:19 elaborate 130:1 elapsed 187:22 elbow 77:17,23,25 elements 3:3	elevate 18:22 48:6 elevates 48:10 elicited 63:5 eliminate 123:21 email 116:16,20 embark 1:6 emerged 91:19 99:19 emergency 121:23 123:2 Emily 115:22 emotionally 155:19 emphasise 7:7 employees 119:19 120:9 enable 51:22 enabled 17:15 37:16 61:3 63:22 64:2 95:14 131:23 145:7,9 146:17,22 147:7 147:15,23 148:7 148:18,25 181:7 181:16 183:2 187:11 enabled' 146:24 enables 12:11 encompassed 19:13 end-to-end 137:17 endeavours 29:25 energies 15:16 63:1,3 enforced 157:19 157:23 158:7 engage 30:7 55:8 87:11 149:2 engaged 7:8 19:17 67:24 93:11 108:15 149:6 150:2 engaging 29:3 68:4,16 152:7 engineer 58:1 engineering 138:17 English 146:18 enhanced 88:22	140:5 141:10 enjoined 123:16 enquire 108:12 enquiring 145:25 enquiry 157:10 ensure 4:20 7:14 13:5,13,14 14:4 16:3 21:1,14 34:8,13 35:9 36:14 38:18,21 39:18 40:5 45:1 49:15 51:20 58:1 104:24 174:6 179:19 ensured 139:11 ensuring 22:12,15 43:23 130:6 172:22 entail 100:12 entered 49:19 99:21 104:8 147:17 enterprise 145:2 entire 4:19,23 38:12 57:11 82:5 93:1 113:21 entirely 14:8 22:17 42:3,24 46:24 50:6 54:22 56:11 61:23 69:13 76:25 85:4 91:19 94:13 106:1 112:2 117:24 121:11 135:23 147:19 159:24 162:21,23 163:3 173:4 entitled 124:18 161:19 189:22 entries 105:24 entry 75:19,21 137:10 environment 43:22 63:18,19 67:17,19,20 69:20,21 70:2 environmental 43:7 69:12 160:5 160:14	envisaged 24:9 148:3 equal 50:3 equally 87:5 107:13 equipment 50:2 57:4,13 58:14 59:1 137:1,3,5,8 138:1,16,19,23 139:4 Eren 18:2 19:10 24:17 25:15 26:8 33:10 34:6,18 36:12,15,18,21 36:24 39:7 56:6 56:6,18,22 65:20 106:4,11 109:5 111:20 112:17,23 113:5,13,17,19 117:12,20 118:11 119:4 121:19 122:1,12 123:7 123:10 133:21 Eren's 15:19 18:5 56:12 108:17 err 151:5 erroneous 98:14 error 31:15 87:3 98:6 138:11 159:7 errors 5:19,20 6:1 6:2 99:7,23 100:10 166:21 167:3 171:23 escape 5:22 15:19 24:24,25,25 25:6 25:9,14,19,23,25 26:4,4,11,20 27:2 27:8 39:4 56:21 65:20 69:23 108:21 109:15 110:3 117:12,16 117:21 118:1,5 118:11,20 121:12 123:10,12,15 140:24 escaped 26:8 72:24 escaping 109:6
E				
E 117:17 191:3 e-disclosure 186:1 earlier 17:15 40:24 63:16 69:15 93:12 99:14 130:18				

<p>121:19,21 especially 86:16 93:2,25 98:16 148:15 176:15 essential 21:23 69:12 162:13,16 establish 27:16 50:14 52:21 56:24 62:18 90:10 183:13 established 52:10 102:22 165:16 185:5 establishing 38:2 51:15 establishment 118:9 estate 121:23 et 126:21 ethics 11:5,6,13,16 European 6:6 98:20 evaluate 16:22 evaluated 35:4 evaluation 27:4 event 3:13 9:14 14:17 25:22 38:8 52:14 59:8 69:17 94:13 100:13 115:20 128:21 152:11 184:13 events 74:20 114:19 everybody 1:3 48:15 55:1 81:13 evidence 14:25 15:7,9,18 18:13 19:14 24:1 26:18 28:10 29:6 32:11 33:20 34:8 36:15 37:1,9 38:5 40:10 42:25 43:9 46:11,24 52:25 53:23 57:13 58:12,21 60:12 64:9 65:13 66:13 66:23 67:16,18 72:3 74:2,3,6,15 74:16,18 78:3</p>	<p>79:17,22 80:13 80:24,25 81:5 85:18 87:16 91:14,15 99:16 103:25 104:3,18 104:21 105:8,15 106:7 107:18,25 108:12 113:3,9 113:17 114:4,6 116:10,21,23 117:3,5 120:12 122:6 123:10 124:1,10 126:4 127:8,13,15 128:5,8,14 129:20 131:8,11 131:15,18 132:7 132:15 133:19 137:6,20 138:21 139:16,23 142:17 144:18 146:1 148:17,21 149:10 149:23,25 150:5 150:12 153:23 155:3,4,22 156:6 156:25 157:5,18 158:14 165:8,16 165:23 167:13,16 167:19,23 168:3 168:5 169:13 171:3,7,21 172:12 173:5,13 173:15,18 176:9 177:21,24 180:3 180:6 182:13,15 184:2 185:18 186:14 187:18 188:2,24 189:5,9 evidenced 56:5 evident 132:6 evidential 17:24 27:17 50:12,14 51:3,4,15,19,25 52:5,21,22 53:20 54:3,5 55:23 56:24 61:18 62:19,25 65:13 65:24 95:15 129:7 183:19</p>	<p>evidently 116:13 exactly 12:16 45:21 78:9 84:23 86:25 102:5 117:23 118:24 144:3,4 160:24 163:4 177:18 examine 108:7 167:9 170:18 examined 53:16 169:8 examining 10:17 example 9:6 24:18 27:7 31:25 32:5 32:18,25 33:8 54:10 63:5 70:22 95:15 119:21 163:19 169:17 186:1 examples 98:19 excellent 66:4 exceptional 24:25 25:13,25 57:5 118:19 120:21 121:11 177:10 180:21 exceptionally 3:7 94:2 177:13 179:13 182:4 excess 78:21,23 79:1,3 exchange 140:23 143:13 144:2 exclude 158:12 exclusion 81:9 exclusive 56:4 exclusively 37:23 55:6 excuse 14:8 execution 98:7 exercise 12:7 18:24 24:5 27:22 28:1 41:17 52:13 52:19 55:9 148:15 170:1 exercises 19:6 exhaustively 97:23 exist 15:8 existed 47:11</p>	<p>existence 92:22 140:20 exists 10:24 expect 2:5 185:15 expectation 143:11,19 expected 14:10 134:2 144:9 189:2,4 expecting 136:17 expense 83:15 expensive 57:7 experience 21:17 40:12 58:2 68:11 119:24 142:19 150:21 156:24 187:6 experienced 151:8 expert 57:12 148:3 172:18 176:8 177:20 188:24 189:5,9 expert's 165:14 experts 40:3 77:8 78:14 111:25 122:15 123:8 124:3 125:3,9,21 125:23 126:2 127:15 128:5,6 130:3,16 132:18 132:18 135:6 141:8 142:17,21 144:10 146:5,16 148:21 154:1,19 161:1 165:11 167:19 168:22 171:19 172:5 178:1 181:4,24 182:14 185:3 experts' 128:14 165:19 166:1 explain 82:10 83:16,19 105:24 179:8 183:12 explained 14:2 23:5 35:9 38:9 38:18 45:11,12 45:18 46:6 50:3 59:7 77:5 81:3</p>	<p>83:12 84:22 104:19 105:22 110:7 117:15 121:20 140:12,22 142:7 155:2 158:21 159:6 169:20 170:7 180:20 explains 111:10 explanation 20:9 83:13 85:9 86:21 104:11 explanatory 101:16 102:1 exploited 18:5 explore 48:25 51:18 explored 106:23 127:24 130:16 134:21 160:20 186:16 expose 107:11 express 68:19 104:5 113:25 119:5 172:13 177:17 185:4 188:11 189:22 expressed 43:16 103:3 125:9,24 154:13 157:22 188:5 expression 147:25 expressly 102:12 115:10 117:1 170:20 180:18 extant 118:7 extend 4:18 79:13 extended 124:21 extensive 112:20 156:24 extensively 138:24 extent 3:2 7:17 15:20 26:16 37:15 41:6 76:3 97:11 114:3 145:24 154:11 167:9 168:7 external 117:17,20 120:25</p>
--	--	---	---	---

externally 122:4	147:1 150:25	8:17,19 20:9	107:9 108:23	faulty 59:2
extract 4:15 70:24	181:18	37:10,11 40:15	109:17 110:16	favour 124:25
87:4 92:21,25	faced 46:12 72:3	62:13 91:3,4,6	113:2,23 116:2	favourable 15:4
153:18	89:4	93:20,21 94:16	117:15 121:8	favoured 17:1
extracted 72:25	facilitate 25:23	95:3	129:16 134:11,20	FE 137:12
extracting 71:22	29:5	failure 8:12,19	139:14,19 142:9	FE10 150:10
extraction 67:1	facilities 50:4	10:1 13:19,22,23	149:5 151:21	FE11 151:24
69:11 70:1,21	facility 59:9 60:5	14:9,18,23 16:21	152:23 154:10	FE19 132:5,12
71:15 89:21 93:5	facing 71:25	17:5 22:24 24:3	155:5 161:8	fearless 101:3
97:7 152:14,23	fact 2:21 10:16,23	24:4 27:16,19,21	162:1,20 163:20	fears 107:13
154:12,16,20,23	20:25 24:22 26:8	28:10 30:12 32:9	163:22,25 168:17	feasible 7:18
154:24 155:1,21	28:21 38:7 40:21	32:24 33:2,19	173:2 174:14	feature 166:16,18
156:11,23 157:3	42:23 43:4 48:23	34:21 36:11,14	177:2 178:5,13	featured 167:19
157:9,15,23,25	53:20 86:24	36:14 38:11 40:6	179:19 183:8,12	features 84:18
158:2 159:24	89:24 94:9 99:25	40:16 42:12	183:22 184:7	126:5
160:11,23 161:2	101:5 102:19	44:25 54:14,15	188:6	February 77:3
extraordinary	109:13,22 112:12	56:24,25 59:4	family's 12:22	feds 152:2
14:20 71:15	118:13 119:15	91:17 94:6	74:14 105:4,20	feed 27:5 41:18
extreme 30:14	128:8 130:19,25	106:19,22 112:8	110:9 112:7	57:21 59:7,12,19
43:10	137:2 138:20	113:25 115:4,5	118:16 120:9	61:4,13,17 63:4
extremely 22:3,4	149:18 150:7,15	116:12 132:4,5	132:2 139:22	67:21 138:3
105:13 187:10	156:9 162:4	132:11 137:1	152:19 161:10	139:11
eye 151:24	165:1 166:22	138:9 148:23	164:15 174:18	feelings 40:9
eyes 66:15 71:9	170:11 171:6,16	154:2 170:14	177:4,8 179:22	feigned 122:2,3
152:6	177:23 179:24	177:9 179:15,19	far 6:18 7:5 10:7	fell 189:7
	183:12	183:16 189:6	32:1 43:19,19	feud 20:19
F	factors 27:20	failures 5:19,19,20	47:18 48:9 51:1	Fifthly 76:12
F 111:17	32:15 47:2 85:1	6:2,21 8:11 9:24	67:11 68:13	figure 77:18,18,21
FA 14:11 15:8	95:13 120:22	9:25 33:15 35:19	92:12 94:6 95:2	77:21,22 78:6
28:18 33:8 39:25	127:9 160:5	36:9 49:25 50:3	106:14 113:8	figures 78:18
168:8,13 173:3,7	facts 10:18 12:5,23	56:23 59:23	124:11 134:19	final 103:11 161:4
FA1 40:4 170:12	45:22,24 90:19	178:13 179:7,9	155:23 163:14	184:7
FA2 34:2 35:15	92:10 98:22	fair 2:3 47:10	165:17 174:8	finally 3:10 4:21
36:24 40:7 41:19	100:23 176:4,13	104:1 169:4	179:10 183:21	97:9 102:18
42:8 108:9,14	176:15,19	fairly 181:25	187:24	110:15 113:23
109:20 110:5	factual 7:24 8:18	fairness 185:14	farm 158:10	130:15 158:4
128:24 130:1	faded 15:2	fall 25:11 90:19	FAs 28:16 40:24	180:16 185:23
166:21 167:15,25	fail 138:4,7 159:6	93:17 178:11	fast 154:5	188:4
171:10,11	failed 16:16 27:3	familiar 177:11	fatal 6:17 9:9	find 8:4,10,11,17
FA2s 167:10	33:21 34:13,15	family 1:15 4:17	84:14 90:8 99:5	31:10 37:12
FA3 40:8 41:19	41:20 54:4,8	5:5,18,25 15:20	187:22	51:13 62:12
128:25 130:1	55:8 60:5,9 71:8	31:24 40:4,20	fatalities 11:4	70:14 100:7
167:2,25 171:23	71:19,19 94:10	55:5 57:18 58:7	fatality 11:21	101:9 145:10
FA5 42:20 51:17	94:24 107:6	78:3 87:15 90:8	fatally 48:8	162:7 175:12
56:17 130:1	179:25 183:19	91:15 95:20	fault 58:24 59:1,5	finding 8:4,7,18,20
152:24 153:9,13	failing 14:19 57:25	96:12 99:2 101:1	59:8,17 60:2	9:4,5,6 10:20
153:21,24 165:20	88:10 90:23	103:24 104:1,5	105:16 116:14	12:6,10,11,13
165:25	106:6	104:13 105:11	123:5 137:18	100:9 127:23
face 5:8 76:21	failings 3:5 6:1	106:3,16,24	138:20 183:20	186:22 187:25
85:10 120:2				

<p>findings 9:11,20 9:23,24 10:16 11:25 37:11 74:21 98:10 101:5,6 105:11 180:19</p> <p>finds 110:17</p> <p>fine 148:16 176:16</p> <p>finish 44:4 136:12 136:17</p> <p>finishes 120:4</p> <p>fire 86:15</p> <p>firearm 27:15 35:2 36:6,13 48:14 53:25 60:23,24 61:21 62:10 64:24 67:13 76:20 86:17 107:7 110:1,5 111:17 131:2 133:16 134:6 139:18,19,21 140:16,17 141:6 141:14 143:21 145:14,16 147:23 148:8 179:25 180:14 182:10 183:3</p> <p>firearm's 143:17</p> <p>firearms 6:13 7:15 11:22 13:2,6,14 14:15 15:14,21 16:17,19,21 17:6 18:10,12,15 19:24 20:10,11 21:3 22:22 23:1 25:21 26:22 27:25 28:25 36:3 37:16 38:4,24 41:22 44:24 45:17,23 46:4,22 46:22 47:9 48:5 49:3,3,17 52:1,18 54:19,25 57:6 60:10 62:5,7 63:22 64:2 73:5 85:17,23,25 95:14 97:10 98:7 98:19 107:24</p>	<p>108:11,16,18,20 108:22 109:8,15 109:21 110:2,21 111:18,19,25 131:13,23 132:16 133:13 135:1,4 135:14 140:8,22 141:16 143:11 144:2,12,17,18 144:21 145:3,7,9 146:14,17,22,24 147:7,15,22,22 148:7,18,24 152:13 155:6 156:14,25 162:11 163:6 165:4 169:8,21 170:17 172:1,4,6 174:12 176:13 180:23 181:3,7,16 183:1 183:2,14,24 185:14</p> <p>fired 6:17 62:1 75:11,25 76:16 77:9 78:5 80:9 85:3 87:17 176:13</p> <p>firing 77:5</p> <p>firm 176:14</p> <p>firmly 154:15</p> <p>first 2:9 3:2 6:21 14:19 16:16 19:11 22:21 23:2 23:20 32:19 38:7 42:20 50:12 57:25 58:12 75:2 76:22 77:6 79:22 84:1,3,6 85:23 87:19 103:2,14 113:6 115:22 120:13 128:21 131:21,25,25 141:19 162:3 163:11 164:2 171:9 173:22 174:1 176:21 178:13</p> <p>firstly 6:11 8:17 52:12 61:1 75:18</p>	<p>81:9 85:3 86:13</p> <p>fishing 113:4</p> <p>Fishmongers' 102:16</p> <p>fitness 172:23</p> <p>fitted 25:25</p> <p>five 26:21 35:4,5,5 44:4 105:2,2,3</p> <p>fixed 168:19</p> <p>flawed 17:10 159:5</p> <p>floor 3:14</p> <p>flows 9:10</p> <p>Flying 164:10</p> <p>focus 44:21 54:15 54:23 56:2,4 81:13 83:14</p> <p>focused 55:5</p> <p>focusing 81:16,17</p> <p>foiled 122:13</p> <p>follow 90:16 97:19</p> <p>followed 18:11 41:24 112:23 166:5</p> <p>following 5:18 11:1 21:7 23:9 47:3 56:12 72:5 74:21,25 75:16 76:25 98:24 103:1 107:20 112:19 115:18 176:20</p> <p>follows 8:10 81:8 101:17</p> <p>force 11:7,15,17 11:19,21,21 20:18,24 41:6,7 42:9,10 84:14,17 85:14,17,22 88:17 98:15 100:1 103:7 130:20 153:6 164:12,14,19</p> <p>forced 32:23</p> <p>forces 171:17</p> <p>foresee 182:21</p> <p>foreseeability 3:9 176:2 183:7</p> <p>foreseeable 93:7</p>	<p>179:9</p> <p>foreseen 6:20 175:19</p> <p>forewarned 91:25</p> <p>form 10:25 17:22 33:9 35:3 37:2 40:23 42:8 47:23 49:11 92:12 104:9 105:6 106:20 134:10,14 166:23,25 179:16</p> <p>formal 27:25 79:22 105:6 119:10</p> <p>formally 115:10 188:11</p> <p>formed 187:11</p> <p>former 22:19</p> <p>formerly 119:16</p> <p>forms 10:23 14:11 14:14 15:8 28:18 39:25 40:8,10,16 40:18 41:19 167:6,8,25 168:8 168:13 173:3,7</p> <p>formulaic 42:3</p> <p>formulating 19:10</p> <p>formulation 17:24 135:16</p> <p>forth 48:16,19</p> <p>fortuitously 56:11</p> <p>forward 5:11 19:15 23:22,24 27:6 41:10 65:8 65:9 76:11 81:14 97:19 108:2 184:14</p> <p>found 90:20 134:14 138:20</p> <p>founded 188:2</p> <p>four 26:21 70:13 70:13 75:4,9 155:14 186:2</p> <p>fourthly 76:10 131:24 177:7</p> <p>framed 9:15 101:12</p> <p>framework 7:3,4 13:5</p>	<p>Frankly 40:20</p> <p>freed 121:25</p> <p>freezes 137:23</p> <p>freezing 59:3</p> <p>Friday 109:6</p> <p>friend 175:2</p> <p>friends 185:24</p> <p>Friern 175:9</p> <p>front 71:18 76:4 79:11 86:13,14 86:20 128:25 137:12 152:2 153:25</p> <p>frustrate 129:6</p> <p>frustration 104:5</p> <p>full 14:21 46:10 96:6 143:13 155:6</p> <p>fully 53:15 61:14 135:8 161:16</p> <p>function 58:11 59:3,6 61:3 62:11,12 91:18 108:17 137:2,20 138:3,7,22 139:11,15,25 162:8 170:13 172:3,24</p> <p>functional 58:23</p> <p>functionality 58:17</p> <p>functions 57:15 100:22</p> <p>fundamental 6:3 17:6 22:24 30:8 47:22 54:18 56:23 87:3 91:17 94:6,25 164:15</p> <p>fundamentally 41:4 43:13</p> <p>further 1:10 4:20 8:4,18,20,23 9:10 10:3,11 21:21 28:17 69:4 77:2 89:16,17 95:22 132:25 138:15 141:16 147:2 152:20 157:24 162:19 171:10</p>
---	--	--	--	---

172:25 175:18 184:2 furthering 50:7 Furthermore 61:16 163:24 180:10 future 11:4,23 43:23 118:12,14 125:8 127:21	give 11:24 15:9 32:22 43:5 44:5 45:20,21 67:6 82:18 83:2 118:8 120:23 126:22 151:12 179:10 given 2:18 14:25 15:9 23:19 24:8 31:21 43:15 50:5 51:3 53:3 57:19 59:21 71:10,11 73:16 74:9 78:8 84:4 85:7,25 89:16,17 98:14 104:12,15 106:16 106:18 107:8 109:12,20 110:3 111:4,21,25 155:17 174:16 180:1 185:16 gives 48:2 78:13 giving 82:16 84:20 glaring 175:16 gleaned 60:14,15 64:14 gloss 37:18 38:13 71:12 GMP 102:22 105:16 go 4:14 8:3,6,9 9:12,20 13:18 31:9 50:18 63:16 66:14 67:9,22 115:24 124:23 126:19 127:6 129:5 173:19 goal 67:2 goes 48:4 going 1:13,23,25 2:5 3:22 4:4,13 4:15 12:9,18 20:19 25:19 26:5 27:17 33:16 37:18 38:13 39:9 40:1 44:13,17 49:24 51:9 53:1 58:5 59:23 60:24 65:14,18,19,23 66:7 67:8 68:14	68:24 69:22 71:6 71:12 72:10 73:9 73:10 80:11,22 81:11 84:7,21 85:12 88:1,13 90:2 96:6,21 109:2 124:23 126:9 127:10 128:3,22 131:16 135:9 136:1 143:16 154:4 155:17 Gokay 71:22 124:10 133:20 good 1:3,5 58:10 58:17 66:1 90:6 93:15 119:21 138:10 goose 187:23 gospel 151:1 governed 91:23 governing 115:25 governor 115:25 grab 87:12 grace 66:22 grade 35:8,10 38:22 106:19 178:23 179:15 graded 35:10,15 104:7 105:1 grading 35:11 103:22 104:10 105:3 Grainger 9:17 97:20 102:21,24 103:2 105:12 grateful 4:11 5:16 189:12 gratitude 4:18 188:5 grave 5:19 31:15 great 17:11 33:17 74:9,9,19 109:16 109:18 161:22 188:11 greater 16:2 46:17 52:1 127:20 greatest 7:16 10:17 37:15 41:6	129:18 Green 35:25 38:16 38:21 45:14 108:25 114:10 119:25 178:19 gross 2:20 3:4,7 6:24 9:7 12:18 91:9 94:4 95:9 97:13 103:12 166:10 173:19 175:11 176:5,7 177:6 182:4 184:17,21 185:20 188:22 grossly 6:23 12:14 85:22 99:3 grossness 177:10 177:21 178:2 184:5 188:24 189:3,9 ground 3:23 38:3 69:25 150:11 152:6 grounds 73:18 guaranteed 129:5 guard 130:25 guards 120:2 121:17 122:10 127:3 128:17 130:22 131:4 guidance 13:2 34:21 85:17 124:25 125:4,11 160:7 162:6,19 162:23 165:14 166:4 175:8 180:25 181:2 guilty 176:5 gun 73:14,22,24 80:11 81:11 84:21 89:8,10,19 99:19 120:2 124:7,13 133:23 133:24 134:2 135:8,12 141:19 142:4,5,23 182:12 guns 122:12 gunshot 72:21	H
gallop 3:22 4:4 44:3 gander 187:24 gang 109:25 112:5 143:10 145:4 150:23 gang's 110:3 gangland 124:16 gaps 33:25 113:25 Gary 115:25 gates 114:9 gather 15:11,17 60:12 61:21 63:18 67:16 gathered 26:18 36:15 gathering 18:13 19:13 29:5 33:18 38:5 50:8 general 34:22 155:12 160:11 180:25 generalised 179:15 generally 146:11 158:23 genuinely 2:13,15 84:9 88:13 geographical 33:4 50:17 52:8 53:5 55:11,13 60:12 129:17 getting 66:19 71:9 82:7 143:7,8 149:19 gist 34:25 47:14,16 47:19,23,24 107:17,18 108:1 108:2,3,6,22 111:5,10 180:2				half 26:21,23,24 Hall 102:16 172:12 hampered 13:25 hand 36:19 handled 36:18 131:18 179:7 handling 37:4,13 56:5 96:25 97:4 103:15,22 105:12 131:15 135:18 178:14 hands 72:5,6,7,13 72:17,18 73:8,17 75:10,14 76:16 76:23,24 77:1,3 78:1,5,6,10 79:24 80:4,5,7,8,9,14 80:16,19,20,22 82:13,17,19 84:22,24,25 87:20,20,22 88:2 88:4 89:23,24 120:5 135:23 hands-off 16:11 happen 43:23 66:25 happened 12:23 14:1,24 19:19 54:15 61:25 65:8 74:17 79:12 84:2 112:21 123:3 happening 81:23 130:2 happens 31:10 happily 7:4 happy 22:17 55:12 95:24 151:6 hard 148:3 hardware 138:8 138:20 harm 32:21 127:20 Hartley 127:14,16 128:4,7 142:17 143:1,13 144:6 146:16 167:18 169:3 172:20

173:1,16 181:14 Hartley's 172:15 hatting 20:14 161:23 162:4 163:25 Hatton 72:22 Hawthorn 62:21 142:12 hazard 14:22 70:19 head 2:22 65:14 73:8 186:12 headquarters 39:2 heads 138:8 health 21:14 48:18 49:13 64:7 134:12 135:15 148:3 hear 81:10,12 91:15 158:16 heard 29:23 61:2 64:8,9 69:16 72:21 75:3 81:4 91:14 100:16 103:25 104:3,17 106:21 107:17,25 115:20 116:23 124:9 133:19 141:24 145:20,23 148:10 149:25 151:14 153:8,23 157:5 161:16 167:16 173:5 180:3 hearing 1:13 5:7 35:1 47:19,25 147:15 188:9 heart 40:15 122:2 heaven 4:19 heavy 133:18 134:12 148:2 heeded 184:12 heightened 50:23 65:12 86:2 118:22 held 2:13,15 37:19 83:24 98:13 123:12 helped 134:24	helpful 74:23 91:24 helpfully 92:9 101:15 hesitate 188:17 hierarchical 22:6 hierarchy 25:3 55:3 high 24:24 38:22 46:15 47:9 49:21 55:17 80:3 81:5 93:8,20 126:3,3 146:11 147:14 148:1,1,16,16 168:23 169:16,22 176:17,18 178:23 183:3,4 high-grade 45:16 46:14 high-graded 36:1 46:2 109:4 high-risk 30:16,20 93:9 126:9 127:10 129:24 higher 88:21 129:15 169:10 highest 39:18 181:24 182:24 183:5 highlight 2:5 4:15 highlighted 51:16 167:18 highlights 134:5 highly 24:23 25:7 149:25 165:20 173:16 hindsight 125:10 historical 118:10 hold 25:10 69:23 holding 2:12 home 98:24 honest 2:12 85:19 88:8 honestly 2:15 82:19 83:23 84:16 87:17 Honour 9:17 hoof 52:23 hope 1:4 3:21 5:3	90:2,7 91:10 hopefully 51:12 hopeless 32:1 hospital 24:17 26:5 122:4,16 175:9 hotter 136:13 hour 3:16 43:25 61:10 66:21 68:22,23 69:7 79:7 95:25 96:4 96:6,9,9 136:11 hours 1:20,23 3:22 4:2,2,3,3 19:24 44:4 60:20 61:7 61:8 hours' 89:1 house 113:18 houses 155:16 HQ 114:23 115:1,3 115:4 116:4,6,12 119:6 hubris 161:11 hugely 19:23 humility 161:11 hundreds 74:24 hypothetical 107:9 107:15 147:20 148:13 180:3	45:14 112:10 ifs 23:21 28:22 66:20 ignorance 24:22 ignored 149:23 illness 122:16 illogical 41:25 illustrated 142:16 imagine 136:3 148:4 imitation 26:22 48:14 49:2 53:25 60:23 61:21 62:10 67:13 132:16 133:14 135:1,14 139:18 139:21 140:8 142:2 145:14 147:22 148:6 181:3 182:10,17 183:1 immeasurable 161:8 immediate 73:6 106:4 immediately 72:17 84:11 153:18 175:16 imminent 73:12 73:22 89:7 immutable 31:23 impact 40:6 81:22 141:12 143:18 145:24 146:2 149:1 imperative 128:24 imperatives 16:20 17:8 21:2,5 22:11 94:8 implement 125:2 139:2 155:23 implementation 97:8 159:8 implemented 156:18 implications 79:14 importance 30:9 46:25 50:3 51:15 69:19 177:20	important 4:16 13:1 31:19 38:14 45:20,23,24 50:21 51:2 58:6 81:11,18 82:8 107:13,14 110:13 129:9 130:15 131:20 132:1,9 132:13 152:22 153:20 157:4 161:25 163:24 165:3 167:21 170:18 172:3 173:25 175:10 177:5 importantly 2:25 15:3 69:4,14 71:2 164:11 impossible 25:9 115:17 143:24 148:22 176:14 184:5,14 impractical 156:5 imprisoned 26:8 imprisonment 123:23 improbable 79:4 improper 49:8 improved 139:13 inability 158:25 inaccuracy 47:5 inaccurate 35:21 35:23 38:19 44:22 106:18,24 106:25 inadequate 42:1 inadvertently 47:5 inappropriate 52:15 incarcerate 21:11 incarceration 26:20 incendiary 188:1 incentive 15:3 inches 70:19 incident 43:13 82:4 incidents 21:9 include 36:11
		I		
		IC3 112:12 idea 39:4 ideal 51:8 ideally 22:5 identical 71:24 identification 3:5 33:25 34:6 identified 4:6 19:21 20:3 23:21 27:11 52:14 62:14 69:3 93:23 94:17 112:14 114:4 137:18 178:3,5,9 identify 1:16 18:6 34:4 90:23 93:20 112:8 113:24 163:10,13 178:10 identity 34:16		

43:17 153:9,16 153:21 160:12 165:9 166:22 included 5:23 10:6 13:3 23:15 34:3 45:2 64:7 106:10 141:17 152:25 153:10,24 171:9 189:25 includes 11:10 55:2 108:3 150:5 156:15 including 7:25 101:6 103:24 107:22 112:23 122:8 135:5 144:23 154:13 155:3 158:16 159:12 171:12 188:12 incompetence 37:8 57:9,23 91:16 incompetent 15:21 57:19 60:1 incompetently 50:8 60:11 99:3 inconceivable 182:20 inconsistency 81:3 incorporate 71:5 incorporated 64:13 167:25 incorrect 153:7 165:8 166:25 increase 51:23 53:1 55:14 57:1 64:20 159:3 182:13,19 increased 129:22 140:18 146:7 147:9 157:25 168:16 increasing 175:21 175:24 incredibly 31:18 45:23 65:1 111:5 independent 22:18 74:2,6,15 79:21 85:18 157:14	158:13 independently 155:3 indicate 88:11 127:16 128:6 indicated 4:12 6:19 36:23 77:14 108:15 126:10 indicates 36:1 47:25 109:4 175:2 indicating 38:23 49:2 indication 48:2 133:1 indicative 90:1 indictable 53:21 individual 9:8 11:1 12:15 26:5 42:11 69:1 107:22 110:20 118:22 169:24 individuals 20:4 31:5,11 32:14 62:9,10 68:15 107:21 110:19 induced 130:24 indulgence 44:6 inevitable 8:4 12:12 40:8 59:23 66:3 98:15 100:2 130:21 131:2 161:7 inevitably 5:9 9:5 15:2,25 41:24 65:23 99:5 120:10 168:24 187:7 inexorable 9:10 inexorably 8:10 inference 9:6 36:7 inferred 5:15 100:23 101:6 102:9 influence 133:13 influenced 86:6 150:18 inform 24:11,20 27:12 32:8,17	69:10 115:4 116:12 119:11 informal 115:14 115:18 119:11 information 17:21 25:16,18 36:10 37:13 43:8 45:1 45:7 46:1,25 48:5 50:8 51:11 53:13 54:9 61:25 62:2,18 63:14,17 64:25 67:5,9,21 68:2,6,13 69:5,8 69:12,19 70:3,8 71:2,7 85:11 97:1,4 98:14 103:16 105:21 112:20 115:21 118:20 119:3,6 119:20 120:7 134:4 139:13 140:10,25 141:16 141:24 142:1,3 145:1,5 146:25 148:10 177:5 180:22,24 181:17 183:23 informed 13:7 26:10 29:15 31:22 54:14 114:23 116:5 117:9 119:7 120:19,23 149:16 155:9 informing 30:16 inherent 13:16 inhibit 125:7 inhibited 100:21 initial 128:19 159:20 initially 92:1 159:22 160:21 injured 30:21 injury 122:2 174:9 input 20:6 INQ27 77:20 inquest 9:3,4,18 92:16 inquests 12:11	inquiries 9:14 100:14 101:20 102:3 inquiry 4:19,22,23 4:23 5:3 9:7,17 11:24 14:24 23:7 29:25 36:4 83:20 91:24 97:19,20 101:3 102:21,22 103:2 105:12,15 107:12,15 110:17 112:3 125:5 130:3,14 134:5 141:8 142:17 144:10 148:21 154:1 157:4 161:1,17 165:11 167:9,16 168:22 171:19 172:5 173:15,25 181:24 190:8 inquiry's 13:25 inquisitorial 161:18 185:11 187:8 inside 75:10 76:10 insist 40:24 68:1 insisted 80:23,25 insistence 21:19 82:13 Insofar 110:17 inspector 156:21 157:3,10 164:18 Inspectors 116:15 installation 37:23 50:1 57:19 58:3 installed 57:17 137:1,8 instance 14:20 86:10 92:12 104:8 110:11 181:15 instances 30:3 34:24 instantaneous 77:7 80:20 instinct 73:9 instructed 76:19 87:23 146:5	172:19 instruction 72:15 75:12 82:17,18 82:21 83:5 85:6 87:25 88:3,6,10 88:16 89:13 instructions 73:16 75:8,9 76:15 77:1 78:8 88:4 98:14 instructive 98:10 insufficient 18:1 insulated 162:21 integrate 56:15 intel 111:19 117:21 132:4 134:9 135:20 intelligence 13:7 17:18,23 19:9,13 23:10 24:1 25:16 25:18 27:13 29:19 30:1,24 33:18,23,25 34:1 34:14,16,19,21 34:22,23,24 35:7 35:13,16,16,20 36:1,5,12,18 37:3 38:20,23 44:23 45:1,16 46:2,14 46:18,19 47:10 47:13 48:12,13 48:18 49:2,9,16 49:23 50:9 51:19 54:4 61:22 64:13 67:16 96:25 97:5 103:16,22 104:7 104:9,24 105:13 106:3,8,9,16,20 107:3,21 108:9 108:14,19 109:4 109:7,25 110:4 110:11 111:6,9 111:12 112:1,17 112:25 113:23,24 117:19 118:4,6 118:11,13,20,25 119:2 120:14 124:4,7 131:17 131:21,22,25
---	---	---	--	--

132:10,23 133:2 133:7,17 134:8 134:16,22 135:1 135:14,18,25 136:2 139:21 140:8 141:13 144:24 147:22 148:2,7,24 178:14,16,18,23 179:8,16,18,21 179:23 180:6,12 180:17 181:3,10 183:1 intelligence-led 112:16 intended 25:19 53:12 142:5 intending 77:16 intent 81:13 102:2 123:7,15 125:6 intention 111:3 165:24 intentionally 73:17 intentions 143:5 intercept 66:2,4 88:24 165:22 interception 42:22 43:14,14 51:21 55:16 56:2 63:3 63:5 65:22 66:10 67:1,6,9 93:8 153:4 168:24 169:2 174:7,13 184:1 interchange 188:22 interests 16:24 18:9,18 23:14,18 27:1,23 29:2 interface 59:13 interfere 138:18 interfering 59:11 59:18 170:21 internal 117:16 122:3 internationally 158:1 interpretation	144:20 149:6 interpreted 140:12 141:5 142:2 144:13 145:14 interrogated 30:25 intertwined 18:15 intervene 88:23 127:22 interveniens 95:8 intervention 122:22 128:1 129:25 152:15,17 152:18 174:10 introduced 125:4 intrusive 57:7 171:6,7,22 172:21 investigating 21:10 investigation 10:25 15:17 16:13 17:10 20:11 23:1,22 27:6 29:7 32:13 33:15,21 34:18 38:6 50:7 57:5 85:10 162:10 164:7,13 175:18 176:22 investigative 10:24 16:20 17:8 22:1 34:15 94:8 invitation 119:5 invite 12:7 74:21 189:15 190:3 invited 10:10 172:13 involve 100:5 109:13 131:20 137:7 138:2 164:19 involved 21:15 32:24 33:10 34:17 36:8 39:17 46:6 53:2 55:14 56:19,21 121:1,5 124:5 150:6,23 157:8 164:6 177:15 182:9	involvement 20:13 22:20 128:17 involves 187:6 involving 100:4 IOPC 95:5 161:1 165:11 166:9 172:12 173:13 IOPC's 165:18 IPC1133 153:12 IPC385 127:17 143:12 IPC537 109:3 IPC89 111:16 irrelevant 26:9 37:20 issue 2:20 3:3 32:12 39:16 66:14 90:8 106:20 115:1 130:16 131:17 137:17 150:13 152:19 163:25 182:1 issued 75:8,12 76:15 87:24 89:13 issues 3:6 4:6,16 21:14 30:13,22 31:19 44:19 137:3 iterations 166:23 Izzet 15:19 19:10 24:17 25:15 26:8 39:7 56:22 65:20 108:17 109:5 121:19	89:18,22 92:14 120:4 130:12 141:17 176:19 186:23 187:9 Jermaine's 5:12 6:13,23 10:18 75:18,23 77:3,11 78:4,10,16,24 80:2,14 83:7 84:19,22 86:15 95:4,17 178:20 job 32:23,24 55:15 133:25 join 159:22 joined 54:11 joint 74:7,12 75:15 77:10 78:13 joking 149:18 150:9,17 151:2 151:21 judge 9:17 23:6 39:9 judged 83:22 88:18 judging 88:14 judgment 100:10 133:7 judgmental 7:24 judicial 11:10 39:20 July 36:13 106:11 jumpy 70:4 junction 50:17 junior 119:15 jurisdiction 8:25 jury 177:22 justice 22:3 30:5 35:24 38:15 101:10 102:4 121:5 163:17 justifiable 30:18 justification 83:3 89:6 justifications 5:11 justified 11:7 27:1 29:2 161:12 justify 16:23 31:2 84:14,15 86:7 88:9 89:15 94:2	118:5,11 <hr/> K Kabbani 74:7,12 75:15 77:5 80:19 Kaufmann 1:14 2:4 3:15,19,20 4:3,11 5:1,16 12:22 44:3,13,17 90:5,7 91:13,22 92:3,7 93:14 95:22 96:12 100:16,25 101:15 102:9,18 117:18 118:3,18 121:9 186:11 187:19 188:16,17 189:3 191:5 keep 2:3 115:21 130:4 keeping 13:22 42:24 140:6 kept 58:20 122:17 170:5 Kevin 154:15 155:3 158:9 168:4 173:6 key 13:23 34:17,24 40:6 54:4 74:5 97:9 161:5 165:5 keyboard 138:13 kill 98:17 killed 6:8 7:2 102:7 killing 6:18 9:4,5 10:7,12 12:4,12 102:6 189:22 kind 52:13 53:10 91:4 122:9 140:15 158:19 159:7 179:12 188:10 Kingdom 98:23 99:9 KM13 18:3,7 33:13 37:24 76:10 128:22 knee-jerk 132:23 knew 16:11 31:17 53:6 65:14 71:10
		<hr/> J jeopardising 124:4 Jermaine 5:18,23 6:1,5 7:2 10:21 76:7,17,23,25 77:6,16 78:12 79:5,18,23 80:14 82:12,25 83:1 84:7,8,20,24 85:6 85:7 86:9,14,17 87:4,10,12,14,19 87:21,22,23,25 88:3,7,9,10,12,15		

80:25 84:11,15 85:9,10 89:14 111:13 113:4 119:23 151:6 155:11,12,13,14 155:16 knife 62:23 know 1:8 2:17 5:2 11:5,9 14:14 25:10 31:20 33:9 33:11 35:15 45:8 45:21 56:6,18,20 63:25 64:9 67:22 68:12 69:22 75:20 76:17 79:5 80:1,3,19 82:5,7 108:9 111:13,23 116:3,6 120:14 123:11 135:10 143:23 knowing 113:7 119:7 knowledge 39:20 39:21 57:16 known 29:21,22 29:23 30:5 36:16 58:12 65:17 70:9 70:10,18,24 111:24 112:4,6 112:11 117:13,19 145:3 147:4 152:8,9 156:12 181:19 knows 85:21	latest 146:20 laughing 68:5 law 22:9 90:13,14 92:9,11 96:22 97:16,21,22 103:11 177:11 179:14 189:3,11 lawful 39:7,14 85:16 90:9 lawfully 172:4 lawfulness 170:15 172:1 layout 155:8,12 layup 114:5 lazy 16:1,1 lead 2:24 47:8 48:5 85:13 112:19 113:3 127:20 leader 159:16 leads 8:11 135:17 leafy 158:16,21 leaking 119:20 learn 11:3 learned 5:21 123:9 175:1 185:24 learning 185:12 learnt 134:25 leave 5:5 121:22 leaving 31:2 120:25 led 5:12 10:18 13:7 23:13 26:20,22 32:19 38:19 46:17 99:5 100:2 102:23 112:17 113:14,22 148:18 159:2 left 31:25 45:4 58:18 75:18 76:2 76:6 77:11 116:17 legal 4:19,23 5:10 7:3 legitimate 85:9 147:5 181:20 Leman 35:21 44:18 45:9 49:19 lend 157:8 168:1 168:11	length 79:15,16 179:1 187:8,17 187:21 lengthy 123:23 less-lethal 89:20 lessons 11:3 40:14 let's 62:11 lethal 41:6,7 85:14 98:15 100:1 130:20 letter 13:20 112:13 letting 17:3,16 27:2 29:10 level 13:12 26:3 30:10,10,12 31:12 37:7 39:18 182:4 levels 156:24 liability 100:19,23 101:5,13,14,21 101:24 102:8 liaison 38:14 lie 15:9 78:13 lied 83:6 161:20 lieu 9:3 life 5:13 6:13,16 7:13,17 8:13,20 10:1 17:7 37:16 38:11 48:7 50:9 55:18 90:11,19 90:21 91:18 93:9 93:11 98:4,8 122:14 178:20 life-threatening 81:19 lifting 80:9 light 8:18 15:4,5 61:16 87:15 likelihood 47:9 100:22 109:21 124:15 157:25 Likewise 105:4 limit 160:14 limited 61:13 71:7 137:19 limits 71:11 92:22 147:16 line 22:19 75:5 88:25 105:8,20	115:21 131:7 135:5 142:8 144:13 159:7,14 159:19 164:21 179:13 lines 20:11 22:15 146:10 link 126:16 linked 112:13 list 117:12,16,17 118:1,12 listen 58:17 61:12 74:24,24 listened 60:20 143:2 144:11 listener 61:4 listening 5:8 60:19 63:4 70:15 140:5 143:3,6 144:3 149:13,16 184:2 litany 5:18 literally 59:13 little 28:17 44:1 63:11 101:1 136:12 145:17 live 57:21 58:19 59:12,18 86:17 138:3 139:2 143:20 152:19 lives 100:8 livestream 57:15 loaded 46:8 76:20 location 147:3 155:7 159:16 174:7 lock 133:12 141:4 143:14 log 128:25 137:10 170:5 logical 118:8,10 London 9:18 20:22 43:2,5,15 102:16 113:3 156:5 158:16 163:2 long 4:14 52:8,25 55:13 61:9,9 81:21 82:1 136:1 141:22 186:4	long-term 18:20 22:23 longer 18:23 72:8 108:3 longer-term 18:25 19:3 121:3 123:19 124:18 look 2:7 40:13 44:20 53:13 67:20 72:2 114:6 118:16 152:8 153:11 161:5,24 looked 25:22 126:7 130:17 looking 53:8 81:1 101:3 173:9 lose 81:17 150:25 losing 138:2 loss 95:16 161:8 lost 8:14 10:19 68:5 73:7 149:19 150:9,17 151:2,9 lot 3:23 13:11 72:16 89:23 loud 75:3 Love 134:1 low 40:20 69:3 77:4 78:1 80:7 80:10 168:15,23 169:2 lower 80:14,23 129:16 lowered 106:14 Luger 36:13 106:12 Luncheon 96:15 luxury 13:17 142:22 lying 79:8 83:5
<hr/> L <hr/> lack 16:3 57:16 95:15 143:17 161:11 laid 11:15 lain 78:25 79:10 138:22 Lammy's 20:21 lane 134:1 158:10 lanes 158:17,21 language 165:18 lap 80:10 large 158:7 largely 69:7 74:5 late 34:2				<hr/> M <hr/> machine 58:21,22 59:5 machinery 57:17 58:2,9 mafia 20:21 magazine 46:10 main 18:2 111:18 129:7 131:19 137:23 149:13

<p>maintain 18:2 127:24</p> <p>Majesty's 39:14</p> <p>majority 156:6</p> <p>making 9:4 13:5 17:18 18:16 23:11 27:13 29:21 31:11 32:1 37:11 76:14 80:18 81:22 85:14 86:10 95:5 105:7 162:13 171:10 182:22 189:8</p> <p>males 112:12</p> <p>man 76:12 78:1,10 78:15 79:5,13,18 80:2,16 83:8,8 84:6,10,19</p> <p>manage 22:7 51:13</p> <p>managed 62:16 92:7 179:7</p> <p>management 14:4 17:9,18 31:3 45:7 105:21 164:21 177:1 178:14</p> <p>manager 22:19 60:1,17 62:17 115:22</p> <p>managerial 30:10</p> <p>manages 24:22</p> <p>manifestations 94:6</p> <p>manifested 50:10</p> <p>manifestly 123:14 142:24</p> <p>manifold 20:9</p> <p>manner 13:15 16:7 24:6 36:17 65:10 99:4 103:25 136:25 138:4 144:8 150:3 154:9 188:6</p> <p>manoeuvres 149:16</p> <p>manslaughter 3:4</p>	<p>6:25 12:18 91:10 95:9 97:14 103:13 173:20 176:5 177:6 184:22 185:20 188:23</p> <p>maps 155:13</p> <p>margins 148:16 176:16</p> <p>Martin 115:22</p> <p>Mason 113:13,16 113:22 119:24 124:10 133:19,24 134:1</p> <p>Masters 120:12,18</p> <p>MASTS 18:12 88:22 126:20 157:15,25 158:3 159:25 160:3</p> <p>material 26:19 45:13 108:8 156:18 167:7</p> <p>materially 106:13 139:13</p> <p>materials 69:18</p> <p>matrix 35:5</p> <p>matter 19:23 29:16 35:13 46:23 47:6 70:19 88:14 92:2 102:6 103:11 134:23 166:12 173:8</p> <p>matters 2:25 3:1 7:21 24:12 67:11 71:7 75:16 84:1 90:10 94:11 97:12 103:15,21 104:11 145:24 163:24 173:10 176:21 178:3,5 184:4 189:11</p> <p>maximise 54:16</p> <p>maximum 89:1</p> <p>Mayes 115:7 116:15</p> <p>mayhem 20:20</p> <p>McCann 21:3 41:14 98:2,10,18 99:25 130:17</p>	<p>McKibbin 35:9 104:22 105:7 159:5,13 170:7 186:25</p> <p>mean 3:22 4:4 48:24 63:14 64:23 100:25 102:5 112:18 122:24 140:15 144:18 145:15 147:23 148:8 183:2</p> <p>meaning 123:1 141:19</p> <p>meaningful 43:6 47:12</p> <p>means 7:17,19 18:20 48:24 52:2 60:12 66:5 119:7 119:14 120:1 121:16</p> <p>meant 33:4 49:20 87:6 91:6 110:24 117:2 124:5 146:15</p> <p>measure 19:1 91:16</p> <p>measurements 79:15</p> <p>measures 6:12 25:5 26:4 63:13 120:16</p> <p>mechanism 11:3 145:16</p> <p>medical 176:7</p> <p>medium 41:4,15 168:16,21 169:2</p> <p>meet 17:2 51:2 53:24 57:20 93:20 140:20,24</p> <p>meeting 14:3,7 19:12,18 22:24 23:2,4,8 28:13,24 28:25 29:1,4,16 37:18,19,21,22 38:8,9,10 44:14 113:19 115:22</p> <p>meetings 13:23 14:9,18 15:1,4</p>	<p>113:17 171:13</p> <p>member 108:13</p> <p>members 43:2 50:24 54:22,24 158:12,25</p> <p>memories 15:1</p> <p>memory 82:2 172:14</p> <p>men 150:19</p> <p>Menezes 92:16 173:25 174:15,22 175:25</p> <p>mentally 155:19</p> <p>mention 84:18 99:22 179:24</p> <p>mentioned 42:20 42:23 162:4</p> <p>merely 14:3 22:11 34:19 122:19 124:13 146:8 175:11</p> <p>message 37:17 60:22 63:22,24 64:3,7,12,15,15 64:16,20,23 95:14 178:22</p> <p>Messrs 32:18 74:10</p> <p>met 16:25 22:11 35:18 50:19 55:24 65:14 113:13 125:23 131:13 138:17 172:7</p> <p>method 127:25</p> <p>methodology 33:22</p> <p>methods 7:19</p> <p>Michael 92:15 173:24 174:24</p> <p>micromanage 94:23</p> <p>middle 1:22</p> <p>mind 20:17 47:7 51:25 52:6 54:4 65:4,7,22 80:21 110:14 140:6</p> <p>minds 26:13</p> <p>mindset 45:22</p>	<p>46:13 47:1 50:5</p> <p>minimal 6:22 95:12,17 175:23</p> <p>minimally 95:3</p> <p>minimisation 55:9</p> <p>minimise 7:13 8:12,20 10:1 23:20 24:2 37:15 38:11 40:6 50:9 51:2 54:16,25 55:10,15,19,22 56:25 67:10 70:1 90:18,21 93:10 94:8 125:2 174:8</p> <p>minimised 13:15 130:10</p> <p>minimising 7:16 48:9 54:24 56:2 65:22 91:18</p> <p>minimum 76:7</p> <p>minute 14:2,23</p> <p>minuted 14:18</p> <p>minutes 23:8 44:5 90:4 136:3 141:23</p> <p>mischaracterised 31:7</p> <p>misconduct 166:10</p> <p>misleading 108:2 109:1 179:3</p> <p>misrepresentation 178:18</p> <p>missed 111:2 141:13 149:8 177:4</p> <p>misses 41:4</p> <p>mission 18:3 19:20 33:13 34:6 36:20 50:18 55:7,16 56:4 67:13,23 68:3 93:4 108:13 133:22 178:24</p> <p>mistake 85:5 98:6 116:14 119:8</p> <p>mistaken 63:12 82:19 86:8 100:10</p> <p>mistakes 30:20</p>
---	---	---	---	---

100:10 mistranscriptions 142:11 misunderstanding 114:8 misunderstands 95:11 mitigate 6:12 32:21 41:5,12 118:23 123:17 127:19 mitigated 33:7 mitigating 126:5 mitigation 127:9 129:10 mitigations 42:6 131:11 mixed 82:3 mixture 15:22 mobile 18:5 30:8 144:1 module 162:18 moment 5:15,23 5:23 47:11 49:24 67:14 68:3,17 72:2,4 75:25 77:9,12 78:5 92:23 135:22 Monaghan 115:25 116:4,6,7,8,13 119:8 Monday 1:1 monitor 138:13 monitoring 144:7 month 28:16 37:19 monumental 4:22 MOPI 34:13 Morguld 166:24 167:11,15 morning 1:3,5 47:4 50:2 52:23 53:14,19 54:15 56:7,20 58:11,25 59:20 66:21 85:22 86:9 94:17 94:22 140:24 146:13 166:16,18 178:21 189:16 mount 18:10 25:19	mounted 18:12 126:18 mouse 138:13 mouthful 134:15 move 12:22 65:19 71:20 87:10 109:11 135:24 145:7 149:4 150:19 152:13 174:12 moved 76:3,23 77:3 80:4,5,6,7 movement 39:16 108:16 movements 34:3 movers 117:18 moving 4:19 23:5 27:6 49:24 66:7 71:14 76:3 77:15 80:17 81:14 83:7 84:20,23,24 135:21 164:14 MPS 2:18 6:12 7:14,23 9:1,19 10:2 13:13 14:13 16:16 21:25 28:19 30:2 31:7 31:14,18 32:20 33:2 34:22 40:2 40:22,24 42:15 43:15 47:15 48:11,15 49:1,8 57:6,12 58:4,7 59:22 64:16,19 64:20 67:25 68:5 68:10 92:7,13 94:11,14,20 100:16 101:1 104:18 105:9,17 107:3 108:19 111:13 113:3 117:15 119:17 125:22 130:4,5 130:10,13 132:4 132:14 139:6 152:22 154:11 155:25 156:3,17 156:25 161:23 167:25	MPS's 14:8 30:12 MPS3800 137:16 MPS3996 137:15 mucking 151:10 multidimensional 16:18 23:15 28:7 28:20 40:17 41:1 41:16 167:17,21 168:1,7,14 170:4 multiple 44:19 58:15 91:4 120:22 143:2 160:1 murder 20:20 Murphy 3:17 Murray 5:21 16:10 19:8 22:18 29:8,14 34:2,13 37:9 50:13 52:4 115:7 116:15,17 116:19,25 119:6 119:9 163:16 Murray's 17:9 22:21 164:3 muzzle 76:5,8,10	47:16 104:18 107:18 108:3 NDM 13:3 23:11 near 128:23 147:14 181:11,13 182:2,3 183:6 184:4 nearby 155:15 nearside 70:20,25 necessarily 18:11 48:10 90:16 147:23 148:8 183:2 necessary 6:16 18:9,24 24:5 27:5,22 33:3 40:23 43:7,21,21 49:12 90:12 94:22 96:10 105:3 167:13 189:5 necessity 30:17 42:9 neck 75:19,21 need 2:7 4:2 16:17 18:12 23:25 37:14 48:24 54:16 55:22 57:20 61:21 67:6 67:10 73:19 89:3 111:16 126:16 139:24 145:23 166:19 178:8 185:17 186:6 187:2 needed 32:22 33:7 36:21 45:21 54:2 55:18,19 61:5 70:20 119:4 189:1 Needless 19:3 needs 14:5 16:5 53:24 118:14 188:23 189:9 negative 6:15 7:8 90:11 negligence 2:21 3:4,6 6:25 9:8 11:20 12:18	91:10 94:3 95:9 97:13 103:13 173:20 175:11 176:5,7,7 177:6 184:17,21 185:20 188:23 negligent 6:23 negligently 12:14 Neil 104:22 neither 19:6 83:18 94:11 105:3 115:7 119:18 152:11 181:1 nervous 67:25 network 109:12 never 6:2 8:1 14:15 33:5 38:9 42:18,19 43:1,4,5 43:7 50:19 52:4 57:24 62:1 63:15 63:15 65:11 70:14 85:12 86:3 86:15 87:11 119:17 122:10 128:23 131:12 132:14,16 140:1 158:17 164:12 nevertheless 32:20 new 20:21 44:14 135:21 146:25 181:16 Nichols 115:11,20 116:1,3,7,18,24 117:1,4,11,15,25 118:8 122:5 Nichols's 116:8 Nicholson 154:15 155:3 158:9,14 168:4 173:6 night 132:5 135:20 NIM 34:13 nod 186:12 NOMS 114:23 115:1,3,4,8,9 116:1,2,4,6,12 119:6 non-air-powered 141:3 non-compliance
		N		
		N 112:13 191:3 name 12:15 20:14 named 101:14 narrative 6:5 190:1 narrowing 81:15 83:14 Nathan 113:22 119:24 124:10 133:19 national 125:16 165:13 166:3 170:10 nationally 13:12 167:24 natural 21:9 66:5 97:6 152:14 nature 18:25 25:12 94:4 120:17 144:24 145:2 159:11 185:4 NCA 34:20,25		

169:13 non-specific 29:20 non-vetted 119:19 nonsense 64:22 normal 138:13 159:17 166:15 notable 22:16 74:4 160:25 notably 153:1 note 13:1 28:18 45:12,13 48:11 101:16 102:1,18 104:25 108:24,25 109:3 110:15 111:15 117:7 142:15 154:12 159:15 162:3 174:1 175:10 177:19 noted 40:23 55:12 91:13 99:7 117:2 138:6 149:14 157:24 177:20 notes 15:8 notice 120:24 155:18 notion 157:12 notwithstanding 133:17 150:7 168:12 November 19:19 22:23 28:24 29:16 58:13 108:14 112:21 novus 95:7 NPCC 157:15 NPFTC 88:25 number 3:1 47:17 53:7 81:7 107:21 110:19 155:7 160:15 178:11 185:24 numerous 47:16 47:20 97:24 108:4 124:22 155:2	O'Conner's 114:4 Obelisk 137:10 object 91:17 objected 8:2 objections 186:5 objective 10:20 11:12 20:8 83:22 87:15 129:8 172:21 objectively 11:17 11:20 88:14 objectives 21:12 22:6 34:2,7 170:23 objectivity 21:20 162:13 obligation 6:11,15 7:9,9,12 10:25 90:18,25 98:3 119:10 173:6 185:10 obliged 7:14 124:20 163:7 observation 98:2 187:5 observations 44:14 103:1 151:18 observe 31:4 106:3 observed 21:25 obstacle 31:23 176:3 obstacles 29:12 159:11 obtain 34:3 47:18 47:20 48:14 69:19 108:22 114:1 170:23 obtained 43:7 107:21 132:4 135:20 obvious 11:19 14:17 30:16 40:14 50:23 55:17 57:20 69:18 119:12,21 128:20 139:2 166:13 175:14,15 175:20 178:9	179:10 182:7,21 183:7 187:1 obviously 4:13 14:21 35:13 81:6 94:19 108:5 109:23 120:7 131:20 138:23 151:23 166:14 177:14 occasion 106:11 occasionally 30:21 occasions 113:14 124:22 153:17 occupant 72:25 occupants 18:7 50:24 53:6 54:11 61:11 63:7,8 67:4,12,23 68:3 69:5 70:11,13,13 71:10 93:4 112:11 139:17 140:7 143:7 144:16 149:17 150:16 151:21 153:18 154:8 155:7,14 159:21 160:1,4 occupants' 143:5 occur 91:7 122:18 184:25 occurred 15:4 83:11,11 94:17 107:12 142:12 161:20 185:3,9 OCG 109:20 OCN 20:16 108:21 164:7,17 OCN's 108:19 October 5:21 19:12 20:4 25:18 25:21 35:17 46:7 107:20 116:25 117:6,19 122:13 odds 162:24 OFC 51:20 150:11 OFCs 154:14 offence 16:25 17:3 18:11,17 19:2,5 19:11 24:14 29:2	29:9 35:17 36:2 46:3,7 50:22 52:7 53:4,21,22 53:23 54:1 55:12 55:25 99:13,15 102:11 109:8 144:17 offences 17:16 26:17 27:5,11 51:5 162:10 offenders 123:25 147:2 181:19 offer 29:13 85:15 officer 21:10 22:13 31:10 33:1,1 42:11 45:24 48:5 69:2 76:20 79:12 84:4 87:7 99:18 119:16 149:10,22 151:8 160:7,12 160:13,17 169:24 174:5 176:13 officers 11:6,18 24:19 29:24 30:7 30:7,18 31:6,13 36:4 43:16,18,22 45:5,19 47:3 49:18 62:3,15,22 65:11 76:15 85:25 86:5 87:10 88:5 89:1 92:24 99:17,20 100:6 111:18,23 115:18 126:24 128:18,18 131:13 133:13 140:1,4 145:20 146:14,19,25 148:20 149:8,16 150:1 151:17 152:6 155:6 156:14 159:11,12 159:20 160:15,18 161:10 162:6 168:17 169:8 172:4,7,8 174:10 174:12 181:17 officers' 11:14 26:13 47:7 93:5 149:5	offside 70:25 omitted 84:17 once 4:20 5:4 19:21 23:17 32:17 53:6 55:23 57:12 66:8,8 80:1 85:3 113:17 113:19 153:15 156:12 165:22 ones 94:18 157:8 ongoing 40:22 109:5 online 155:13 onwards 61:20 63:1,20 65:21 67:15 79:23 open 33:21 71:13 73:1 93:18 103:23 104:12,16 106:23 107:5 132:7 140:6 179:17 opened 72:4 86:14 opening 97:24 145:8 155:1 165:7 openness 91:23 operate 137:21 operation 6:14 7:15 12:24 13:18 14:21,21 15:15 16:20,24 18:10 18:12 20:1,5,12 20:13,18,23 21:3 21:16 22:4,20 23:1,13,17,18,25 24:9 27:23 28:5 28:25 30:15 31:18,21 32:6,21 33:21 34:11 37:5 38:4,12 39:5 41:22 42:6 50:10 50:21 52:2 54:17 54:20 55:2,4 57:6,8 58:18 60:11,16,25 61:23 66:6,16,16 66:24 69:10 85:24 98:8 99:3
O				
O'Conner 114:9 160:20				

99:4 108:11 110:19 115:24 119:11 120:16 121:2 122:10 125:24 126:2,12 126:18 127:10,25 128:11 129:2 131:10 133:3 134:18 137:4,9 139:2 149:21 157:15 160:3 162:11,22 163:15 165:4,21 166:24 166:24 170:7 171:5,14,16,21 172:22 173:4 operation' 151:13 operation-specific 167:14 operational 7:15 41:21 57:20 142:19 157:2 158:5 160:5 operations 13:3,6 13:15 15:24 16:6 98:19 99:24 125:1,7,18 126:9 149:20 157:7 169:16,22 operative 59:5 opinion 22:11 169:5 177:17 185:4 189:23 opportunities 18:4 82:25 127:23 129:7 opportunity 1:20 10:19 22:21 52:1 52:25 55:21 56:1 58:14 60:19 61:12 63:10 67:7 71:3 80:7 84:5 89:16 95:16 99:14 108:7 127:22 149:8 154:7 189:10 opposed 49:3 53:18 60:11 157:9 166:10	opposite 149:23 option 42:14,16 43:12 67:8 89:20 126:23 128:1 129:24 152:25 153:10,21 154:21 158:8,24 165:10 165:21,23,23 options 41:20 73:1 127:19 154:24 157:22 oral 111:8 152:24 182:15 orally 121:9 order 23:24 50:9 55:19 59:11 61:14 67:10 69:10 78:20,25 79:11,14 99:11 118:23 125:5 175:4 ordered 174:12 organisation 60:3 119:19,20 organising 145:4 original 47:16 originally 37:24 131:3 ostensibly 13:24 ought 63:21 185:18 outcome 32:2 66:25 71:25 91:7 134:18 149:1 170:16 outcomes 51:7 outline 32:7 outset 5:20 13:1 37:4 50:6 93:3 96:21 132:9,13 outside 93:17 118:9 173:7 178:11 189:7 outweigh 19:4 124:19 overall 18:23 143:9 170:24 overarching 21:1 overblown 38:20	overload 133:10 overrun 136:12 oversight 16:3 21:20 98:7 162:14 170:24 171:7 overstate 111:6 overt 66:14 129:5 overwhelm 21:2 overwhelming 42:25 149:25 182:12 overwhelmingly 16:15 52:20 58:8 59:15 owe 174:5 owed 6:12 31:16 93:1 Ozcan 18:2,5 33:10 34:6,18 36:12,15,18,21 36:24 56:6,6,12 56:18 106:4,11 112:17,23 113:5 113:13 133:21 141:18 Ozcan's 113:9 Ozger 108:15,16	170:9 182:1 pages 4:14 117:11 137:15 147:14 155:4 156:9,10 165:25 171:22 pains 126:8 paper 155:13 paragraph 11:6 92:17,22 93:24 93:25 98:2,13 99:1,8 101:15,18 102:19,20 103:5 103:18,18 105:5 105:19 107:1,19 110:11,15,24 113:2,15,24 116:21 117:4 118:17 120:9 132:1 141:9 150:4 152:23 163:20 164:2,5 165:15 166:8,10 168:6,18 174:3 175:25 178:17 179:23 186:24 paragraphs 90:22 91:2 98:11,12 105:10 108:23 111:9 112:9 115:1 116:10 121:8 125:15 152:21 157:17 163:22 169:9 parallels 99:10 parameters 170:23 171:20 parked 70:19 155:15 158:10 parking 155:11 159:18 parliamentary 102:2 part 9:8 10:23 11:18 12:6 14:9 15:23 18:24 20:8 36:14 48:8 82:15 101:13 116:14 124:22 167:22 183:6	participant 1:19 participants 1:9 1:11,17 97:25 103:24 105:14 188:12 participants' 5:10 participate 120:16 particular 9:7,8 27:25 31:25 35:21 37:14 72:20 73:2 83:14 97:17 120:20 128:16 138:7 161:13 171:8 178:5 particularly 40:21 61:10,16 89:22 123:24 127:10 129:23 parties 7:5,11 53:1 55:14 103:9 168:15 170:6 partners 38:15 163:17 parts 61:13 82:4 110:9 164:23 167:12 pass 3:24 132:4 passed 25:17 34:24 53:7 54:5 54:13 56:13 132:10 133:7,11 134:9,12,16 141:15 144:5,8 183:23 passenger 70:23 70:24 75:24 passing 74:4 passion 20:16 passionate 163:1 passive 34:19 paste 167:6,10 pasted 167:7,12 patently 40:14 paucity 15:10 pause 72:2 pay 43:19 pays 74:14 Penny 97:18
		P		
		P2 169:20 package 129:5 page 77:20,21,21 77:22 78:7 105:8 105:23 109:3,11 109:23 111:16 112:6 114:7 115:12 120:6 122:6,18,21,23 123:5 124:23 126:3,15 127:18 131:6 133:8 135:5 137:16 142:8 143:12,19 144:6,13 146:10 147:17,18 150:13 153:12 154:25 155:4 157:1 159:7,14,18 160:2 162:8		

189:16,18 190:4 people 16:1 21:15 30:21 39:10,13 39:19 66:12,14 66:17 68:24,24 72:17 89:24 111:22 150:22 163:2 182:16,17 perceived 82:10 82:11 83:3 152:5 percentage 176:10 perceptual 81:4,7 82:9 83:12,18 perfectly 48:17 139:25 186:4 187:19 perform 158:23 160:8,17 performance 71:14 97:9 161:5 165:6 performed 41:3 108:17 154:6 156:7 159:24 161:2 171:1 172:20 performing 163:9 168:11 174:13 period 66:22 67:15 82:2 93:1 107:20 113:21 118:2 periods 61:9 peripheral 81:18 periphery 81:24 83:15 permeated 32:6 37:5 permissive 9:15 16:12 20:7,7 permissively 9:15 permit 31:24 permitted 18:17 18:21 23:14 24:9 27:9 31:21 129:3 178:22 person 48:8 76:21 101:14 108:13 113:13 141:7 person's 100:18	personal 19:25 127:4 persons 42:21,22 153:1 persuasive 103:8 phase 7:15 19:15 171:8 phenomena 81:4,8 82:9 83:12,13 phone 18:5 113:9 phones 30:8 photographs 77:10 114:1,13 phrase 101:25 109:19 145:9,10 145:11 physically 73:24 73:25 89:9,11 171:15 picked 20:4 154:1 picture 15:12 27:13 38:20 44:22 63:17,19 106:13 126:19 155:6 158:1 178:18 179:21 pictures 114:14 piece 68:13 87:13 106:9 187:18 pieces 104:8 pillar 71:18 pistol 46:9,10 place 4:10 13:13 13:24 23:3,11 33:1 38:14,15 39:16 57:19,25 58:16 62:14 65:23 100:6 114:25 126:5 127:9 128:3 130:2 131:11 156:13 162:11 174:7 placed 34:22 74:8 87:9 117:25 118:12 places 9:1 133:18 187:20 plain 22:14 24:7	146:18 153:2 plainly 50:20 58:21 79:19 145:14 153:7 167:4 171:1 plan 13:19 19:9,10 19:18 27:2 31:24 32:9,24 34:1 38:11 41:9,12 52:1,7 55:19 56:1,15 67:10 69:20 71:4,8 95:16 117:19 118:6 124:1,11 130:4,10 140:20 planned 16:7 31:17 39:4 99:3 99:4,24 100:4 114:21 118:21 planning 7:14,19 13:6,8,9,24 14:3 14:9,17,18 15:13 15:14,16 19:15 21:2 23:2,6 27:6 28:22,25 29:3 37:19,21,23 38:8 38:9,10 41:18,18 43:21 50:20 55:20,22 61:22 63:2,4 93:1 98:7 122:9 124:9 130:1 167:22 171:8,13 173:3,7 183:25 plans 99:13 platform 158:3 play 165:5 playback 57:22 58:11 59:3,6,9 60:5,19 137:2,20 137:21 138:7 139:11 played 114:19 playing 143:22 please 78:7 109:11 189:19 plot 118:11 121:4 121:12,22 122:19 123:14 140:24	plugged 59:14 plus 148:2 pm 96:14,16,18 132:3 136:8,10 190:7 point 3:10 4:21 11:12 19:14 31:11 33:4,5 41:5,7,10,13,15 41:16,24 50:13 50:16 51:3,9 52:8,11 53:4,5,20 54:6 55:11,13,17 55:24 56:7 60:13 61:19,20 62:19 62:25 63:1 65:8 65:9,13,15,16,17 65:24 66:8,11,17 82:7 89:18 92:20 92:24 93:7 97:3 98:5 100:21,25 102:12,18 103:4 103:6 104:22 105:7 110:14,15 114:5,17 116:16 121:9 125:25 126:10 127:5,14 129:15,17 130:3 130:9,13,15 132:1,7,13,17,21 142:16 150:10 151:5 152:20 154:3 155:10 157:4 158:9 160:20 162:3 166:6,11 168:15 168:19,21,24 169:2,6,12 172:11 174:12 178:17 182:14 183:8,17 184:7 186:6,21 187:16 187:18 188:18,20 pointed 30:15 73:23 89:8 131:1 142:3 pointing 76:20 141:13 142:2 points 17:25 27:17	45:19 50:13,14 51:5,16,25 52:5,6 52:21,22 54:3 56:24 69:24 95:16 128:9,19 135:8 161:10 179:1 183:9,13 183:19,22 polarised 161:9 police 18:21 25:7 25:16 29:22,23 33:1 39:5,12,13 45:20 68:19 76:20 97:9 98:24 99:11,12 100:6 112:18 113:14,21 115:6,18 119:11 119:12,16 120:23 121:1,15 122:20 123:4 124:4,6,13 124:17 125:5 126:24 127:21 134:8 140:2 149:12 151:3 152:3 161:5,15 162:6 168:17 174:5 policies 13:20 16:3 16:8 35:3,20 45:7 policing 21:12 122:15 125:3,9 132:18,19 141:8 146:16 154:19 157:16 162:22 167:19,20 173:8 181:5 policy 13:1 15:6 134:23 poor 86:10,11 172:16 173:14 pose 24:24 67:5 posed 24:2 55:6 56:4,16 165:6 position 2:18 7:23 8:5 11:24 24:21 43:5 48:15 51:20 52:24 57:24 68:5 68:10 75:22 77:4
--	--	--	---	--

77:7,8,10,13,25 78:4 79:1,8 80:7 87:4,6,7 94:13 95:11 98:18 99:20 100:7 115:15 132:14 135:17 146:20 148:9 179:22 180:4 187:11 positioned 71:17 71:20 78:20 79:2 83:8 86:13 positions 78:15 161:9 positive 6:11 7:9 7:12 21:9 90:18 108:19 positively 49:10 poss 111:17 possession 26:22 27:14 30:2 36:3 36:6,13 38:23 44:24 46:4,7,22 49:17 53:25 64:24 86:17 106:12 107:3,4 108:10,18,20 109:8 110:1 111:21,24 132:15 143:11 144:17 145:15 180:23 possibilities 76:1 87:16 possibility 32:22 43:8 54:12 121:6 127:1 134:6 possible 1:21 7:17 10:17 15:11,18 37:15 39:18 41:6 48:2 52:8 55:16 59:9 63:19 74:18 77:10,19 78:14 82:16 112:22 114:5,20 123:21 123:25 125:3 126:20 129:18,20 130:9 132:15 140:2 149:1 150:12 160:3,6	176:8 possibly 77:19 78:11 112:14 121:13 122:12 126:12 133:5 143:17 174:20 178:1 184:21 post 86:19 87:8 131:15 post-incident 79:22 potential 14:22 27:4,10 29:11 41:21 55:17 67:8 114:12 125:13 128:11 133:15 154:24 potentially 96:23 103:14 127:20 138:11 147:2 181:18 power 9:15 101:20 practicable 174:8 practical 2:17 101:2 117:22 practice 13:4 40:22 pre-deployment 113:23 181:6 pre-disposition 157:3 precautions 7:18 7:18 precedence 182:12 precise 1:21 75:21 110:14 precisely 10:9 11:1 47:6 70:2 89:4 89:13 160:18 163:11,13 170:9 precursor 18:9 preferable 64:17 145:8 preferred 9:18 prejudged 153:6 premises 99:21 prepared 14:14 140:3 preparing 143:10	167:6 presence 43:2 142:4 present 15:1,3 24:14 51:6 83:15 111:7 122:9,22 130:8 134:7 150:11 167:24 171:15 175:15 presented 39:3 45:25 129:20 154:17 182:7 presenting 130:23 presents 176:3 pretty 109:22 147:14 prevent 11:4 26:4 53:12 121:21,22 129:11 130:2 prevented 114:25 121:19 preventing 33:12 prevention 11:23 prevents 11:6 previous 77:22 107:18 117:14 118:4 previously 111:20 primarily 103:17 104:18 principle 11:13 23:13 98:21 principles 21:4 42:5 51:12 prior 2:23 108:17 prioritisation 160:16 prioritise 54:23 prison 19:10,21 24:22 25:1,17 26:2,7,19 33:5 38:25 39:2,7,14 39:21 50:19,24 56:12,13 115:5 116:17 117:22,22 118:24 119:3 121:10,16,20,22 122:10 123:11 prisoner 121:11	123:8 prisoners 24:24 25:11 39:3,12 117:16 121:17 129:23 proactive 34:15 145:17 probably 117:12 probe 53:6 54:8 60:10 63:20 64:8 64:10 65:1 68:13 69:4,9 70:15 74:6 80:1 85:11 85:11 87:18 119:22 120:6 131:22 133:1 135:19,24 136:2 136:20 139:16 140:9,21 144:15 145:1,21 151:15 151:20 152:1 177:5 problem 33:24 58:25 78:19 105:18,25 130:21 164:24 problems 96:7 123:13 procedures 119:23 proceed 19:2 27:2 97:2 114:17 125:1 128:11 139:10 proceeded 29:20 125:25 proceedings 161:18 174:24 185:11 188:7,10 process 18:13 21:21 23:12 37:3 41:18 78:9 87:25 162:15 167:22 170:11 173:3,7 processes 187:7,8 procure 133:21,25 produce 111:5 135:12 140:2 170:10 171:9 produced 39:1	78:22 79:1 107:17 140:4,17 product 59:12 137:12 professed 22:17 professional 40:13 172:17 professionalism 32:12 profile 33:24 105:18,25 profiles 106:3,10 profound 57:17 profoundly 48:22 49:4 progress 27:9 34:7 34:9 66:24 progressed 19:18 prohibited 9:2,11 9:12 101:7 170:21 prohibition 8:23 8:24 9:16 11:14 21:6 53:11 163:11 prohibits 100:18 projected 168:20 promotion 164:14 proper 14:5 48:17 49:12 69:10 91:19 110:8 161:14 181:8 186:18 properly 13:14 16:4 18:24 19:6 27:20 45:25 59:8 59:17 60:15 70:7 126:22 177:15 187:19 proportionate 157:22 169:4 proportionately 45:25 propose 152:20 166:11,13 proposed 20:2 111:7 proposition 49:14 134:20 139:19
---	--	---	---	---

153:5 164:15 177:8 181:22 184:22 185:10 propositions 97:17 prosecution 123:23 prospective 118:6 118:25 159:6 protect 98:4 125:5 158:25 163:2 protecting 121:16 protection 12:16 16:23 26:17 53:25 121:15 126:17 127:23 129:5,18 162:25 163:5 protective 120:15 protocol 115:8,18 protocols 115:12 prove 27:8 175:4 proved 135:4 137:12 175:22 180:14 proven 31:23 provide 14:3 36:10 47:11 57:15 69:12 160:7 163:23 180:22 181:1 provided 13:4 17:17 34:25 38:20 45:5,11 47:19,24 50:21 51:17 57:4 62:18 63:10 64:11 67:1 69:5,8 71:3 108:24 143:1 150:8 165:19 168:4 provides 11:3 56:1 101:11,17 170:13 180:25 providing 48:4 104:15 province 163:10 provision 21:23 122:7 162:16 proximate 94:18	public 16:23 23:6 23:16 25:7 26:16 43:2 50:25 53:24 54:22,24 122:17 123:19,22 126:17 127:22 154:7 158:13,25 159:3 162:25 163:5 pull 79:10 pulled 72:7 78:24 141:22 pulling 154:5 punished 11:2 purely 73:9 purport 101:21,24 102:5 purported 30:13 purpose 60:10 82:24 101:19 140:23 purposes 38:4,5 63:4 pushed 86:18 87:1 87:6 put 4:23 11:24 39:8,19 42:7 43:5 50:4 57:24 58:23 72:17 73:17 75:13 76:16 77:1,19 78:2,6 79:23 80:8 82:12,17,19 84:1 87:19,20 88:2,2,3 89:24 90:8 97:19 99:15 108:2 114:8 117:12,20 120:5 130:2 139:17 145:18 148:8 151:24 166:7 168:14 169:1 181:24 182:24 184:16,20 185:11 186:18,19 putting 5:10 32:25 72:13 78:3,9 80:18 84:25 87:22 89:23 122:19 126:5	127:8 <hr/> Q <hr/> quality 61:1 query 104:13 113:2 question 7:22 10:5 11:23,25 16:9 41:7 61:24 66:11 73:13 88:17 90:20 93:16 95:2 95:12,14 101:13 103:12 104:2 108:13 114:16,21 121:24 125:19 128:11,15 133:6 134:21 135:18 139:24 142:20 149:3 150:15 155:24 158:4 162:22 167:17 173:19,22 174:1 174:25 175:12 176:2 177:21 181:2 184:17 186:7,18 188:24 189:3,6 questioned 73:1 questioning 42:2 167:5 172:10 questions 12:19 32:19 91:11 117:14,25 130:13 131:20 133:9 147:20 148:13 165:5 185:18 187:2 quickly 72:25 80:4 80:9 96:22 159:23 quiet 114:14 quite 17:3 26:2,13 31:12 37:16 60:18 68:16 69:17 70:16 72:9 79:4 96:21 104:13 115:17 119:8 148:22 176:1 184:5 quote 45:22 52:24	72:15 <hr/> R <hr/> R116 147:8 race 186:7,15 187:25 radio 149:12,13 raise 12:20 183:8 184:7 raised 2:22 4:9 41:4 72:6 75:18 77:18,25 132:8 150:13 182:14 186:8,10 Raising 41:14 raison 20:23 Rambo 62:23 Randall 74:8,13 75:16 range 26:25 41:20 93:17 157:11 169:5 ranged 26:20 ranging 26:23 rarely 158:20 rate 72:11 rational 60:7 rationally 45:25 raw 134:10 186:24 re-evaluate 16:22 re-instigate 20:19 re-organised 60:6 reach 77:16 176:14 189:21 reached 4:21 27:10 53:20 60:13 61:19 65:16,24 66:8,9 reaches 31:5 reaching 6:4 73:24 77:25 78:12 84:9 88:12 89:10,19 react 73:10,11 reacted 86:6 reaction 132:23 read 5:17 49:6 104:23 105:13 109:10 115:13 124:24 144:21 readily 27:12	reads 137:11 reaffirmed 146:8 real 11:23 20:17 27:14 46:22 47:9 47:18 48:14 49:3 60:24 62:5,7 64:24 122:11 133:16,23,24 134:2,6 135:4,9 135:13 140:7,11 141:5,13,16 142:4,5,23 144:18 145:13,15 147:23 148:8 163:14 170:6 178:25 180:14 182:10,12,17 183:2 realise 35:6 realising 85:5 realism 139:24 realistically 53:24 reality 28:2 31:20 158:19 really 15:13 16:23 20:17,22 45:19 45:24 82:14,15 83:20 85:19 90:2 150:21 169:18 rear 86:20 87:1 114:9 reason 6:7,17 67:22 72:20,24 76:18 79:17 88:15 105:16 112:18,25 117:3 118:10 123:6 127:11 129:24 131:4 135:3 155:1 174:15,21 184:20,24 reasonable 1:4 7:13,18 11:20 19:4 30:23 33:22 48:17,19,23 68:10 88:18 90:21 91:5 93:10 114:16 121:1 125:20 128:10
--	---	---	--	--

131:9 145:5 154:20 168:25 174:6 180:8 181:13,23 183:6 189:8 reasonableness 2:10,13 10:5,20 11:16 127:5 189:23 reasonably 31:2 36:5 79:21 88:19 93:18 107:5 113:22 144:9 174:8 175:19 179:9 reasons 15:22 16:14,14 42:19 51:3 63:25 97:18 102:13 103:20 104:6 106:21,23 111:3 126:18 138:6 139:3 152:22 166:13 180:19 reboot 59:11 rebooted 58:24 138:24 rebut 133:2 recall 20:15 24:16 53:22 56:10 67:17 116:25 149:11 receive 49:15 received 1:8 19:9 34:19 35:12 48:13 60:22 63:23 77:1 108:14 120:8 131:18 132:12,21 133:1 140:8 144:25 145:1 178:21 182:18 receiving 88:5 recitation 42:4 recognise 125:22 129:9 recognised 129:4 146:18 recognises 156:3	160:5 recognising 120:20 130:7 recollecting 117:6 recommend 95:6 recommendation 125:17 recommendations 16:4 100:24 101:5 185:25 recommended 51:18 165:23 reconcile 39:15 reconstruct 13:25 14:24 74:19 reconstruction 80:15 record 13:22,23 14:9,16 24:3 32:15 45:8 52:12 54:4 61:6 70:12 70:14 164:25 173:7 recorded 13:9 14:11 23:9,23 53:19 75:13 104:7 108:9 115:10,19 130:1 139:14 165:13 166:3 168:8 170:5 180:19 recording 17:21 41:1 50:1 103:22 141:10 142:14,18 143:2 144:11,19 168:12 170:4 173:2 records 28:13 58:20 recovered 138:21 rectify 63:11 Reddy 61:3 62:21 149:10 150:8,14 151:14 Reddy's 68:1 reduce 52:3 126:6 129:10 reducing 18:23 refer 46:22 94:11	141:2 166:9 reference 2:19 8:1 8:2 24:16 28:15 28:22 36:12 37:12,13 42:21 42:22 46:14 62:22,23 68:18 84:6 88:18 91:1 103:6 105:11 111:16 116:20 125:15 128:14,15 141:1,19 148:11 152:2,4 153:1 157:23 163:22 167:1 170:18 172:25 173:11 180:2 referenced 142:11 references 116:10 137:14 152:1 157:16 168:5 referred 9:19 29:4 172:15 187:19 reflect 120:11 145:20 reflected 37:8 111:13 refusal 31:15 32:3 refuse 29:13 regard 37:14 40:15 98:11 102:17 103:1,17 105:16,22 109:24 116:21 118:18 119:9 121:2 124:17 128:24 161:24 162:7 166:8 175:6 177:14,19 regarding 38:1 135:1 144:12 regardless 122:4 133:23 135:15 registration 53:7 regrettable 99:7 99:23 rehearsed 156:19 reinforce 99:23 reject 14:8	rejected 99:6,12 relatable 176:23 relate 103:21 145:13 176:21 177:2 182:10,17 related 182:11,22 relates 143:17 176:16 178:15 181:7 183:8 184:7 186:7 relating 26:22 29:19 35:17 44:19 97:22 138:8 162:22 relation 2:16,20 7:12 11:25 12:6 12:10 17:23 21:9 33:22 34:16 35:25 36:8,15 37:10 38:3,5,11 38:25 40:7 42:24 43:13,14 48:12 49:25 51:12 54:22 56:5 63:13 70:22 89:5 92:14 94:14 95:6 96:22 97:13 105:12 110:10 128:16,19 131:14,17,21 133:11 140:6 153:14 158:4 166:1 167:5 176:6,15 177:6 177:12,21 178:2 178:20 182:24 184:9,15,17 186:1 187:20 188:21 189:22 relatively 61:13 81:21 82:1 144:24 relaxed 79:8 relay 63:24 relayed 45:15 46:2 46:25 47:24 48:2 53:16,18 62:3 64:5,15,16,18 68:2 71:3 149:19 relaying 45:12	relevant 2:14 27:20 32:13 45:7 52:18 54:10 61:14 90:20,25 93:22 99:1 106:1 106:12 108:8 111:9 125:19 130:11,13 153:13 156:15 159:25 163:3 169:19 175:6 176:23 177:5 179:7 reliability 45:2 187:3 reliable 15:12 36:1 38:22 45:16 46:2 46:14 49:2 65:1 109:4 178:24 reliance 9:1 74:9 187:20 relied 36:5 relies 102:19 relieve 63:9 rely 3:6 92:15 98:21 179:3,19 remain 65:18 remained 124:14 140:9 147:17 remaining 96:11 remand 25:10 39:13 remedied 59:18 remedy 137:24 138:25 remember 82:4,6 remind 1:16 reminder 147:4 181:19 remove 79:14 84:8 123:7 removed 110:13 138:24 rendered 98:15 reopened 185:19 repair 58:20 repeat 56:17 64:4 123:25 repeated 6:21 82:25 142:12
---	--	--	--	---

143:3,6,22 152:1 164:8 repeatedly 60:20 79:23 80:2 82:12 82:14,20,22 83:6 107:6 142:19 158:21 161:12 replace 126:24 130:22 replaced 59:10 128:18 replaces 107:18 replacing 127:3 128:12 138:12 reply 61:4 replica 113:7 replicated 126:11 replied 42:9 report 74:7,10,11 74:12 75:15 77:10,19 78:13 81:2 102:20 115:8,9,15 127:15 141:9 165:11,14 167:18 172:15 173:16 182:15 185:25 189:24,25 representation 47:10 reproduced 162:18 reputational 31:19 requested 119:6 require 16:24 96:6 122:16 123:2 164:1,25 170:14 required 12:2,3,4 16:8 24:6 28:11 51:21 55:20,20 58:13 112:21 120:15 160:16 165:4 171:1,15 182:2,4 requirement 14:2 21:13 51:2 59:12 119:1 126:6 162:24 requirements 7:5	15:5 17:3 34:14 57:20,21 102:24 requires 10:12,13 41:17 49:10 94:21 118:22 160:9 requiring 171:9 research 32:13 residential 155:11 158:22 residents 152:4 155:16 residual 33:6 resolve 51:11 resort 41:6 85:14 resource 60:7 resources 29:5 34:10 51:22 57:5 112:20 113:1 183:25 Resourcing 172:22 respect 9:7 11:14 14:20 25:5 27:14 35:1,7 37:11 44:24 49:17 91:22 109:16 110:7 121:10 127:12 139:22 153:3 respectful 95:10 respectfully 185:2 respects 104:1 respond 92:8 161:19 185:16 186:2 responded 105:9 responding 122:25 137:22 response 23:10 85:12,15 92:17 123:2 responses 93:18 responsibilities 22:2 34:12 35:7 53:8,10 160:11 responsibility 17:7 21:1,22 22:14 26:24 27:3 35:8 35:9 42:13 54:21	94:9,16,25 100:12 104:24 133:18 162:16 170:25 responsible 18:16 22:25 39:2 58:3 107:4 162:9 163:21 175:6 178:14 rest 5:7 153:15 resting 76:2 restore 138:15 rests 18:19 result 14:23 16:21 35:18 39:1,8 40:19 44:25 48:7 57:23 98:8 106:19 116:13 121:25 123:4 resulted 17:5 178:17 resulting 95:16 182:21 results 11:21 176:25 resume 44:8 retain 32:20 retire 166:14 retired 31:6,12 retrospect 100:11 retrospectively 148:15 return 5:6,6 20:19 returned 58:22 returning 85:24 reveal 30:3 revealed 30:6,9 37:1 42:2 134:4 reverse 118:13 review 11:10 57:15 58:17 61:3 62:11,12 139:15 139:25 157:19,20 157:23 158:2 reviewed 118:2 142:18 144:19 146:4 revised 107:17 180:2	revisit 125:10 revisited 14:7 rides 141:18 riding 148:11 rifle 76:5,10 right 5:20,22 48:7 75:23 86:14 109:23 116:3 118:3 126:5 127:9 131:11 138:18 141:20 159:10 163:4 174:20 183:18 188:10 rightly 104:13 167:16 rights 6:6 104:1 rigorous 20:7 rise 31:2 75:25 84:20 179:10 188:17 rising 168:23 169:2 risk 6:13 7:13,17 8:20 16:18 17:1 17:18 18:20,20 18:23 22:23 23:16 24:24,24 24:25 25:14,25 26:4 28:7 33:6 37:15 39:4,19 40:17,18 41:3 46:15 48:10,10 50:23 51:2 53:1 54:24 55:10,14 55:15,17,23 56:4 56:25 57:1,2 65:22 67:5 69:2 91:18 93:7,8,10 94:8 100:5 106:14 118:9,14 118:15,19,23 119:2,12,19 120:10 121:11,12 122:14,19,22 123:8,17,19,22 124:2,19 126:3 127:19 128:21 129:16 130:9,23	133:16 138:2 140:17 146:10 147:7,10,13,24 148:5,19,19 159:3,4 167:17 167:21 168:2,7 168:14,18 169:1 169:11,13,15,16 169:17,20,22,23 170:6 174:9 175:14,15,20,20 175:21,24 176:17 177:14 178:9 179:10 182:7,19 182:21 183:3,7 risked 113:1 124:4 risks 8:13 10:1 13:16 17:16 18:22,25 19:1,3,4 23:20 24:2 26:7 27:23 28:3,5,5,15 33:14 46:12 52:3 54:16 55:1,20 56:2 67:10 70:1 90:18 121:3 125:3 126:6 risky 66:6 road 114:14 robber 131:1 Rodney 125:4 role 20:12 52:16 52:16 53:11 85:24 160:8,17 163:3 164:16,18 165:5 169:19 170:15,18,19,22 171:8 172:23 183:13 roles 21:6,18,22 22:2,25 160:16 162:15 163:9,14 163:18 171:1 Ronan 114:4 room 38:2 82:6,6 149:20 188:9 Ross 104:22 186:25 round 72:22 rounds 46:9
---	--	--	--	---

routinely 26:7	54:23	seat 70:23 72:6,18	39:23 46:3 82:24	September 1:1
rule 100:14,20	safeguards 125:2	75:24 76:2,4	83:2 109:7	190:9
102:12	safekeeping	second 7:1 16:19	seen 6:9 33:20	sequence 74:20
ruled 103:8 129:25	108:16	33:12 37:19	47:12,14 56:8,10	Serco 29:14,15,19
ruling 100:18	safely 22:9 43:20	38:10 54:14	73:21 89:7 95:4	29:24 30:2,3,4,6
102:15 103:4,6	safety 21:15 46:8	56:20 76:17	119:22 136:21	30:7,10,13,16
173:25	51:12 54:16	87:24 109:23	156:16 158:1	31:2,3,6,10,16,20
run 16:24 17:4,16	81:11 123:20	114:16 130:9	164:20	31:23 32:3,8,17
18:8,11,17 19:5	salient 45:19	132:13 143:25	seized 113:7	33:1,13 50:23
19:11 23:14,18	sample 187:3	164:5 174:25	seizing 138:8	53:7 55:7,8
23:25 24:1,10	sat 10:16 68:23	175:11 181:6	selected 60:3	62:22 114:23
26:14 29:2,9,11	72:6	secondly 2:16 3:5	88:24 156:12	115:2 116:2
30:15 31:21,24	satisfied 90:15	6:15 8:17 42:23	selecting 154:12	119:10,11,13,17
38:19 52:7 53:4	93:14 175:3	75:8,23 87:9	selection 159:2	119:18,23,25
55:13,25 59:21	satisfying 3:6	103:4 131:22	self 2:9 7:2 9:9	120:1,8,12,13,15
79:1 96:6 110:12	sauce 187:23,23	163:13 176:25	12:13 90:15	120:19,23 121:16
121:2 125:7,18	save 11:7,15 34:5	179:19	97:21 116:12	126:12 127:3,12
127:2 131:10	34:23 90:11	seconds 75:3	self-defence 2:12	128:12,20,22,23
133:3 139:25	92:12	secrecy 39:1	187:21	129:10,22 130:9
165:21 166:6	saw 19:8 83:20	section 8:24 9:14	selfsame 90:10	130:22,25
running 14:1 18:4	87:21 169:14	19:25 54:1 99:1	Sellu 177:20	Serco's 120:10
27:24 28:5 49:25	saying 8:3 33:3	100:13,17 101:10	send 189:18	128:16
57:10,11 59:25	48:4 91:21	101:17,19 102:3	sending 92:24	series 86:11 99:7
137:24 170:5	114:11 136:12	102:3 175:7	senior 21:10 31:10	147:19
rush 68:22	142:9 143:7	secure 34:15 61:5	36:4 43:18	serious 6:1 47:6
	151:1,1,11 163:2	79:11 107:7	119:15	64:18 70:18 91:4
S	163:4 166:14	119:14 179:25	sense 37:20 46:23	94:19 106:6
S105 67:17 70:3	172:16 180:11	secured 24:1	59:11 74:18	122:2 124:5
76:22 84:3	says 47:25 71:24	securing 65:19	77:24 79:9 86:2	164:6 185:15
111:14 112:3	83:11,19 110:25	124:1	86:22 118:14	seriously 2:24
180:9	115:10,15 120:18	security 25:2,2,8	senses 81:7	13:25 149:21
S111 71:15 72:3,8	125:1 128:4	26:9 39:3 118:23	sensible 70:23	155:22 166:4
72:9,12,21 86:20	153:17 162:8,12	122:5	sensibly 186:3	182:6
86:25 89:5,21,23	163:5	see 14:12,22 16:6	sensitive 17:23	seriousness 98:5
159:15	scenario 28:22	44:7 45:14 72:5	120:7	serve 123:18
S111's 72:8,11,15	88:18 89:4	72:8 73:5,8,22,25	sent 69:14 92:20	served 26:17
87:5	scenarios 41:21	77:23 80:5 81:23	116:17	service 24:22 25:1
S48 42:20 51:16	school 68:25	86:23 89:8,11	sentence 8:14	25:17 26:3,7
153:8 156:10	scientific 74:16	109:23 111:15	26:20 103:5	38:25 39:2,8,14
163:21 165:17,20	SCO19 20:2	120:2 129:25	120:4	39:21 115:6
168:3 169:1	SCO7 19:25 20:13	131:4,5 140:21	sentences 51:6	118:24 119:3
180:9	37:3	151:25 152:3,3	110:12	121:10,16
S48's 165:6,12,20	SCO7's 37:4	160:1 163:17	sentencing 26:23	servicing 17:15
sac 158:22	scope 125:10	184:5	26:25	session 108:6
sacs 158:17	Scotland 44:14	seeing 69:1 83:16	separate 6:10	sessions 104:4
safe 122:17 143:9	screen 59:3,10,13	seek 4:15 33:2	169:15	set 10:9 22:6 25:10
143:25	Scrubs 38:16	50:14 125:2	separation 21:18	34:14 41:20
safeguard 17:7	scrutiny 85:15	138:5,18 149:2	21:22 22:25	53:14 57:5,14
50:22	se 100:11	seeking 22:5 36:2	162:15	58:9 59:4 63:25
safeguarding				

90:22 92:9,16 93:25 97:17,23 98:11 99:1 103:17 107:1,19 121:13 128:24 136:21,24 139:9 154:25 156:25 170:19,23 171:20 180:2 183:9,19 183:23 sets 101:15 118:18 setting 41:11 49:20 severe 122:14 SFC 20:1,6 22:7 22:16 26:25 28:9 28:14 106:7 130:5 154:14 162:9,24 164:21 170:19,20 171:1 171:7,11,15,17 171:19 172:3,14 172:20,21 173:2 173:16 176:22 SFC's 172:25 shake 186:12 shape 92:12 shared 40:8 146:16 sheet 109:24 shift 24:15 shifted 26:1 shocking 32:5 shoot 10:21 80:14 80:22 83:4 86:9 87:13 89:6 98:17 131:3 shooting 80:22 88:9 89:15 90:9 99:5 100:6 124:16 133:12 141:4 143:14 shootings 20:21 shop 113:4 short 8:2 44:11 53:4 82:2 92:7 105:24 123:18 127:20 136:9 155:17 183:12	short- 121:3 short-term 18:20 18:22 19:1 22:23 124:19 125:3 shortcomings 168:10 shorten 81:20 shorter 136:13 shorter-term 19:4 shortly 5:21 14:15 46:6 67:17 70:4 126:14 132:3 148:12 154:22 shot 5:23 6:17 7:1 9:9 48:8 62:1 75:2,7,9,11,25 76:16 77:6,9 78:5,17,18 79:17 80:12,19 84:8 85:5 87:17,21 88:5,12,14 90:16 98:23 99:18 129:14 169:25 187:12 shots 133:15 shottey 140:11,14 143:7,8 shoulder 75:23 76:2 shoulders 76:2 170:20 show 30:21 176:9 showed 89:18 156:6 showing 156:18 shown 77:18 78:6 80:15 113:9,10 114:12,14 175:5 shows 28:18 123:14 shred 186:14 shun 155:25 side 27:21 151:5 158:17 siege 98:24 sight 15:13 72:8,14 73:8 187:9 sighted 56:8 105:14	sign 89:19 significance 85:8 101:2 significant 19:23 46:17 82:4 109:14 110:22 120:15 125:10 146:2 147:11 148:18 165:20 182:1 significantly 178:19 silent 2:3 similar 27:21 101:11 127:6 130:23 156:5 158:1,2,3 simple 166:10 simply 5:8 7:7 8:9 26:1,2,13 28:17 31:21 33:14 41:15 42:4 43:12 47:15 66:14 77:17 79:4,11 83:12,16 84:22 91:3 95:10 108:7 119:15 153:22 157:13 164:25 167:11 177:23 182:8 187:25 simultaneous 57:15,21 simultaneously 160:4 Sinan 108:15 sincere 188:5 single 55:11 151:25 sinister 32:2 SIO 21:7 22:5,8,12 51:6 52:16,17 53:11 115:4 149:19 162:9 163:9,20 164:12 164:15,17,19,21 164:23 176:22 177:3 183:13 sir 1:5 3:15,20 4:7 4:18 5:3,16,17	6:4,19 7:3,21 12:18 14:8 20:15 28:14 37:20 40:8 43:9,18 44:5,13 49:6,17 53:22 56:10 62:12 67:14,17 68:9,22 69:16 72:2 74:21 74:23 90:2 91:20 92:15 93:16,22 95:4,19 96:5,20 100:13 103:20 104:17 107:25 114:5 117:24 128:3 131:8 135:21 136:16 142:21 153:5,20 156:16 157:5 159:15 161:4 165:19 166:17,20 172:10 173:5,19 173:24,24 174:17 174:24 176:1 177:11,18,22 178:4 179:1 180:16 181:21 183:5,9 184:3,8 184:16 185:8,17 185:23 187:14 188:15 sit 91:9 170:20 site 18:4 66:2,4 113:2,8 sitting 9:2,3 25:3 72:18 75:19,20 78:11 177:22 situation 16:2 41:8 72:3 82:10,11 83:20 84:17 86:5 89:12 93:9 130:23,23 174:22 situations 81:6,19 135:9 six 46:9 96:22 117:7 159:20 skirt 44:13 Skorpion 46:10 sleeping 69:7 79:7 slider 137:21	slightly 21:12 147:9 182:19 slow 142:14 slow-time 154:9 small 187:3 smash 71:16,19 smashing 71:13 Smith 168:20 so-called 37:19 161:22 software 137:22 Sogucakli 71:22 72:6,11,14,23 89:5 124:10 133:20,23 134:2 Sogucakli's 72:5 soldiers 98:14,16 130:19 somebody 12:13 12:14 26:3 73:15 82:16,20 123:3 150:25 someone's 176:17 somewhat 132:24 soon 120:2 152:3 sooner 185:3,9 SOP 13:4 104:22 sorry 62:21 96:1 166:17 186:11 187:4 188:17 sort 16:5,6 44:4 66:25 96:8 134:22 sorted 58:17 sought 25:22 45:18 55:10 70:14 79:9 133:10 146:15 161:17 sound 75:3,6 source 35:1 105:23 107:23 110:21 124:9 sourced 133:17 space 151:12 Sparks 19:12 speak 15:14 42:12 116:6 speaking 119:14
---	--	---	---	---

specialist 150:1 151:17 169:1 180:10 specific 29:18 48:21 82:23 178:10 specifically 123:16 141:1 143:5 153:10,14,17 154:19 160:8 speculate 15:20 speculation 134:19 139:12 149:2 speed 4:1 spend 152:20 spirit 13:21 91:22 split 59:7 139:10 split-feed 139:7 spoke 20:15 115:23,25 spoken 116:18 sport 113:4 spot 16:5 spotted 56:12 SPP 16:25 17:3,16 18:9,18,19 23:14 23:19 27:1,4,10 27:21,23 29:2 51:9 124:20 125:14 spying 68:20 Squad 164:10 squandered 57:9 staff 31:16,22 50:23 60:1 126:12 staffed 62:15 stage 2:23 19:7,21 27:9 32:19 39:12 41:18 60:24 63:7 73:12 111:24 135:25 137:7 stale 132:24 stance 31:14 stand 29:10 83:25 86:9 188:7 standard 88:19,21 93:21 182:2 standards 89:3	172:17 173:12 standing 71:17 stark 83:10,19,25 start 67:7 95:24 96:4 starting 49:14 82:12 154:3 179:22 180:4 state 8:9 9:12 25:8 41:3,15 47:7 49:16,23 53:5 65:4,6 70:4 85:19 98:3 100:19 102:12 132:9 141:21 148:12 152:23 154:23 155:10 168:15,17,21 187:1 stated 26:6 36:23 46:16 58:12 77:3 83:22 100:3 102:20 109:2 132:3 146:16 147:24 156:4,21 163:24 165:14 statement 11:13 77:2 137:15 140:13 142:13 186:25 statements 127:12 states 153:14 160:8 stating 10:3 101:7 118:9 141:17 station 39:13 45:20 statistics 186:24 steamed 70:10 71:11 steamed-up 86:24 steer 125:17 step 8:23 9:10 10:3 10:11 118:5 161:23 steps 7:13 8:16 9:2 17:14 24:20 56:15 67:15 90:21 91:5,5	93:10 107:5 121:10,13,18,21 Stewart 45:10 47:5 Stewart's 46:24 stood 67:11 71:7 86:19 stop 44:1 66:5,7 97:6 152:14 157:19,23 stop/extraction 158:8 stopped 172:10 stopping 8:2 71:21 straight 120:5 126:16 strange 73:10 strap 76:12 78:17 78:17,22,23 79:1 79:3,13,15,16,19 straps 79:10 strategic 30:12 39:23 138:17 165:24 170:17,22 170:24 strategy 18:1 19:11,14 22:4 27:7 34:15 128:1 128:2 159:2,5 street 35:22 44:18 45:9 49:19 69:2 streets 20:22 43:1 43:4,15 158:17 stress 81:5 126:8 stressed 129:1 stresses 160:2 strict 21:13 stricture 164:20 strike 133:10 striking 13:16 77:6 175:16 strong 15:3 48:18 64:7 125:17 strongest 48:2 strongly 58:24 124:25 131:8 142:4 structure 40:25 164:21	structured 169:14 study 184:19 stunned 81:12 style 20:21 sub-machine 46:10 subject 18:2 33:25 36:22 81:7 128:11 174:9 subjective 168:24 169:11 subjectively 11:11 subjects 34:4 55:3 55:6,16 105:19 111:24 123:24 150:9 159:4 165:22 168:16 submission 9:16 45:9 53:19 54:2 61:24 64:4 66:2 68:9 69:13 94:5 95:10 101:9,25 102:13 105:4 106:25 107:10 110:8 112:7 115:2,17 116:22 118:17 120:9 131:8 132:2 139:22 146:1 150:4 170:1 174:18 176:1 177:4,8 178:4,7 179:4 184:3 185:9,17 187:1 submissions 1:6,9 1:10,10,23 2:6,11 2:23 3:19,25 4:5 4:7,13 5:5 6:10 7:10 10:10 12:19 12:22,25 14:12 17:11 28:20 31:8 32:7 33:17 48:11 48:25 49:6 53:15 54:7 58:6 59:24 64:1 65:7 68:1 74:5 90:10,19,23 92:1,9,17 93:15 93:24 94:1 96:11 96:19 97:24 99:2	101:16 103:17,19 104:20 105:10 111:8,10 113:15 136:22 152:19,21 152:24 157:1 161:10 166:7 169:9 170:12 174:4 176:20 181:8 183:10 184:16,19 186:10 188:5,15 189:12 189:16 191:5,6 submit 6:19 9:22 11:23 28:19 37:10 38:4 43:10 46:23 47:6 49:7 52:20 55:5,10 58:7 59:15,22 60:18 62:14 64:22 65:4 69:7 74:17,25 82:13 83:25 85:1,8 90:24 93:18 94:20 100:13 102:14 106:16 121:8 134:20 137:2 139:14 149:5,7 151:21 177:2 185:20 submits 108:23 submitted 110:22 171:11 submitting 176:3 subsequent 98:19 123:23 substance 8:8,15 23:4,12 28:24 substantial 34:10 substantially 140:18 substantiate 184:21 substantive 40:15 subversion 94:7 subverting 17:7 success 160:9 successful 48:1,3 51:23 109:13 111:2 123:22
--	---	---	--	---

sudden 122:15	supervised 62:16	suspicious 107:13	38:15 39:16	131:24 149:14,24
suffice 25:13 38:17	supervision 60:5	sustainable 165:7	41:10 44:2,3	151:11 152:10
sufficiency 165:22	171:22	sustained 16:23	51:10 55:18	159:15 180:23
sufficient 51:1	supplementary	26:16 53:24	65:23 73:24	184:13
124:1	101:16 174:4	126:17 127:22	74:11 83:21	teams 5:10 112:24
sufficiently 15:12	supply 143:11	162:25 163:5	84:21 89:10	126:21 143:25
suggest 3:17 65:3	support 117:21	swapped 131:5	90:11 93:10,22	technical 19:20
109:7 110:6,12	122:8 139:5	Sweeney 35:24	94:14,25 95:15	57:4
129:15 132:10	148:17 149:20	switched 59:10	96:18 100:6	technique 14:4
138:5,14 140:22	157:14 165:19	139:4	132:22 135:25	89:20
140:25 141:16	177:7 180:7	system 25:1,4 26:9	136:1,4 138:15	techniques 67:24
151:14 155:5	supported 36:19	39:20 137:23	150:25 156:13	68:4,17
161:2 173:13	75:24 180:8	systematic 13:9	161:23 173:22	technology 138:4
178:13 183:22	supportive 172:22	17:20,22 18:6	174:6 175:1	138:10
suggested 25:24	173:16	24:6	181:9	tell 88:1 151:7
105:18 110:4	supports 131:9	systemic 57:25	taken 5:4 7:20	telling 82:15
112:7 116:2	181:21	systems 13:13	15:9 17:14 19:5	113:16 116:25
134:8,9 138:12	sure 2:7 35:12		23:18,22 24:17	tells 124:25
149:21 152:16	50:18 64:5 72:9	T	24:20,21 25:5	template 170:10
154:10 155:22	96:5 143:6	tab 98:25	56:15 57:19	templates 167:24
161:13,20 163:20	184:24 188:14	table 42:17,18	58:16 62:14 68:7	168:10
166:4 167:2	surprise 3:11	43:12,17 153:3	71:15 77:5 80:21	ten 44:5
182:6	160:10	tactic 43:6,20	85:1 90:21,24	tendency 16:1
suggesting 115:13	surprised 2:8	55:11 97:6,8	91:5,6 95:6	tension 22:7 51:13
141:5	159:17	153:2,6 154:3,6,9	97:20 98:8 107:5	term 18:23 123:18
suggestion 105:23	surprising 53:3	154:17,22 155:2	119:24 121:10,18	127:11,20 146:7
109:17 113:12	69:1	155:9,20,23	121:21 122:4	162:6 182:10
134:10 153:20	surrender 77:12	156:2,7,17,19	123:17 124:21	termed 106:17
155:18 160:25	90:1	157:20 158:3	137:25 142:7	118:1
162:20 165:9	surveillance 18:1	159:3,8 160:6	144:15 151:15	terminology
suggestions 164:8	19:20 36:22 54:9	tactical 20:2 21:24	152:17 160:22	146:18 181:25
186:20	57:7 63:12,16	41:20 42:14,16	173:24 175:8	terms 2:18 8:1,2
suggests 46:2	66:16 67:20 68:7	76:5 106:18	184:3	10:3 21:7 33:9
58:25 109:25	68:11 69:2,10,24	109:1 130:10	takes 26:4	37:12 41:11
169:5	112:16 113:20	153:10,21,24	Talking 136:15	56:17 81:15 91:1
suitably 11:2	126:21 131:24	154:14 162:17	target 159:18	97:16,22 100:19
summarised 34:25	145:18,20,22	163:5 165:2,3,5	task 54:19 71:9	106:15 107:2
117:3 150:4	146:19,19 149:4	165:12 170:21,23	164:12,14,18	115:3 119:10
179:14	149:5,14,20,24	171:20 183:14,24	tasking 163:21	128:6 129:6
summary 3:3	150:1,11 151:8	185:14	taught 170:8	133:14 136:20
17:14 59:25	151:17,22 152:10	tactics 69:11 88:22	Taylor 156:21	150:14 159:8
summer 1:4	184:8,13,13	123:2 152:13	157:4,11 168:4	165:2 166:7
Superintendent	surveilled 68:20	153:15,16 156:11	Teague 9:17	170:4 172:20
105:7 153:8	suspect 112:19,23	156:15 157:11,20	team 4:19,23	175:22
159:5,13 164:10	129:14 135:12	160:9	19:24 33:21	terrible 85:5 86:8
170:7 171:4,24	175:19	take 3:3,18 4:1	34:19 36:25	terrorist 130:19
172:16 173:14	suspected 100:5	6:12,16 7:12,24	67:20 68:7,11	test 2:12 3:7 10:8,8
supervise 94:10,16	suspects 100:4	8:16 10:3,11	97:18 107:16	58:14 90:13,14
94:23	112:24 129:18,23	16:11 18:21	108:1,13 114:12	97:21 175:11
		23:11,23 32:17		

<p>tested 58:9 137:4,5 138:21</p> <p>testing 20:8 58:3 138:25</p> <p>tests 58:23</p> <p>TFC 20:1,6 22:7 26:24 28:9,14 51:7,10,18 53:12 93:18 94:7 104:23 106:7,19 129:1 130:6 131:18 132:15 133:6,19 139:17 140:12,25 141:24 142:7,24 144:4,8 144:15 145:4,18 149:22 154:14,22 159:6,6 162:9,20 162:24 163:3,8 164:21,22 165:3 166:4,7,22 167:9 168:13 169:1,7 170:5,8,20 171:9 171:12 172:23 173:17 175:4 176:4 177:1,3,4,9 177:25 179:5,7 180:5,8,9,10,21 181:9,13,23 182:8,21 183:6 183:16,19 184:11 184:20</p> <p>TFC's 128:25 169:14,20 170:2 170:14</p> <p>TFC/SFC 21:7 22:12</p> <p>TFCs 175:6 177:25</p> <p>Thank 1:5 3:15,20 4:25 12:21 44:9 92:6 95:21 96:13 96:20 97:15 128:13 136:6,7 136:19 166:20 185:22 190:4,5</p> <p>thereto 2:23</p> <p>thing 45:23 102:5 140:11,14 185:8</p>	<p>things 11:5 68:12 81:20,23 83:16 84:5</p> <p>think 1:24 8:14 19:19 23:6,6,6 32:25 40:14 41:13 43:24 44:3 61:2 67:4 71:5 73:11 75:2 77:20 77:21 82:16 84:5 91:22 105:17 112:18 123:6 141:7 142:21 151:3 184:24 185:2 186:17 189:4</p> <p>thinking 28:16 66:9 67:7 87:20 133:14 151:3 152:1</p> <p>third 66:15 183:8</p> <p>thirdly 2:20 3:9 43:3 75:11 76:5 76:22 131:23 175:14 177:4</p> <p>thorough 13:9</p> <p>thoroughly 16:22 165:12 166:2</p> <p>thought 28:14 30:22 35:8 39:23 66:1,20 67:3 72:17,21 78:12 99:18 113:18 115:13,23 116:1 116:2 119:22 139:1 140:18 182:16 189:18</p> <p>threat 13:7 16:18 20:17 23:15 24:15 26:2 28:7 28:20 40:17,19 41:2,2,14,16,25 47:3 48:6,9 49:21 55:6 56:16 64:21 65:3,12 71:23 73:5,5,6 81:16,17 83:3 86:2 110:23 118:21 134:17</p>	<p>146:7,20 147:9 147:12 148:19 168:14 169:3 182:13</p> <p>threatened 93:9</p> <p>threats 42:6 50:9</p> <p>three 2:5 42:19 62:9,9 63:6 70:11,17 112:10 112:16 119:1 129:3 141:4,23 150:22 155:13</p> <p>threshold 93:20 177:10 181:12</p> <p>thresholds 51:19</p> <p>thrown 30:13</p> <p>tier 157:5</p> <p>tightened 79:19</p> <p>time 4:10 14:10 17:12 28:15 30:2 40:18 42:6 47:11 55:20 56:13 58:10,17,18 61:7 65:17 66:23 68:18 71:11 73:7 75:11 77:5 79:16 80:6,13,21 82:1,2 82:25 84:17 87:17 92:7 93:12 96:7 99:21 111:13,15 115:16 117:8 119:14 122:20 124:9 125:20 133:3 140:16 141:10 142:14,22 146:13 147:12 152:8,20 154:5 155:17 168:9 170:6 173:6,12 174:8 184:2,18 187:8 187:17,21</p> <p>timely 144:8</p> <p>times 13:6 58:15 61:4 74:24 79:25 112:7 141:5 143:2 144:11 152:16 154:10 171:12</p>	<p>timetable 2:2 96:8</p> <p>timetabling 1:17</p> <p>timing 75:6 136:11</p> <p>ting 143:16</p> <p>tings 143:23</p> <p>tiny 44:5</p> <p>tipping 17:24 27:17 33:4 50:12 50:14,16 51:3,4 51:15,25 52:5,6,8 52:10,21,22 53:5 53:20 54:3,6 55:11,13,24 56:24 60:13 61:19 62:19,25 65:13,24 66:8 95:15 129:17 183:8,13,19,22</p> <p>title 166:23</p> <p>today 5:5 138:11 152:24 164:24</p> <p>today's 125:11</p> <p>Tokarev 46:8</p> <p>told 35:24 45:14 46:16,18 49:18 70:17 71:20 72:16 78:6 79:23 82:11,12,14,20 87:19,20 111:14 111:18,23 112:3 112:5 115:21 116:4,7,24 120:2 140:10 142:1,3 147:21 150:15 151:17 180:12 183:1</p> <p>tomorrow 96:11</p> <p>top 25:3 60:9 147:14 157:5</p> <p>topic 97:11 135:21 161:4</p> <p>topics 23:9</p> <p>torch 99:19</p> <p>total 13:23 24:3 37:1 38:10</p> <p>totality 8:11</p> <p>totally 26:11 162:23 169:18</p> <p>Tottenham 134:1</p>	<p>touched 38:22 44:18,22</p> <p>touchscreen 137:21 138:10,13</p> <p>tragic 99:10 130:11 176:12</p> <p>trail 14:4 40:5</p> <p>train 42:7</p> <p>trained 28:11 58:1 62:15,16 87:11 88:21,24 98:16 122:25 123:1,1 146:17 150:1 156:15 159:12 160:24 175:6</p> <p>training 13:2 69:18 85:17,24 88:20 89:2,2 151:17 156:17,18 156:20 159:9,25 160:21 161:3 165:13 166:3</p> <p>trajectory 77:12</p> <p>transcribe 142:13</p> <p>transcribed 143:23</p> <p>transcript 74:7,12 74:22 75:5,13 120:6 140:2 141:10 142:6,18 142:22 144:19</p> <p>transferred 167:14</p> <p>transmission 131:23 145:7,21 146:23 147:7,9 147:11,15 148:18 148:25 181:7 182:6,9,16,18,22</p> <p>transmit 148:23</p> <p>transmitted 145:12</p> <p>transporting 121:17</p> <p>travel 126:13</p> <p>treat 62:7 92:19 104:14 111:22 112:1 135:4,9 180:14</p>
---	---	--	---	--

treated 2:24	twitchy 150:16	128:18	unit 119:13	169:10
trenchant 28:8	152:6	underlay 10:18	United 98:23 99:9	unsurprisingly
trial 6:24 140:3	two 1:20,23 3:22	underlines 107:25	universally 40:20	50:5 118:25
triangle 157:6	4:2,2,3,3 6:10,20	undermine 171:25	46:15	unsustainable
tribunal 177:23	7:7 8:16 16:15	underscores 38:10	unjustifiable 39:1	134:20 151:19
trickle 96:10	18:15 26:23	understand 51:20	45:10	184:23
tried 107:6 138:12	34:23 44:4 46:8	67:19 69:21	unknown 36:24	unusual 145:17
179:25	47:4 50:10 51:13	103:20 126:17,18	75:22 105:19	188:9
trouble 24:11 81:1	60:20 61:7,8	126:20 163:19	unlawful 6:18 9:4	up-to-date 23:10
troubling 37:7	63:8 75:25 78:14	understandable	9:5 10:7,12 12:4	49:1,15 179:20
true 24:20 30:4	81:20 87:16	104:5 169:23	12:12 90:9 102:6	update 131:25
49:22 57:10	98:18 99:22	understanding	189:22	132:22 145:12,18
91:16 157:13	104:8 105:24	43:21 62:4,6,8	unlawfully 6:7	145:20 146:12
truly 3:7 91:19	108:20 110:12	63:12 68:12 70:2	102:7	148:4 150:8
94:2 177:12	112:11,12 113:14	104:2 115:15	unmistakable	updated 47:14
180:20 182:3	113:19 126:20	120:22	150:3 179:10	106:8,10 166:25
trusted 31:4,11	128:19 130:6	understated	unnecessary 105:6	171:10
truth 5:8 29:4	137:3 143:23	133:18	174:9	updates 132:25
37:22 42:18	144:13 154:24	understood 5:14	unobjectionable	upper 31:5 147:16
43:11 101:4	156:11 160:11	46:21 58:2 64:23	164:22	upwards 77:12
113:16 118:10	163:24	64:24 68:6 72:13	unplugged 59:14	80:6
try 13:13 14:24	two-hour 2:2	111:14 145:13	138:23	urban 158:5,7
40:5 51:11 65:19	two-year 85:24	148:13 162:6	unpredictability	urge 2:25 4:16
70:24 71:16	type 79:8 112:5	182:9,11	134:5	162:2
178:6	134:5 150:23	undertake 28:1,11	unquestionable	urgent 122:8
trying 71:12,13	typically 158:6	69:9	84:10	use 11:15,17 42:9
108:22 124:8		undertaken 7:16	unquestionably	42:10 43:1 45:5
TSU 19:19 58:1,23	U	28:21 52:16	61:19 62:17,25	50:4 54:8 59:13
167:1	ugly 15:13	63:13 162:9	74:23	60:6,9 73:19
Turkey 26:9,9,10	UK 98:19	undertaking	unrealistic 31:9	84:14 85:16
123:11,13	ultimately 18:16	163:16	65:5	88:17 97:6 98:15
Turkish 112:13	20:4 34:14 42:10	undertook 52:13	unreasonable	101:25 109:21
turn 10:5 39:25	42:11 112:14	underway 126:1	37:14 83:21 86:8	130:20 131:22,24
57:3 63:22 74:1	unabashed 20:25	Undoubtedly	121:3 139:20	139:20 142:5
78:19 96:22	unable 36:4 57:18	138:4	144:15 148:25	146:6 155:9
103:14 114:16	81:23	unequivocal 21:19	152:11 155:24	157:9,19 165:18
131:15,16 138:1	unacceptable	22:10 28:10	184:11	167:5 181:25
152:13	138:2	172:5	unreasonably 48:6	useful 112:19
turned 98:13	unambiguous	unexpectedly	49:21 166:6	158:13
99:19 113:17	175:16	113:18	unsatisfactory	user 138:11
Turner 15:24	unarguable	unfair 142:24	173:5	Utara 20:13 22:20
16:10 22:16 37:9	185:10	173:10	unsuccessful 108:5	107:22 110:20
42:3 94:14,15,24	unarmed 36:21,22	unfortunate	unsuccessfully	158:20 164:7,13
153:8 164:3,10	121:16 130:25	100:11 181:25	47:18	164:17,23
171:4,24	unbiased 156:22	unfounded 107:14	unsuitable 158:6	utilised 157:21
Turner's 94:21	unclear 106:1	186:19 187:1	unsupported	utility 57:8 157:15
172:16 173:14	110:24 116:19	unhappy 39:1	162:23	utmost 98:5
Turning 7:3 24:7	uncomfortable	unhelpful 170:1	unsurprising	Uzi 113:7
75:15 178:3	40:12	uniformly 128:9	115:9 157:7,24	
undercover				V

<p>v 98:23 99:9 175:9 V68 106:18 109:3 169:17 validity 167:3 171:25 valuable 10:22 11:25 17:17 van 19:22 33:5,13 50:19,24 53:7 55:7,8 56:12,13 66:14 122:1,11 126:13 128:22,23 129:2,13,19 130:7,24 varied 160:6 various 23:21 98:11 99:20 104:3 110:9 134:12 161:9 veered 74:5 vehicle 18:3 19:20 33:12,13 34:6 36:20 39:11 42:22 50:19 55:7 55:17 56:5,21 61:11 62:9 63:7 63:8,14 66:7,12 66:15,17,18 67:24 68:3,14,15 68:23 69:6,23 70:20 71:1 72:23 79:7 86:2,12,23 87:2,5 93:4 127:12 140:7,21 144:1 149:15,17 150:16 153:4,11 153:15,15,22 154:6 156:8 158:9,24 165:10 178:24 vehicle's 76:11 vehicles 34:5 49:20 verbatim 45:12 61:6 verdict 6:5,24 10:7 91:20 verdicts 6:18 version 171:10</p>	<p>versus 148:16 viable 139:11 155:20 157:21 vicinity 50:25 155:16 159:1 victims 122:22 130:4,8 videos 156:17 view 7:16 20:6 51:9 72:19,19 73:18 125:9,24 126:2 127:4 141:8 144:3,4,10 146:15 150:6 151:5 154:13,16 156:22 166:1 168:22 172:13 174:13 180:24 181:11,15 187:11 Viewed 148:22 vindicated 85:13 violated 9:21 violation 6:6,9 8:5 8:13,21 9:13 10:4 48:7 90:11 90:17 Virtual 176:6 virtue 119:15 130:18 vision 72:11 81:16 81:18 visit 24:17 26:5 122:16 visited 113:5 vital 50:20 69:19 vitality 161:25 volumes 42:12 volunteered 34:20</p> <hr/> <p style="text-align: center;">W</p> <p>W109 46:16 147:8 W80 5:23 6:17 7:1 10:21 11:10 61:25 65:7 71:20 71:24 74:4 75:5 76:6 77:3 78:11 78:19 82:10 83:1 83:6,19 84:2,8,10 85:3,4,9 87:6,16 88:5,9,12 89:14</p>	<p>90:9,15 95:7 135:5 147:19 148:20 159:20 182:25 187:9 189:17 W80's 74:1 76:22 79:20 85:19 147:12 189:23 wait 132:23,25 waited 99:17 waiting 159:21 walk 86:23 walking 69:1 wall 159:14 want 12:1 41:5 42:14 44:1,21 72:2 73:11 74:1 95:19 132:22 133:13 139:2 150:24 151:4,12 151:23 188:16 189:14 wanted 7:21 29:8 52:24 67:18 72:12,19,22 79:6 120:14 133:22,24 134:2 188:18 wanting 29:10 wants 22:8 warning 48:18 49:13 64:7 111:22 112:1 134:12 135:15 148:3 warrant 6:4 wasn't 29:1 32:4,4 34:22 35:12,14 37:21 38:8 48:23 52:25 57:23 59:1 64:10 67:19 72:9 79:19 85:25 141:15 143:6 waste 112:25 watched 68:19 watching 40:9 150:11 152:5 way 5:1 12:8 16:12 29:10,17 35:24 60:8 63:20 68:21</p>	<p>77:13 80:18,23 81:21 85:16 86:3 87:5 89:21 91:23 92:11 93:5 95:19 101:12 103:7 104:9 113:6,21 123:15 124:20 136:24 144:22 161:3 170:22 180:11 183:20 ways 50:11 144:13 weak 15:21 weapon 47:18,21 64:11 73:3,19 84:8,9 87:9,12 88:12 weaponry 141:1 147:3 weapons 36:3 46:4 46:8 54:12 109:9 111:20 112:5 122:12 141:3 178:25 weapons/firearms 46:20 wear 117:17 wearing 79:18 website 175:8 Wednesday 189:15 190:3,6,8 weeks 10:17 13:17 14:1 23:24 47:17 47:21 108:20 186:2 weighing 32:16 weight 46:18 128:4 welcome 1:3 welfare 21:15 well-established 25:1 Wembley 113:4,11 went 14:16 15:12 50:2 67:20 71:12 76:24 Westminster 102:16 whatsoever 76:18 79:9</p>	<p>wheels 62:24 whereabouts 34:17 whilst 107:11 125:22 139:6 142:1 146:17 148:12 159:21 165:5 168:22 169:25 171:5,19 174:14 180:25 182:11 whistle 118:1,12 Whitaker 137:6 138:16 Whitaker's 137:15 wholeheartedly 156:23 wholesale 16:21 17:5 24:4 31:15 32:9 34:20 57:9 wholly 38:25 42:1 50:7 52:15 65:5 65:5 79:4,4 102:6 149:9 156:5 164:11 183:14 187:1 wider 22:20 55:9 widespread 13:19 Williams 6:22 15:23 16:9 20:15 22:17 29:8 33:8 35:6,12 36:23 37:9 42:3,8 43:3 44:25 48:20 50:6 50:13 51:17 52:10 53:14,18 55:5 56:17 60:9 60:22 62:17 63:14,23 67:12 68:2,7 69:13 70:7 92:20 93:1 94:23 95:1,6 104:22 109:17,23 110:17,25 132:21 133:10 140:6,22 141:14 145:21 153:9 156:9 163:1 164:3,6,12 164:16 166:9</p>
--	---	--	--	---

167:11 168:20,25 171:3 Williams's 20:12 53:23 70:12 91:16 94:3 window 71:16,20 86:24 87:1 windows 70:9 71:11,14 wired 59:16 wiring 59:2 wish 3:12 wished 45:21 133:21 witness 77:2 119:18 121:20 132:17,19 142:13 154:12 158:22 177:16 186:16,25 witness's 40:9 witnesses 29:23 40:12 49:1 104:23 108:8 127:13 134:13 155:2 161:16,19 188:13 wondering 31:25 Wood 35:25 38:16 38:20 45:14 108:24 114:10 119:24 178:19 Woody's 113:3,8 113:10 word 104:25 109:22,22 110:12 143:24 171:6 188:7 worded 64:12 148:4 wording 108:5 110:5,10,14 135:16 words 13:11 17:23 31:22 35:3 40:11 49:11 76:24 77:7 104:10 105:6 106:20 108:3 111:2 116:1 119:23 131:10	134:14 135:16 136:20 141:20 179:17 work 2:3 4:22 13:11 31:10 56:23,25 57:1 60:4,6 68:24 126:25 worked 27:7 58:11 59:16 62:13 130:5 139:4,8 140:4 working 33:22 43:22 59:19 60:15 62:11 137:20 139:15 159:2 163:2 Wormwood 38:16 worry 96:2 worthy 181:4 wouldn't 2:3 16:12 62:13 79:6 80:21 127:3 164:24 wound 75:19,21 wrested 22:15 wrestled 22:1 Wright 92:22 Wright's 92:15 173:24 wrist 75:18,22 76:6,9 77:6,8,11 writing 4:1 186:2 written 1:8,10 4:12 5:17 7:10 10:10 12:25 14:12 17:11 25:12 28:19 31:8 32:7 33:17 36:10 44:15,20 48:25 53:15 54:6 58:6 59:24 64:1 68:1 74:5 90:10,22 98:1,12 99:2 103:18 105:10,20 108:24 110:9 115:14 121:9 152:21 172:13 183:9 184:16 186:10 188:4	wrong 15:25 26:2 49:4 50:2 69:13 80:3 102:10 107:16 111:4 119:8 129:15 138:15 149:7 153:23 155:23 164:9,17 168:17 172:7 177:14 179:23 180:4 183:14 wrongdoing 11:2 107:11 wrongly 88:6 115:13 178:22 <hr/> X <hr/> X 191:3 <hr/> Y <hr/> Yard 44:14 year 89:2 years 13:12 14:25 26:21,24 117:7 yesterday 126:23 York 20:21 <hr/> Z <hr/> 0 <hr/> 00.09 75:4 06.58 131:25 <hr/> 1 1 109:3 147:21 186:8 1.45 96:16 10 8:24 22:23 28:24 29:16 44:13 90:4,5 101:10 102:3 112:6 124:23 131:7 153:12 166:25 10.00 1:2 132:3 190:6,8 10.2 102:20 103:5 100 116:4,5 135:5 147:17 151:6,10 100-page 178:6	102 113:24 104 105:5 107 113:2 115:2 109 117:11 11 14:1 15:16 17:17,19 18:10 25:20,23 26:18 27:10 29:6 35:22 38:1 43:24 44:17 45:3 47:4 59:1 75:5 94:18 109:6 112:9 124:8 126:1 131:14 134:7 153:14 167:1 172:9 178:21 11.06 44:10 11.20 44:8,12 111 125:15 112 125:15 114 126:3 115 126:4 117 159:14 119 156:10 12 98:12 101:15 142:8 144:13 12.07 137:11 12.44 96:14 121 110:11 156:10 125 147:18 126 136:22 13 35:17 46:7 92:17,22 99:1 122:13 142:8 154:25 156:9 174:3 130 4:14 131 105:8 136:22 134 152:23 136 115:12 14 78:18 102:19 127:18 137:15 146:10 150:12 146 99:8 15 77:21 78:18 120:6 135:5 136:3 137:15 15-minute 1:22 159 182:1	16 77:20,21 165:25 165 89:1 166 152:21 167 152:21 168 150:13 169 150:13 17 77:18,21,21,22 165:25 174 157:1 177 157:17 178 157:17 179 107:1 179:23 18 54:1 159:18 181 150:4 19 77:3 78:6 112:21 114:7 190 154:25 156:9 192 154:25 156:10 196 110:15 198 132:1 155:4 <hr/> 2 2 2:16 6:6,9 7:6 8:5 8:13,21 9:13,14 9:21 10:4,13,24 12:6,10 21:14 28:4 42:1,4 49:10 51:12 52:18 64:5 90:17 97:22 98:4,9,25 99:7 100:2,12,13 100:15,17,20 101:8,17 102:3 102:25 104:1 125:14 130:18 131:5 137:16 147:22 159:7 165:21 174:19 2.40 136:8 2.50 96:18 2.55 136:5 2.56 136:10 20 136:3 2005 100:14 101:17 201 155:4 2013 157:18 2015 13:1 16:16 19:12 36:13 106:11 107:20
---	--	---	---	--

109:6 131:14 134:7 164:23 167:23 168:3 2016 77:3 2018 108:3 2021 1:1 108:6 190:9 207 98:13 21 123:5 135:5 143:12 147:14,16 147:18 214 142:8 22 126:3 143:19 146:10 182:1 23 122:18,21,22 123:5 126:15 131:6 133:8 144:6,13 146:9 154:3 171:22 24 58:13 24/7 112:24 113:20 25 98:2 112:21 26 160:2 28 118:1 29 25:18,21 107:20 116:25 117:6,19 155:4 159:7,14 170:9 29/30 108:14	4 11:6 19:19 105:8 111:16 137:5 162:8 4.00 136:17,18 4.16 190:7 40 113:15 41 163:22 416 165:15 42 103:18 111:10 112:10 43 115:1 44 144:13 46 116:21 146:10 159:18 47 163:20,23 164:2 48 116:10 164:5	7.30 53:19 54:2 61:17,18 62:19 63:20,25 64:6,6 64:12 65:12,14 65:21 146:12,24 181:7,16 184:1 70 159:7 71 126:15 72 166:8 73 131:6 166:10 77 168:6 78 122:6 79 169:9		
	5	8		
	5 105:23 159:14 5.00 56:8 111:19 112:4 131:16 147:13 179:2 50 116:11 50-centimetres 76:6,21 87:9 52 117:4 53 105:10 57 115:2 58 105:10 121:8 58(c) 118:17	8 101:18 115:23 137:9,11 159:19 172:9 190:9 8.00 65:15,25 67:15,18 70:4 149:9 8.56 67:19 80 120:9 81 147:14 169:9 82 147:14 171:22 83 171:22 84 105:19 170:12 85 166:8 170:12		
3	6	9		
3 37:18 105:8 191:5 3.00 49:19 106:17 106:24 109:1 111:12 179:2 30 5:21 19:12 20:4 103:18 31 107:19 122:18 122:21 32 122:23 175:25 358 90:22 36 111:9 112:9 360 93:24 360(d) 178:17 361 90:22 364 93:25 39 133:8	6 1:1 115:12 117:11 122:6 6.58 48:12 60:23 63:23 64:13 131:21 132:12,22 132:24 133:17 135:20 144:25 147:21 148:6,23 180:6,17 181:10 60 121:8 62 154:3 63 170:9 634 141:9 64 168:18 65 112:6	9 98:12 112:22 156:10 9.00 152:17 184:1 9.16 56:9,10 91 114:7 117:11 92 108:23 94 108:23 96 191:6 97 115:2 9mm 46:9		
4	7			
	7 34:3 37:24			