

Tuesday, 26 January 2021

(10.00 am)

SIR JOHN MITTING: Thank you.

We are now about to embark on the directions hearing that I foreshadowed last time we spoke.

Mr Barr, would you like to introduce your own submission and the parties, please.

MR BARR: Sir, good morning, and thank you. Yes.

We should have: Mr Skelton on behalf of the Commissioner of Police for the Metropolis; Mr Boyle on behalf of the National Police Chief's counsel; Ms Brown on behalf of the Home Office; Mr McAllister on behalf of the Designated Lawyers Officer Core Participant Group; Mr Whittam for the Slater and Gordon clients; Mr Bunting for Seven Media Organisations; Mr Greenhall for the Non-Police Non-State Core Participant Group; Mr Menon for Core Participants represented by Saunders Solicitors, as well as some of the clients represented by Deighton Pierce Glynn Solicitors, including Audrey Adams, Richard Adams and Ken Livingstone. Mr Ryder is representing clients who are represented by Hodge Jones & Allen and Bhatt Murphy Solicitors, and Ms Williams is representing the Category F and Category H Core Participants.

We circulated a note yesterday in response to the

1 written submissions of the core participants that we've
2 gratefully received. Having set out our thoughts in
3 writing, I don't propose to develop them orally, sir, in
4 order to maximise the time that you have to hear from
5 the advocates for the core participants.

6 Unless there is anything that I can assist you with
7 further at this stage, sir, that is all I have for the
8 moment.

9 SIR JOHN MITTING: Thank you very much.

10 Mr Skelton, you are first on the list. Before you
11 open your submissions, I would like to say something in
12 response to the letter sent by your solicitor which was
13 circulated by the Inquiry, and also to attempt to clear
14 up one or two misconceptions that may have taken hold.

15 When the Inquiry started, the Metropolitan Police
16 Commissioner said that the Metropolitan Police had
17 a small number of millions of documents which it was
18 going to make available to the Inquiry. Unfortunately,
19 given the investigation conducted by the Inquiry, which
20 was based upon individual undercover officers to start
21 with, the form in which the documents were held by the
22 Metropolitan Police was not readily accessible to the
23 Inquiry. Further, it was not accessible except through,
24 if I can call it by the old-fashioned word, a library,
25 with only a small number of librarians.

1 Accordingly, despite the statement made by the
2 Metropolitan Police for all deployments before, as
3 I have now found, July 1995, the Inquiry had to look
4 elsewhere to obtain the documents that it needed. It
5 has obtained a very large number of documents, which has
6 permitted it to form, from the point of view of
7 documentary material, a comprehensive, not absolutely
8 comprehensive, but a sufficiently comprehensive picture
9 of the intelligence reporting of undercover officers
10 before July 1995. For the period after then, the
11 Metropolitan Police records are fully sufficient, with
12 one -- sorry, they are fully sufficient. There is
13 a difficulty in respect of a particular officer, which
14 we will attempt to overcome in due course.

15 The Metropolitan Police have therefore since almost
16 the start of the inquiry been in the same position as
17 many others, in dealing with documents which have not
18 been produced by them. The idea, which is widely held,
19 that the Metropolitan Police has been sitting on a vast
20 pile of documents which it has been meticulously
21 studying to ensure that it is up to speed is not,
22 I think, correct.

23 Furthermore, the manner in which the documents are
24 organised would make it as difficult for the
25 Metropolitan Police as for the Inquiry to be able to

1 deal with the challenges posed by the Inquiry.

2 So the Metropolitan Police has been in the position
3 of the recipient of documents, just as everybody else
4 has, and it has, as you know and I know, the task and
5 the duty of ensuring that documents which are put into
6 the public domain do not contain material that would
7 damage the public interest. That is what has taken the
8 great bulk of the time which we have all taken to get
9 here.

10 The second point I would like to make is this.
11 I entirely accept that those instructed by the
12 Metropolitan Police Commissioner, the CL team, have done
13 their level best to cooperate with the Inquiry, and the
14 idea that they have deliberately instructed it is simply
15 erroneous. Nevertheless they, like the Inquiry and
16 everybody else, face difficulties which have to be
17 surmounted, and they are manifold. They are not easy to
18 surmount, and they inevitably create difficulty and
19 delay. But the idea that the difficulties that we have
20 experienced can be put down to deliberate obstruction is
21 wrong.

22 A misconception that I have noticed from one of two
23 of the Non-State's written submissions is that the
24 inquiry has the Registry Files, ie the Special Branch
25 individual files, of all individuals who are

1 core participants. That is wrong. The Inquiry does not
2 have their Registry Files because the Registry Files
3 contain intelligence from a wide variety of sources
4 which are irrelevant to the Inquiry, and it is not
5 a productive exercise for the Inquiry to call for or
6 examine the Registry Files of individuals.

7 Furthermore, we would only find out which
8 individuals matter by looking at other documents before
9 we get to Registry Files.

10 I am sorry about that long introduction. Would you
11 like to begin your submissions.

12 Submissions by MR SKELTON

13 MR SKELTON: Thank you, sir, and thank you for the points of
14 clarification you have made.

15 May I address you first and, I think, principally,
16 on the issues of broadcast, and of course I'm mindful
17 that you have the MPS and, indeed, everybody else's
18 written submissions, so I won't detain you, sir, I hope,
19 too long.

20 As it stands, the pandemic will prevent you from
21 having a conventional in-person hearing in April, and as
22 I think everyone agrees, this is far from ideal. So you
23 must determine how best to facilitate participation and
24 attendance at a partially remote hearing in a manner
25 that is lawful, fair, practical and safe.

1 We agree with your counsel in their written
2 submissions that we received yesterday that two
3 essential questions for your determination are: first,
4 should this next phase of the hearings be streamed over
5 the internet with a 10-minute delay, and; second, if so,
6 should the stream be audio-only, or audio-visual?

7 In short, sir, the MPS's position in respect of the
8 first question is yes, but only with some basic security
9 measures in place. And the second question is that
10 audio-only is the only safe option.

11 So, sir, in more detail, taking the first of those
12 issues, should the hearings be streamed over the
13 internet with a delay. Sir, you have already made
14 a restriction order -- or orders, rather -- prohibiting
15 the publication of the real names of all the former
16 undercover officers giving evidence in Phase 2 of your
17 hearings, and those orders are specifically and
18 explicitly designed to prevent the disclosure or
19 publication of any evidence or document which discloses
20 the witnesses' identities, including any descriptions or
21 images capable of identifying them.

22 You have also previously made decisions and
23 directions on the procedures for your hearings which
24 bear upon these issues. They include the restrictions
25 on livestreaming in your statements of 19 December 2018

1 and 30 October 2019, and the restrictions you have made
2 on the publication and circulation of images of former
3 officers in your statement of 29 January 2020.

4 Sir, those orders, decisions and directions, have
5 been made with the principal purpose of reducing but not
6 wholly removing or minimising the risk that witnesses
7 will be identified and, in the MPS's submission, the
8 proposals that it makes are wholly consistent with that
9 approach. And they are essential for two reasons:
10 first, security. An open and uncontrolled internet feed
11 will undermine the efficacy of your orders and
12 directions by maximising the remaining risks of
13 witnesses being identified.

14 That's for the simple reason that it can be watched
15 in private by anyone and recorded without knowledge and
16 without any consequences, and such recordings will be
17 permanent. They can be rewatched, recirculated without
18 limit, with the inadvertent or deliberate effect of
19 identifying the witnesses now or in the future, either
20 by individuals or groups of people, or with the
21 assistance of technology.

22 Sir, notwithstanding those risks, as you will have
23 seen from the MPS's written submissions, it recognises
24 the frustrations felt by the core participants, the
25 media and, indeed, some members of the public in respect

1 of the rolling transcript broadcast during the Phase 1
2 hearings. So it does accept that the Phase 2 hearings
3 may warrant a reconsideration of that procedure if, and
4 only if, the proper security is in place. And that
5 security, we say, should be analogous, or will be
6 analogous, to what would have been in place had
7 an in-person hearing been possible, and also comparable
8 to the measures that may and are routinely taken to
9 access other forms of public online broadcasts, for
10 example television channels, cultural events or
11 webinars, with which we are all personally familiar.

12 They are as follows, sir, and this is picking up on
13 the submissions from paragraph 22 onwards in the written
14 document we have served: first, there should be
15 a 10-minute delay to prevent accidental disclosures,
16 which it is not understood is controversial; second, the
17 MPS says the feed should only be accessible at the time
18 of transmission. This, sir, we say minimises the risk
19 of audio or visual identification for the reasons I've
20 already outlined, without compromising long-term access
21 to the evidence, which can still be available in the
22 form of the transcripts which you will publish. As you
23 stated on 23 July, this is sufficient to discharge your
24 obligations under section 18(1) of the 2005 Act.

25 Third, the feed should be encrypted with access

1 provided on request via a log-in. As I've said, sir,
2 these measures are standard and are routine procedure
3 for anyone using online services. Specifically, they
4 will allow you and the Inquiry to know who is accessing
5 the feed and to inform them directly of the restriction
6 orders you have made, and thereby minimise the risk of
7 them recording the feed, disseminating it or
8 facilitating identification of the witnesses.

9 It will also at the same time maximise your ability
10 to enforce your restriction orders, should they be
11 breached, as you will be able to investigate the limited
12 number of people who have access to the feed, and such
13 security measures, sir, as I say, mirror the steps that
14 the Inquiry was intending to take if its hearings had
15 been in person, which would have involved the
16 registration of attendees at a hearing and the presence
17 of security staff in a hearing room to ensure that
18 recordings were not made in breach of your orders.

19 Fourth, sir, we say for the same reasons there
20 should be a restriction order prohibiting the sharing of
21 the link or providing invitations or circulating
22 invitations to the link and the prohibiting of
23 a recording. Again, sir, for precisely the same
24 reasons: to minimise the risks.

25 Fifthly, we say that the link to the feed should

1 only be effective and accessible in England and Wales,
2 the jurisdiction within which the Inquiry is, of course,
3 working, and within which it has powers to make and
4 enforce its orders.

5 Sir, finally --

6 SIR JOHN MITTING: Forgive me for interrupting, I would like
7 to clarify that last point because I believe I have
8 understood your points up to then, and I reflected upon
9 them, but I don't claim to understand the last point.

10 How can that be achieved? As I understand the
11 position to be, it is perfectly possible to pretend to
12 be in one country when you are, in fact, in another.

13 MR SKELTON: Yes, with my limited IT understanding, I think
14 that's correct. One can use a virtual proxy server
15 which I think mimics or, indeed, links in with a server
16 within the jurisdiction.

17 Sir, I don't want to get into the IT that I think
18 I barely understand sufficiently to give any expert
19 evidence on, but, as I understand it, it is a practical
20 possibility. And of course those companies,
21 particularly commercial companies, that provide
22 broadcasts, do routinely attempt to stop the use of such
23 proxies to access their material from outside the UK.
24 So it may be that your consultants will be able to
25 assist on that.

1 SIR JOHN MITTING: It may be they can, but I would like to
2 hear from you, that if that is not, in fact, a practical
3 possibility, or at any rate it can't achieve the level
4 of security that you seek, whether that alters your view
5 about the transmission of audio-only evidence.

6 MR SKELTON: Sir, speaking without instructions, I would say
7 no, it doesn't. I think the other restrictions or
8 measures which I've already identified, namely the
9 10-minute delay, the accessibility only at the time of
10 transmission, an encryption and log-in, and the
11 restriction orders that you will undoubtedly make, would
12 of themselves as a package be sufficient.

13 If I'm wrong about that, sir, and you will
14 appreciate it is difficult for me to take instructions
15 from where I am sitting, I will no doubt be told, and
16 I hope you will forgive me if I try to come back and
17 address you on that briefly.

18 SIR JOHN MITTING: Of course I will, but because of the
19 propositions you have advanced that is the only one
20 about which I have any doubt about its practicability.

21 MR SKELTON: Sir, there is one further measure which is not
22 explained within the written submissions, but which I am
23 instructed to raise with you, which is also, we
24 understand, practically possible and standard on some
25 audio feeds, and that is what's known as watermarking,

1 which is a way of adding in an electronic method of
2 identifying the specific audio feed by reference to the
3 individual who receives it. In other words, each person
4 has a bespoke version of the transmission. It doesn't,
5 of course, change the audio as they receive it or listen
6 to it. It's an electronically lodged form of
7 watermarking. That would allow you, sir, to identify
8 which recording were publicised or distributed in breach
9 of any restriction order.

10 So I raise this, appreciating it's not been presaged
11 in writing, but also appreciating that you will
12 inevitably be taking advice from your IT consultants on
13 the feasibility and practicality of these matters.

14 SIR JOHN MITTING: Again, that is not something that I claim
15 to begin to understand. Again, I would ask, if that
16 can't be done, would that alter your acceptance of
17 an audio feed?

18 MR SKELTON: Again, sir, speaking without instructions,
19 I'm going to say no, it would not. The other measures
20 I have identified are the more important ones. But
21 again, if I have to be corrected and come back to you,
22 please, I hope you will allow me to do so.

23 SIR JOHN MITTING: Of course I will.

24 MR SKELTON: Thank you.

25 SIR JOHN MITTING: I think in the end one has to face the

1 fact that if a restriction order were to be breached, it
2 might be difficult to identify the culprit, but the
3 long-term consequence would be that we would not be able
4 to do this again. That might be the overall sanction
5 which would cause anybody who might otherwise think of
6 breaching restriction orders to think again.

7 MR SKELTON: Yes, sir, that must be right.

8 Sir, you, in consultation with your legal team and,
9 indeed, with your consultants, may have other practical
10 measures, security measures, that are basic and can be
11 readily implemented which you wish to outline, or your
12 counsel does. Of course the MPS will be ready to
13 discuss those, should that be required, and a dialogue
14 about their efficacy and practicality is, of course,
15 always welcome, as I'm sure it would be with other
16 participants than the MPS.

17 So the second sort of fundamental and underlying
18 reason why basic security measures are necessary is to
19 obtain the best evidence from the witnesses. Again,
20 this is a point, I think, picked up by your counsel in
21 their written submissions that needs to be, I think,
22 repeated and emphasised by the MPS as well.

23 If security measures are not in place, it will
24 inevitably have a consequential effect on the quality of
25 the evidence that the Inquiry receives. The witnesses

1 in Phase 2 are elderly and retired, and some are in
2 ill health. The prospect of their testimony being
3 freely broadcast and recorded will inevitably be
4 extremely unwelcome and will precipitate a great deal of
5 stress and anxiety within those witnesses' minds and
6 those of their families, and that will impact on the
7 quality of the testimony that they are able to give, and
8 for some it could cause them to decline to participate
9 in a remote hearing, because they may wish to say,
10 simply: I refuse to let the Inquiry staff enter my home
11 to ask me to give evidence. Bearing in mind that we are
12 in the middle of a pandemic and the willingness and good
13 faith of the witnesses is, of course, an essential
14 component of us all proceeding with these hearings.

15 Sir, I hope it's an obvious but trite point that any
16 such steps would seriously compromise your investigatory
17 work and the search for the truth which is a necessary
18 and essential step for this Inquiry.

19 Sir, as to the practicality of these measures, as
20 I say, the MPS understands that they're relatively easy
21 to introduce and to apply, and so practicality isn't, in
22 reality, a real obstacle, but your IT advisors will, of
23 course, be able to advise on this and, as I have said,
24 the measures are comparable to those routinely taken for
25 other online events and mirror the security arrangements

1 that would have been taken in any event at an in-person
2 hearing.

3 So, sir, they can't by any standards be
4 characterised as onerous, either practically, or
5 oppressive of anyone's rights, since anyone, of course,
6 can apply to receive the feed.

7 So, in summary, the MPS's position is that they are
8 a practical and proportionate means of facilitating
9 everyone's ability to participate in or follow the
10 proceedings, while providing some essential basic
11 security protections against the loss of the
12 identities -- or the uncovering of identities of the
13 witnesses.

14 Sir, the second question that your counsel pose is
15 whether the feed should be audio-only or audio and
16 visual. On this, you yourself have previously
17 recognised the problems and risks that an audio-visual
18 feed presents. Video footage is one of the primary ways
19 by which people are recognised and identified, either by
20 those watching or listening or by using technology.

21 So an uncontrolled visual broadcast will obviously
22 jeopardise the witnesses' anonymity and their privacy,
23 and equally obviously will undermine the restriction
24 orders and directions that you have previously made.

25 From the MPS's perspective, this would be unfair to

1 the witnesses and contrary to the consistent management
2 of the Inquiry. It would also, for the reasons I've
3 already given, compromise the depth and quality of the
4 evidence itself.

5 So the only safe and fair solution the MPS says is
6 for any broadcast to be audio only.

7 Sir, of course this will present its own risks,
8 specifically the risk of an audio recording nevertheless
9 being made, publicised, and disseminated either by the
10 Inquiry, potentially -- and that is a matter for you to
11 consider -- or by individual listeners. And witnesses
12 may still be identified by their voices, again by
13 individual listeners or by groups using technology now
14 or at some point in the future.

15 But, sir, with the proper security measures in
16 place, which I've described in my earlier submissions,
17 the MPS's position is that risk will be at an acceptable
18 level and, as importantly, it will be practically
19 manageable.

20 Sir, in our written submissions we anticipate the
21 possibility -- no more than that -- of applications
22 being made for further restrictions over and above the
23 ones I have identified on an individual basis in respect
24 of individual witnesses. Sir, to be clear, it's not
25 presently anticipated that any such restrictions will be

1 necessary in the Phase 2 hearings, but, as stated in
2 paragraph 24 of the MPS's submissions, if specific cases
3 arise then submissions can be made and, if necessary,
4 supported by evidence, as your counsel say, so that you
5 can rule upon such applications.

6 But, as I say, sir, this is more, at the moment, of
7 a theoretical possibility rather than an anticipated
8 event.

9 Sir, so far as the issues of discrimination are
10 concerned, the MPS have seen the various submissions on
11 these issues, particularly indirect discrimination by
12 reference to the Equality Act and various jurisprudence.
13 So it suffices to say that the MPS doesn't consider that
14 you have acted unlawfully or would do so if, mindful of
15 the need to protect witnesses from the risk of
16 identification, you were to facilitate participation in
17 the hearings by an audio-only feed with the control
18 measures I've described.

19 Sir, it's noted that your counsel have not addressed
20 all of the issues raised in the written submissions of
21 some of the other core participants, and so you may feel
22 that if you do require detailed responses from the MPS
23 and, indeed, others to those issues, that the better
24 course may be to give permission to serve those in
25 writing after the hearing, bearing in mind that there

1 are some quite thorny legal issues. As we say, we say
2 they don't in fact bind you and you would not be acting
3 unlawfully, but if you do require a detailed response,
4 it may be in writing is the better course.

5 Sir, unless I can assist, those are my submissions
6 on the issue of broadcast. May I turn to witness
7 questioning?

8 SIR JOHN MITTING: Certainly.

9 MR SKELTON: Sir, the MPS's primary submission is that the
10 Rule 10 process will be sufficiently improved if, first,
11 participants have longer with the documents, and are
12 therefore better prepared to participate, and, second,
13 the procedure itself, whereby legal representatives feed
14 in questions and issues to your counsel and have
15 a dialogue with them about which will be pursued, is
16 operated effectively.

17 Your counsel have now disclosed the dates for the
18 Inquiry bundle. It's fair to say that 1 March is not
19 ideal, and I know others will have submissions to make
20 on that, but it should provide some assistance to the
21 participants. And of course it's appreciated, not least
22 to the MPS, how difficult it is to produce a bundle of
23 this nature for these hearings.

24 SIR JOHN MITTING: Reflecting on my earlier remarks, the MPS
25 plays a part in this process and it's awfully well to

1 say on the one hand the bundle must be disclosed
2 earlier, but if you are contributing to the process
3 which prevents the bundle from being disclosed earlier,
4 not because of any obstructiveness but simply because of
5 the process that has to be undertaken, you will
6 appreciate that there is a slight tension between the
7 two considerations.

8 MR SKELTON: That is a fair point, sir, I must accept it.

9 Just as to the second point, the Rule 10 process,
10 again, the MPS agrees with your counsel's submissions as
11 to the limits of what the witness testimony in this
12 Inquiry should achieve in furtherance of your terms of
13 reference. The benefits of sufficient adherence to the
14 Rule 10 timetable, the value of meetings with legal
15 representatives to iron out issues, which are always
16 welcome, and the need to proceed fairly in respect of
17 any allegations for which there is no evidence in the
18 bundle. Primarily, as your counsel anticipates and the
19 MPS endorses, by giving advance notice of such
20 allegations so that they can be evaluated and discussed
21 by those core participants and witnesses to whom they
22 are relevant before the witnesses give evidence.

23 SIR JOHN MITTING: There has to be, I think, some long stop
24 means of dealing with things that occur unexpectedly in
25 the hearing.

1 MR SKELTON: That must be right, sir. Inevitably in any
2 hearing, in-person or remotely, issues arise at the last
3 minute, instructions are given, which raise pertinent,
4 relevant issues which require a change of tack, and
5 an improvised response, as requested.

6 I think obviously advance notice of critical
7 allegations, such as occurred with Joan Hillier, is
8 obviously beneficial, and I think everyone must
9 recognise that. It can't be argued that it is fair to
10 ambush routinely, not that that is the allegation, but
11 that is the problem. A late allegation to which
12 a witness must respond on the hoof when they could have
13 responded more with better preparation in more detail
14 and with better quality. And that is the problem that
15 one is trying to address by asking for advance notice.

16 But I do appreciate that there may be times when
17 that can't be possible.

18 SIR JOHN MITTING: We will discuss the problems that arose
19 last time with those more personally concerned with
20 them, but your point is well made.

21 MR SKELTON: Sir, as to the application by Non-State
22 Core Participants to have 30 minutes to question each
23 witness, if necessary, sir, it can, of course, be
24 immensely frustrating for core participants and their
25 advocates not to be able to ask their own questions.

1 But these are not adversarial proceedings, they are
2 inquisitorial, and Rule 10 is specifically designed to
3 keep them so, by placing the onus on Inquiry counsel to
4 conduct the witness examination, while still allowing
5 participants to engage in the questioning process by
6 feeding in questions and issues and applying to ask
7 questions where necessary and appropriate.

8 This process has been tried and tested in many
9 Inquiries now in which the subject matter has been
10 equally serious, contentious and emotive, and it has,
11 sir, many benefits: it mutually disarms participants,
12 which makes the proceedings less adversarial, both in
13 substance and in tone. It is efficient, as it prevents
14 the duplication of questions. And it shortens the
15 length of proceedings, as even with the best will in the
16 world, questioning by additional advocates is very
17 difficult to control and inevitably makes proceedings
18 last longer.

19 Finally, and equally importantly, it encourages
20 witnesses to speak frankly, and without stress or fear,
21 thereby improving the quality of their evidence.

22 Sir, in considering this issue, you may wish to ask
23 what relevant questions or issues would the Non-State
24 Core Participants want to ask that have not been asked
25 and could not be asked by your counsel. The MPS,

1 broadly speaking, takes the view that there are none.

2 The short answer is: all questions and issues can
3 properly be addressed by your counsel.

4 Sir, those are my submissions on the principal
5 matters that I think are for discussion today. If there
6 are any other matters arising on which you would like my
7 submissions, then of course I will give them.

8 SIR JOHN MITTING: Thank you, no.

9 I take it you're going to remain here, or where you
10 are, listening to the debate as it proceeds. If I need
11 to come back to you, may I do so later?

12 MR SKELTON: Thank you, sir, yes.

13 SIR JOHN MITTING: Now, the next, I think, is Mr Boyle, if
14 he is going to address us.

15 Submissions by MR BOYLE

16 MR BOYLE: Good morning, sir, thank you.

17 Sir, having had the opportunity to consider all of
18 the written statements and the benefit of listening to
19 your counsel and indeed Mr Skelton on behalf of the MPS,
20 I simply observe that we agree with the positions that
21 have been advanced by the MPS and the submissions that
22 you have just heard from Mr Skelton, but beyond that,
23 sir, we've got nothing further to add to our written
24 submissions.

25 SIR JOHN MITTING: Thank you very much.

1 Mr Sanders.

2 MR McALLISTER: Sorry, sir, not Mr Sanders, but it may be --

3 SIR JOHN MITTING: Sorry, Mr McAllister, I do apologise.

4 I was told in advance. It comes of my not looking at my
5 note. Mr McAllister, I apologise.

6 Submissions by MR McALLISTER

7 MR McALLISTER: Not at all.

8 Sir, you will have seen the Designated Lawyers'
9 written submissions that broadly support the status quo
10 modelled upon the Tranche 1 Phase 1 hearings at the
11 Amba Hotel, and these would be the appropriate format
12 for the forthcoming Phase 2 hearings, given the
13 pandemic.

14 In those submissions, the designated lawyers also
15 acknowledged and suggested that earlier disclosure of
16 hearing bundles would substantially meet the concerns
17 raised by Non-Police Non-State Core Participants about
18 the Rule 10 questioning process.

19 We know that Counsel to the Inquiry's note
20 circulated yesterday has accepted some but not all of
21 the arguments made about widening access to the hearing
22 bundle and increased funding and representation, which
23 is likely to assist the Non-State Core Participants to
24 feed into the Rule 10 questions in advance and further
25 reduce the need for late applications to question

1 witnesses.

2 The DL did not file any submissions in response, and
3 obviously further submissions have been received more
4 recently. I don't seek to respond to all of those
5 today, but I do wish to make clear that no concessions
6 are made in respect of either an audio-visual or even
7 an audio transmission outside of any physical hearing
8 venue, in line with our written submissions.

9 SIR JOHN MITTING: You say that no concessions are made.
10 That is, from my point of view, not an especially
11 helpful observation.

12 I understand, and will discuss with others, the
13 objection to a visual transmission, but as far as the
14 audio transmission goes, I would like to hear if there
15 are any grounds for objecting to the MPS suggestion and
16 what they are.

17 MR McALLISTER: Sir, yes. In respect of an audio-only
18 transmission, the Designated Lawyers do not have the
19 corporate knowledge that the MPS or indeed the NCA or
20 NPCC have. In written submissions, the NCA were
21 contrary to an audio feed, as I read them correctly, as
22 were the NPCC. It's axiomatic that designated lawyer
23 officers will share any security concerns raised by
24 state bodies, and will have their own concerns about
25 potential identification of them through their voice

1 being recognisable and a unique identifier. That
2 concern is clearly greater if there aren't the caveats
3 listed by Mr Skelton, both in writing and developed
4 orally before you.

5 But, more specifically, on behalf of the designated
6 lawyer officers, irrespective of security concerns, they
7 will never have spoken publicly about their deployments,
8 and they may well be affected or inhibited by the
9 knowledge of the audio transmission itself, and of their
10 own concerns that people that they know may recognise
11 their voices.

12 In our written submissions, we've cross referred to
13 previous submissions made as long ago as
14 27 September 2018 which, whilst dealing with potentially
15 video transmission, set out points about best evidence
16 and particular privacy concerns that arise on behalf of
17 officers in respect of an identifying feature -- their
18 voice -- being transmitted.

19 Further, our clients scheduled for Phase 2 will have
20 not anticipated having their voice broadcast beyond
21 a hearing venue, as this was not seriously in
22 contemplation before now. And overall, a shift to
23 an audio broadcast between Phase 1 and Phase 2 is not
24 conducive to officers giving their best evidence, and
25 may be particularly difficult to justify for those

1 officers originally scheduled in Phase 1 who have had to
2 move to Phase 2.

3 So, based on previous submissions, privacy concerns,
4 and the concern that you, sir, will not get from the
5 officers the frank, full evidence if they have conscious
6 or subconscious concerns about their voice being
7 submitted to a much wider potential pool of people,
8 hearing, for example, the exchange between Mr Skelton,
9 sir, and you about potential practical difficulties with
10 restricting transmission outside of the jurisdiction,
11 and that potentially not being caught by any restriction
12 order, is likely to fuel that sort of concern.

13 If, sir, you're not persuaded, of course I would
14 echo the caveats that the MPS put in, but without the
15 further potential concession that the jurisdiction issue
16 is one that should be brushed aside. Ultimately,
17 Designated Lawyer officers are concerned about their
18 identity. They've been through the restriction order
19 process. Anything that is significantly different from
20 an in-person venue is likely to cause them concerns
21 which ought not to lead to any change from the
22 Amba Hotel type scenario.

23 If, in individual cases, there are more specific
24 concerns, then the DL would wish to join in with what
25 was described as Mr Skelton as the possibility, if it

1 arises, for more specific applications in respect of
2 specific officers.

3 SIR JOHN MITTING: That seems to me to be the means by which
4 legitimate concerns of individual officers can be met,
5 rather than a broad brush approach taken at this stage.

6 MR McALLISTER: Sir, ultimately, if that was part of the
7 overall process, that would provide some reassurance.
8 But certainly on behalf of my clients, it is not, as
9 I said, conceded, and it's certainly not a starting
10 point, for the reasons set out previously. Their
11 privacy concerns and achieving best evidence concerns
12 are there in a broad way for everybody appearing before
13 you.

14 SIR JOHN MITTING: And assume, if you would, that I am under
15 duties under the Equality Act to ensure, as far as
16 I can, that those who are not able to attend the hearing
17 venue can follow the proceedings, how am I to meet that
18 obligation without audio transmission?

19 MR McALLISTER: Sir, the Amba Hotel format allowed, amongst
20 other matters, anybody at home to follow a written
21 transcript, near live, and also to have access --
22 permanent access -- to a written transcript thereafter.
23 If one stands back and thinks about court proceedings
24 generally, and how much the public know about those,
25 when they know about it, the practical realities are

1 that most people, most members of the public, following
2 anything in the news don't follow it in real time, they
3 certainly don't have an audio feed of what's going on
4 within courts or tribunals, and it usually is some sort
5 of catching up with developments. And, for the large
6 part that, I would say, is sufficient.

7 SIR JOHN MITTING: How, also, am I to fulfil my duty under
8 section 18(1) to ensure that members of the public can
9 "see and hear".

10 MR McALLISTER: What we don't know is whether, come April,
11 members of the public will be physically able to attend
12 any public hearing venue or not. So to an extent there
13 isn't a clear picture at the moment.

14 Sir, the position must be, in respect of
15 section 18 -- and, sir, forgive me, I'm turning to the
16 section as we speak -- so you only have to take such
17 steps as you consider reasonable, and if the position is
18 that the pandemic doesn't allow that, then we would say
19 that the written transcript, the live, or near-live
20 tweeting or broadcasting, and in particular the rolling
21 transcript that you had before, is effectively the
22 simultaneous transmission of proceedings and is
23 sufficient for your purposes.

24 SIR JOHN MITTING: I don't at the moment think that
25 providing a transcript permits, in the words of the

1 statute, the proceedings to be "seen and heard".

2 MR McALLISTER: Well, sir, I would have to accept that the
3 words "see and hear" are specific.

4 Sir, in overall terms, there is not an absolute
5 obligation, sir, on you to have all parts of Inquiry
6 proceedings transmitted simultaneously. They won't all
7 be: there will be closed hearings, for example. So
8 there must be exceptions to the general format of
9 section 18.

10 SIR JOHN MITTING: Well, it's not exceptions to section 18.
11 Section 18 contains within it the requirement that
12 anything done to permit the public to see and hear
13 proceedings must be subject to restriction orders.

14 The restriction orders currently in place in respect
15 of the P2 witnesses prohibit publication of any image of
16 them, hence the genuine difficulty of doing anything in
17 relation to video transmission. But that is not so in
18 relation to audio transmission.

19 MR McALLISTER: Sir, indeed. Sir, you have -- my overall
20 submission, is that that is not something that I can, on
21 behalf of Designated Lawyer officers, concede as being
22 compatible with, ultimately, their privacy rights and
23 treating them fairly.

24 But if you are not with me on the overarching point,
25 then strict compliance with the caveats that the MPS put

1 forward in respect of restriction order,
2 pre-registration, no onwards transmission, would be, at
3 a minimum, the important safeguards. And, as previous
4 exchanges indicate, the ability to apply, in particular
5 cases, if there is a further or specific concern.

6 SIR JOHN MITTING: Position understood.

7 MR McALLISTER: Sir, the other broad issue which I wished to
8 address you on was the Rule 10 questioning procedure.
9 As I have said, the Designated Lawyers maintain that
10 earlier disclosure is the best solution, and that the
11 other concessions on access to bundles within Counsel to
12 the Inquiry's note will surely assist Non-State Core
13 Participants.

14 I do wish to emphasise that DL do not get early or
15 advanced sight of everything in the hearing bundle, for
16 example statements of Non-State witnesses and
17 non-DL officers, and as time goes on, in fact, the
18 proportion of DL officers broadly reduces when compared
19 with other officers and potentially Non-State witnesses.

20 So there are -- issues that arise for Non-State Core
21 Participants in fact arise for Designated Lawyer
22 officers, particularly managers and so on, if there are
23 going to be things said about them.

24 It must also be borne in mind that the Rule 10
25 approach that you adopt will have to be applied for

1 State and Non-State witnesses and, as fleshed out by
2 Mr Skelton, it is a sure path to an undesirable
3 adversarial approach if the current system is further
4 relaxed.

5 The other point that I wish to emphasise is that
6 where applications are made to ask questions of
7 a witness, then contrary to Counsel to the Inquiry's
8 note at paragraph 42, we maintain that submissions in
9 response to such an application from the RLR of
10 a witness should be allowed, and on this point, we note
11 that paragraph 42 of Counsel to the Inquiry's note says:

12 "We have reservations about the proposal that RLRs
13 should automatically be permitted to contest
14 applications for permission to question their clients."

15 The reasons given are partly that the current system
16 is efficient, and partly that it is fair because it
17 treats all witnesses the same way.

18 Now, a few short points can be made here. It's
19 assumed that the choice of words by Counsel to the
20 Inquiry of "automatically" would allow, perhaps, for
21 exceptions for the RLR of a witness to be heard in
22 certain circumstances.

23 But isn't it easier and more efficient to simply
24 automatically allow a right to apply rather than the
25 onus being on the RLR of a witness to have to,

1 particularly bearing in mind that this is remote,
2 effectively interrupt, say that they wish to be heard,
3 then explain why they need to be heard, and then, if you
4 give permission, sir, make the application.

5 Whereas actually an automatic right of reply is
6 likely to be more efficient and probably quite quickly
7 would narrow the focus on what it was that was
8 potentially objectionable.

9 In particular, on behalf of my clients,
10 Designated Lawyer officers, we have previously raised
11 issues about the potential fairness of late allegations
12 made against them. They were made orally back in
13 May 2018, and followed up in writing. And, just to put
14 it simply, we wish to guard against unfairness to
15 officers, particularly if it's late notice of
16 an allegation that might give rise to the sort of
17 conflict of interest that is going to cause problems in
18 representation, and ultimately the smooth conduct of
19 hearings.

20 All of this, we say, points to having the ability on
21 behalf of our witnesses to object to questions being
22 put.

23 SIR JOHN MITTING: I may be misunderstanding you. As far as
24 last-minute ambushes go, which have been preplanned on
25 the basis of information that has not been disclosed to

1 the Inquiry beforehand, I have no difficulty with your
2 submission.

3 But I do have a difficulty with establishing
4 a relatively lengthy procedure to deal with what will be
5 fairly minor matters, generally, arising unexpectedly
6 during the course of the hearing, and I think one needs
7 to bear those two possibilities distinctly in mind.

8 As far as the first goes, of course there can't be
9 preplanned ambushes. As far as the second goes, I don't
10 understand the utility of having a long discussion
11 before a question or two can be asked arising out of
12 something that has occurred unexpectedly.

13 MR McALLISTER: Well, it may be that the reality is, if it's
14 something that's arisen unexpectedly and/or is
15 uncontroversial, that there would be no objection. And
16 before the November video hearing, there had been
17 applications to you to put questions of various
18 DL officers, and no point was raised, no objection was
19 raised on behalf of -- by Mr Sanders in respect to those
20 applications.

21 It is better, we say, to know in advance that there
22 is an opportunity to respond and how to do it. The
23 practical reality is that in uncontroversial cases it's
24 unlikely to be used. But having to work out a way to
25 interject or interrupt to apply to be heard we say is

1 actually contrary to an efficient running of the
2 hearings and it would be better to know that one could,
3 and then hopefully use it wisely.

4 SIR JOHN MITTING: Right. So what you're asking for is
5 a mechanism under which you can be entitled to say "yes"
6 or "no" in 30 seconds?

7 MR McALLISTER: The practical reality, that is likely to be
8 what's needed, save for those cases that could properly
9 be described as an ambush or an unjustified late
10 allegation.

11 SIR JOHN MITTING: That's an entirely separate category, but
12 I am, at the moment, only dealing with the things that
13 occur on the spur of the moment because of something
14 unexpected arising in the hearing, which is bound to
15 happen.

16 MR McALLISTER: Indeed.

17 SIR JOHN MITTING: As you will be there listening, it won't
18 actually matter very much whether I turn to you and say:
19 Mr McAllister, anything you want to say? Or whether you
20 say: please, sir, can I say something?

21 MR McALLISTER: Perhaps not, but just knowing it can
22 happen -- and we would say why not automatically -- is,
23 you know, normal standards of fairness within
24 proceedings, and shouldn't be controversial. But better
25 to plan for it than to be told there's no right of reply

1 or there's no automatic right of reply, which appears
2 more as a barrier to efficient conduct.

3 SIR JOHN MITTING: Now, I understand it is in reality
4 a minor problem which is capable of resolution.

5 MR McALLISTER: Perhaps.

6 Sir, that is what I intended to address you on,
7 unless there's anything in particular I need to assist
8 you with?

9 SIR JOHN MITTING: No, that's very helpful and, again, as
10 with Mr Skelton, if I need to come back to you later,
11 may I do so?

12 MR McALLISTER: Of course.

13 SIR JOHN MITTING: Thank you.

14 Mr Whittam.

15 Submissions by MR WHITTAM

16 MR WHITTAM: Sir, thank you. The brevity of our written and
17 oral submissions shouldn't detract from their weight and
18 I shall, I hope, continue to be brief.

19 With regard to questioning of witnesses,
20 paragraph 44 of Counsel to the Inquiry's note
21 acknowledges our submissions relating to
22 cross-examination in circumstances which have yet to
23 arise.

24 It suggests that any such issues are dealt with on
25 a case-by-case basis when they do arise. We are content

1 with that with this caveat: should there be any hearing
2 that addresses how the Inquiry will approach such
3 matters in principle, Slater and Gordon should be
4 involved. Myself or any other advocate on their behalf
5 can't be presented in the future with a fait accompli
6 because there's been a decision in principle to which we
7 have not been involved. But with that caveat to one
8 side, dealing with it on a case-by-case basis would be
9 appropriate. Not least because, as you have indicated,
10 some matters simply aren't going to be resolved,
11 factually, by the Inquiry, so adopting that relevant
12 process of: is there a dispute of fact, is it necessary
13 to resolve that dispute of fact and, if it is necessary,
14 why can't it be dealt with by Counsel to the Inquiry?

15 Adopting that practical approach, sir, I have no
16 further submissions on that point.

17 SIR JOHN MITTING: Before you pass to the next one, can
18 I just explore those a little further with you.

19 In P2 this issue is unlikely to arise at all.

20 MR WHITTAM: Exactly.

21 SIR JOHN MITTING: I'm primarily concerned with P2. But
22 looking a little ahead, I have set out the circumstances
23 in which I believe it to be appropriate to permit
24 cross-examination by advocates for individuals. This
25 both favours some of your clients, because where they

1 disagree with their managers there may well be things
2 that you want to put to managers which they know as
3 a matter of fact which may be important to be resolved.
4 Likewise, they are likely to be on the receiving end of
5 cross-examination by those whom they may have deceived
6 into a relationship, so is the allegation.

7 Now, I don't understand you to oppose the principle
8 or the practice that cross-examination should be
9 permissible by the advocate for the opposing party to
10 the story.

11 MR WHITTAM: Sir, I don't, but that involves fairness and
12 a two-way street, which we have set out in our written
13 submissions and excited a response to. Our only note of
14 warning would be, this is an Inquiry, not an adversarial
15 process, and at least one of the written submissions
16 might forewarn the Inquiry as to what we would submit is
17 an unnecessary adversarial nature. What springs to
18 mind, to try to lighten my submission, is recalling
19 His Honour Judge Henry Pownall QC once saying to
20 a defence advocate, of course in a different
21 jurisdiction, "Cross-examination does not have to be
22 cross."

23 What I can assure the Inquiry is, and we do retain
24 our submission that if there is a relevant dispute of
25 fact for the Inquiry to resolve, and it is through

1 another core participant who then gives evidence, it's
2 likely that we would make an application to
3 cross-examination if the matters aren't dealt with by
4 Counsel to the Inquiry.

5 We are familiar in, again, a different jurisdiction,
6 to dealing with particularly vulnerable witnesses, both
7 in-chief and in cross-examination, and if we were given
8 permission to ask questions -- appropriately, because
9 Counsel to the Inquiry have not dealt with them -- we
10 would handle our questioning precisely how it is dealt
11 with in that sympathetic way as set out in -- although
12 it's currently being rewritten -- the advocate's toolkit
13 as to how one should deal with vulnerable witnesses.

14 We are not going to engage in an adversarial --
15 unnecessarily adversarial cross-examination of any
16 core participant.

17 SIR JOHN MITTING: I'm encouraged to hear that and I am
18 grateful for your submission.

19 MR WHITTAM: The only other submission that we have, it's
20 set out in our written submissions, is to be engaged
21 when there are applications, for example, for the live
22 feed for Rosa. That is something that directly impacts
23 upon one of the Slater and Gordon clients. We submit
24 that we should be involved in such submissions. It may
25 be that any response, and depending on the individual,

1 no submission made. It may be that we have a very short
2 submission in writing. But we should be involved in
3 that kind of decision-making, because it does have
4 a real impact on some of the Slater and Gordon clients.

5 The discussion this morning about restriction orders
6 and broadcasts comes well to mind. All we submit in
7 general is that the Inquiry must conduct itself to make
8 its restriction orders effective. And there is
9 a concern with, for example, an audio feed, as you have
10 raised this morning with Mr Skelton, being broadcast
11 outside England and Wales. One only has to look at
12 High Court injunctions preventing publicity in cases
13 involving high-profile individuals that are simply then
14 broadcast in another jurisdiction on the internet and
15 accessed here.

16 Saying: well, there has now been a breach so we're
17 not going to do that again doesn't help the person whose
18 restriction order has been broken.

19 SIR JOHN MITTING: That didn't work in the days of printed
20 media in the 1930s. There's no reason to believe it
21 would be any better now.

22 MR WHITTAM: Perhaps behind that is a simple assurance from
23 somebody who is getting a live feed that they won't
24 breach the restriction order is not as effective as
25 having other measures in place.

1 SIR JOHN MITTING: No, but you will recognise that the case
2 of Rosa is truly exceptional, and I dealt with it as if
3 it were.

4 MR WHITTAM: Sir, I accept that. On behalf of the clients
5 that we represent, it may well have been that there were
6 no written submissions to be submitted, and we're
7 certainly not dealing with it as any kind of way to get
8 any personal material that wouldn't be relevant for us
9 to consider at all, but it may be that simply the fact
10 the matter is going to be dealt with and do we have any
11 submissions is a matter that we say, out of fairness,
12 should be raised when somebody is so directly affected.
13 We don't think it will add to any great length, but it
14 is that feeling of fairness amongst the participants.

15 SIR JOHN MITTING: Understood.

16 MR WHITTAM: Unless I can assist you any further, sir, those
17 are our submissions.

18 SIR JOHN MITTING: No, that's very helpful, thank you very
19 much.

20 Now, Mr Bunting is next. I wonder whether this
21 would be a convenient moment to pause for 10 minutes
22 while permitting, then, Mr Bunting to make his
23 submissions.

24 On the other hand, if he feels that he can do it in
25 no more than quarter of an hour, we can do it now.

1 Which would you prefer?

2 MR BUNTING: Sir, I'm entirely in your hands. I suspect
3 I won't take longer than a quarter of hour, if that
4 assists.

5 SIR JOHN MITTING: Then I think it would be a good idea if
6 you were to start at a quarter-past.

7 MS PURSER: Thank you very much, everyone. We will now take
8 a break and return at 11.15. You may move to your
9 breakout rooms.

10 (11.03 am)

11 (A short break)

12 (11.15 am)

13 SIR JOHN MITTING: Mr Bunting.

14 Submissions by MR BUNTING

15 MR BUNTING: Sir, I appear on behalf of Seven Media
16 Organisations who are set out in the written
17 submissions, and they hope to assist you this morning
18 with points of practicality rather than with lengthy
19 citations of principle. And in making these points, the
20 media organisations recognise the particular problems
21 that arise as regards public access when a media public
22 inquiry is listed to take place in the middle of
23 a pandemic.

24 Can I start by summarising the practical points that
25 I hope to make before developing slightly the

1 submissions in respect of audio broadcasting.

2 As regards the summary, the media organisations are
3 grateful for the commitment in Mr Barr QC's note
4 regarding the ongoing provision of the near-live
5 transcript of the evidence sessions, and we're grateful
6 in particular that that has changed and is now capable
7 of being paused and rewound in the way that occurred
8 in November of last year. The media organisations, in
9 a nutshell, wish for that to continue.

10 SIR JOHN MITTING: My understanding is that we had a bit of
11 a false start and then got it right.

12 MR BUNTING: We're very grateful for that, sir.

13 SIR JOHN MITTING: That will continue.

14 MR BUNTING: Thank you. The second point for which the
15 media organisations are grateful is the suggestion in
16 Mr Barr's note at paragraph 25 that the media
17 organisations should be provided with advance sight of
18 the hearing bundle and of the opening statements, and
19 that will address the concerns we raised in the note in
20 respect of how difficult it was sometimes to follow when
21 advocates were jumping between documents during
22 questioning sessions.

23 Then the main point I think today is as regards the
24 audio stream, and we note in particular the suggestion
25 there may be further bespoke written submissions on

1 this, and if there are we would be grateful for the
2 opportunity to respond to them. But for today's
3 purposes, we as media organisations respectfully invite
4 you to take this approach and to ensure that there is
5 an audio stream.

6 To develop that point if I can, sir, of course the
7 starting point, of course, is openness and you will want
8 to take reasonable steps to ensure the proceedings can
9 be seen and heard. And that obligation in section 18 is
10 a complete answer to Mr McAllister's objections to
11 broadcasting of any kind.

12 Of course in terms of principle there are two points
13 that the media has sought to draw attention to. The
14 first is that you are particularly concerned with
15 ensuring public access, but the role of the media is to
16 act as the eyes and ears of the public. It is through
17 the media that most members of the public can obtain
18 access to legal proceedings. It is the media who are
19 adept and expert in bringing these proceedings to the
20 attention of the public and, therefore, even if it's not
21 reasonable for you to facilitate full public access to
22 the proceedings, the Inquiry may wish to consider doing
23 everything it can to ensure media access to the
24 proceedings.

25 SIR JOHN MITTING: May I interrupt briefly. Section 18

1 imposes that obligation on me. You are mentioned in the
2 slightly old-fashioned word, reporters, but that means
3 in modern language the media.

4 MR BUNTING: Yes, but the simple point that I'm making here
5 is that access to the media may be more easy for you to
6 facilitate than access to the public. And that's the
7 point that I sought to draw attention to in Khuja's
8 case, which was sent to the Inquiry yesterday.

9 The second point is that even if you as an Inquiry
10 have general concerns with general compliance with the
11 orders, for example in respect of broadcasting, the
12 media can be trusted to comply with the law. And that's
13 a point which is being repeatedly made in the
14 authorities, and I've provided Sarker's case, In re BBC,
15 to the Inquiry yesterday. The media are well used to
16 complying with reporting restriction orders, with the
17 law of contempt, with the strictures of reporting
18 national security proceedings. They are permitted
19 access to Family Court proceedings, even though the
20 public are not. And they are well used to reporting
21 sensitive inquiry proceedings, even where anonymity
22 orders have been made to protect privacy rights, such as
23 in Manchester, such as in the child sexual abuse
24 inquiry, among many examples. The media will comply
25 with your orders if they are permitted live or near-live

1 access to an audio stream of the proceedings.

2 So having set out those points of principle, can
3 I address the practical points that the MPS have raised
4 in their submissions?

5 If there is to be a delay to the audio-only
6 broadcast, can that delay be kept to a minimum and can
7 it be, as much as possible, the same delay which applies
8 to the transcript feed. Because obviously if there is
9 a transcript feed on one delay and then an audio feed at
10 another delay, that may make it more difficult rather
11 than less to follow the proceedings.

12 Secondly, as regards permitting access only on
13 an encrypted basis or via a log-in, as the MPS suggest
14 at paragraph 23 of their note, the media don't object to
15 that and, as I've said, you as an Inquiry can trust that
16 the media will comply with your restriction orders.

17 As regards whether the footage is accessible only at
18 the time of transmission, the media organisations
19 respectfully suggest that the correct approach here is
20 the approach taken in respect of the transcript feed.
21 It may be that it's capable of being paused or replayed
22 in the moment, even if it is not then accessible online
23 long term to the media.

24 Then as regards the England and Wales point, in my
25 submission the risk that people will be attempting to

1 get around this by hiding where they are may be a risk
2 that is more theoretical than real. And as with the
3 suggestion of watermarks on an online feed, the MPS
4 ultimately accepts that there will be an audio feed
5 whether or not those things can be done.

6 These shouldn't be obstacles to ensuring better
7 broadcasting and there may be technical ways around
8 them, but even if there are not, and you have a concern
9 as a point of generality, as regards people accessing
10 these proceedings from around the world, the short point
11 that I have already made is that this is not a risk as
12 regards accredited journalists in this jurisdiction. So
13 if you are permitting people access via an encrypted
14 service, via an online log-in way, and you can trust the
15 media in compliance with authority, then any risk that
16 arises is properly addressed.

17 So for those reasons and for the reasons set out in
18 writing, the media organisations respectfully invite the
19 inquiry to grant access to an audio feed.

20 As regards audio-visual feeds, we note the
21 suggestion that in an exceptional case the Inquiry will
22 permit individual applications for access to it. If
23 that application process is possible, then the media
24 organisations would be grateful for the ability to make
25 those applications, and they will only make those

1 applications if it is properly justified in
2 an exceptional case. And we don't detect any difficulty
3 with that in the suggestion set out in Mr Barr's note.

4 Those, in summary, are the media's submissions on
5 broadcasting. Unless I can assist the Inquiry any
6 further on those points.

7 SIR JOHN MITTING: Yes, I wouldn't wish to hold out any hope
8 to the media of an audio-visual broadcast. The measure
9 that I intend to adopt in the case of Rosa is adopted
10 specifically for her quite exceptional personal
11 circumstances, and they don't, plainly, apply to the
12 media.

13 MR BUNTING: They may not plainly apply in the generality of
14 cases, and the short point I make is if they do apply,
15 then such an application process may be open to the
16 media organisations. I don't seek to push it any
17 further than that, sir.

18 SIR JOHN MITTING: No. I do also have to bear in mind that
19 I am dealing, in P2, at least, with elderly witnesses,
20 mostly, some of whom have personal concerns, and they
21 may think that broadcasting their image to the media,
22 even under strict control conditions, is a step too far.

23 MR BUNTING: Sir, I can understand why subjectively that
24 concern might arise in an individual case. It may be
25 that objectively that concern might be addressed, but

1 I don't seek to push this submission any further than
2 I already have, simply that the possibility might arise
3 in an exceptional case for the media to make such
4 an application. I don't detect that possibility as
5 being closed.

6 Can I just then, before I finish my -- before
7 I virtually sit down, if I can put it that way, make one
8 final point. I understand that some of the other
9 core participants have raised concerns about redactions,
10 including in respect of the SDS annual reports. We
11 recognise that today's hearing isn't listed for the
12 purpose of exploring redactions, but the media share
13 those concerns, and if there is an opportunity to assist
14 the Inquiry any further on those redactions, then we
15 would be grateful for that opportunity if the moment
16 becomes appropriate.

17 SIR JOHN MITTING: I think, so far as redactions go, that is
18 an exercise that has been done and it is not intended to
19 do it again or to hear other than -- one can never say
20 never -- submissions about them.

21 MR BUNTING: Thank you for that indication, sir.

22 Can I assist you any further?

23 SIR JOHN MITTING: Thank you very much. No, thank you.

24 Now, I think it is Mr Greenhall now, is it not?
25

1 Submissions by MR GREENHALL

2 MR GREENHALL: Thank you, sir.

3 On behalf of the Non-Police Non-State Core
4 Participants, we very much welcome this hearing and the
5 opportunity to learn from the events of Tranche 1
6 Phase 1.

7 We have submitted quite full written submissions and
8 I don't propose to repeat everything in there by any
9 means. I want to focus on four discrete areas, if
10 I may, but first some brief initial points responding to
11 matters raised by others. Then I would like to turn to
12 the issue of livestreaming, first audio and visual
13 livestreaming, and then the proposed caveats on audio
14 livestreaming as proposed by the Metropolitan Police.
15 And then finally some very brief submissions on the
16 Rule 10 questioning process, though there will be areas
17 where I will defer to Mr Menon, who is going to make
18 more lengthy submissions on those.

19 So, sir, if I may start with some initial points
20 first in relation to the delay of the currently
21 scheduled hearings. The Non-Police Non-State Core
22 Participants oppose any delay to the hearings as
23 currently scheduled. This Inquiry has taken some time
24 already and we are keen to progress it.

25 In relation to the proposed venue, we welcome the

1 suggestion that a set-up similar to the Amba Hotel,
2 where all the persons are present in the same location,
3 that is our preferred model.

4 In relation to the posting of a transcript, or the
5 broadcast of a transcript with a 10-minute delay, we
6 welcome the suggestion that that is going to continue.
7 We would ask that on a purely practical basis, as well
8 as the ability to pause and rewind the transcript, that
9 it's possible to select and cut and paste and copy the
10 transcript and read it as if it were a written document
11 rather than, essentially, a video feed. That has
12 practical advantages, sir.

13 SIR JOHN MITTING: You are addressing a technical question
14 which is outwith my competence.

15 MR GREENHALL: I will leave it as a suggestion to those with
16 the technical skills that that represents our desires.

17 Turning now, sir, to the issue of livestreaming, and
18 first the issue of audio-visual livestreaming, and what
19 we say, sir, are the obligations and duties which you
20 are under following from the Equality Act 2010, in
21 particular the Public Sector Equality Duty, and, sir,
22 I would invite you to proceed, as you indicated earlier
23 today, on the basis that you are bound by the relevant
24 provisions of the Equality Act.

25 SIR JOHN MITTING: Are you going to make submissions on the

1 legal position, or is that for others? Because I don't
2 think the issue is straightforward.

3 MR GREENHALL: Sir, the issue has been raised by Counsel to
4 the Inquiry in his note yesterday, so we haven't had
5 a significant period to deal with it. I know that
6 Mr Menon is going to address you in further detail on
7 that point.

8 The submissions, in brief, that I would make is that
9 first it would appear that the Inquiry has not so far
10 considered itself to be exempt from the Equality Act
11 duties; Equality Impact Assessments have been carried
12 out in the past. In my submission, the judicial
13 function exemption under the Equality Act really would
14 only apply to core judicial functions, such as active
15 adjudication and the matters, and that issues relating
16 to the format of the Inquiry fall squarely outside of
17 that. It would be remarkable if an inquiry were not
18 subject to obligations under the Equality Act to have
19 regard to the need to reduce discrimination in the
20 set-up of its methods.

21 SIR JOHN MITTING: We're entering territory which is
22 actually quite difficult, but may I, therefore, attempt
23 to clarify both your position and my current thinking.

24 Do you accept that in the performance of core
25 judicial functions, using "judicial" in a non-technical

1 sense, in other words not meaning I'm acting as a judge,
2 because I'm not acting as a judge, but I am acting in
3 some respects as if I were, considering, for example,
4 evidence, who is telling me the truth, considering
5 procedural matters that deal with the means by which
6 I extract evidence and information, those sorts of
7 topic. Do you accept that in performing them I am
8 performing a judicial function?

9 MR GREENHALL: My submission would be more nuanced. My
10 submission would be if the judicial function were to
11 apply to anything, it could only apply to those
12 functions and it does not apply to the format of the
13 hearing. And, sir, if you wish for further submissions
14 on that point, then I would ask for time to provide
15 those in writing because, as you have indicated, sir, it
16 is a somewhat nuanced point.

17 SIR JOHN MITTING: I want to try to establish, really --
18 I'm not inviting submissions, I want to try to establish
19 what your current position was. And your current
20 proposition begins with the word "If", which is,
21 bluntly, unhelpful.

22 MR GREENHALL: I'm trying to assist you as best as I can,
23 sir. The issue we are dealing with is whether or not
24 the judicial functions exemption would pertain to
25 decisions in relation to livestreaming, and my

1 submission is it is not necessary to determine whether
2 there are any of your functions, sir, in the conduct of
3 this Inquiry which fall under the judicial function
4 exemption. One must simply focus on the livestreaming
5 issue. So whether or not, when it comes to the
6 evaluation of evidence, the judicial function exemption
7 applying there, in my submission it is clear that the
8 judicial function exemption does not apply in relation
9 to livestreaming. I hope I have set out the positions
10 as clearly as I can in relation to --

11 SIR JOHN MITTING: It then seems to follow to me, if that
12 submission is right, that applying section 18(1), given
13 the existence of a restriction order prohibiting the
14 transmission of an image, that the issue is determined
15 in relation to visual transmission.

16 MR GREENHALL: Sir, are you suggesting that the existence of
17 the restriction order as it currently stands prohibits
18 any further consideration under the Equality Act of
19 methods to address discrimination?

20 SIR JOHN MITTING: No, the distribution of an image.

21 MR GREENHALL: Yes, sir.

22 SIR JOHN MITTING: If you are talking about audio, there's
23 no problem there. An audio transmission will not
24 ordinarily breach a restriction order, but a visual
25 transmission most certainly will.

1 MR GREENHALL: And my submissions, sir, on that point are
2 that the duties under the Equality Act must be assessed
3 on the currently existing circumstances. The
4 restriction orders, in relation to visual images when
5 they were made initially in December of 2018, did not
6 contemplate, for obvious reasons (inaudible), therefore
7 it is important in the current circumstances to address
8 the issues in relation to discrimination, and, sir, the
9 current circumstances are such that they preclude
10 persons with protected characteristics from attending
11 a venue.

12 It is accepted in the note from Counsel to the
13 Inquiry that there is a discriminatory impact if
14 livestreaming of audio-visual livestreaming is not
15 permitted, the question is justification. In my
16 submission, the correct approach to the matter is to
17 consider, first, should livestreaming be permitted, in
18 order -- on the basis of discrimination concerns, and if
19 so then restriction orders should be re-evaluated in
20 light of that. It shouldn't proceed the other way
21 around: for them to assume that the restriction orders
22 cannot be varied and therefore rule out any adjustments
23 under the Equality Act that would contradict currently
24 existing restriction orders.

25 SIR JOHN MITTING: You then immediately introduce

1 a practical problem of formidable dimensions. I have
2 indicated I am not going to reopen restriction orders.
3 They were made after prolonged consideration,
4 submissions from all sides, and in particular evidence
5 and submissions from those who are protected by
6 restriction orders.

7 If I'm going to have to do all that all over again,
8 we can forget about hearings this year.

9 MR GREENHALL: No, my submission is that the consequences
10 wouldn't be as drastic as that. It would be to look at
11 what the additional concerns raised by livestreaming in
12 the format proposed would be to those restriction
13 orders.

14 SIR JOHN MITTING: I'm sorry, that's simply not right.
15 Those who are protected as regards their image and
16 identity by restriction orders would have every right to
17 make their position clear, to adduce evidence about it,
18 sometimes of an expert nature, and I would have to go
19 through the whole restriction order process again.

20 If I was to do that, we know how long it took first
21 time round, the chances of completing it this year are
22 not that good.

23 MR GREENHALL: Sir, my submission remains that it is
24 possible for audio-visual livestreaming to be provided,
25 potentially under certain conditions which meet the

1 privacy concerns of -- and we are dealing, in the first
2 instance, with undercover officers in T1 Phase 2. Those
3 restriction orders were granted on the basis of privacy
4 and not security concerns, so it is that that we are
5 dealing with. They were granted on the basis that those
6 officers would have given evidence at an in-person
7 hearing, where they would have been seen and heard by
8 anyone who attended such a venue. So there was always
9 going to be a potential for recognition of an officer by
10 someone who attended the venue, and that risk was not
11 considered insurmountable.

12 So, in my submission, concerns about recognition
13 shouldn't --

14 SIR JOHN MITTING: That is not an image. That is sitting in
15 a room, or being in a room, with another person, live.
16 Anything transmitted over the airwaves transmits
17 an image.

18 MR GREENHALL: I recognise, sir -- sorry, sir?

19 SIR JOHN MITTING: You assert that the starting point is: we
20 must do all this all over again. And then you suggest
21 it need not take anything like as long as it did first
22 time round. What is your proposition for that? What
23 are you submitting should happen?

24 MR GREENHALL: I am submitting that, sir, you can allow for
25 audio-visual transmission of the hearings. It may be it

1 is considered necessary for conditions in regards to
2 watermarking and the like to be applied to audio-visual
3 feeds, and then that may well be a mechanism by which
4 concerns over privacy and transmission of an image on
5 a limited basis could be achieved.

6 But, in my submission, given the limited number of
7 witnesses that we are dealing with in Tranche 1 Phase 2,
8 and the nature of the concern which relates to privacy,
9 the fact that the events concerned are a considerable
10 period of time ago, the privacy concerns that have been
11 raised in relation to those undercover officers are not
12 of such magnitude that when weighed in the balance in
13 the presence circumstances of whether or not
14 a restriction order should prohibit transmission of
15 an image that it must automatically fall on the side of
16 privacy. In my submission, when one assesses the
17 balancing exercise in the present context, with those
18 witnesses, the balancing exercise may shift in favour of
19 allowing evidence.

20 SIR JOHN MITTING: We're at cross-purposes. That is the
21 conclusion that you seek to achieve. What I am
22 concerned with is the route by which it is to be
23 achieved. What's the timetable for this? Who started
24 it? Who is entitled to participate in it? What is to
25 be done?

1 MR GREENHALL: I would submit that those officers who are
2 giving evidence are entitled to make submissions, and
3 the core participants are entitled to make submissions.
4 And that there is time to resolve that in a relatively
5 short time.

6 SIR JOHN MITTING: What is it precisely that is to be done?
7 You know the process that was undertaken last time.
8 Applications were made, they were reported by risk
9 assessments, by witness statements, sometimes by expert
10 evidence. The Non-State participants were then given
11 the opportunity of responding, which they initially did
12 at hearings and then decided not to, and did on paper
13 instead.

14 I want to know what process you envisage for this,
15 and then we can see how long it will take.

16 MR GREENHALL: The process, I submit, would be to indicate,
17 as has been done in the past, a minded-to position that
18 audio-visual transmission is to be allowed, whether
19 under certain --

20 SIR JOHN MITTING: Forgive me for interrupting. That's the
21 conclusion. I'm interested in the steps by which we get
22 there. Is the individual witness to apply again?

23 MR GREENHALL: The individual witness be permitted the
24 opportunity to make submissions again on the proposals.

25 SIR JOHN MITTING: Is this supported by a risk assessment

1 and evidence?

2 MR GREENHALL: If the individual is asserting that there is
3 a particular risk to them over and above any general
4 baseline, that they are to -- they say that they are at
5 specific risk, then that is something that would need to
6 be supported by evidence.

7 SIR JOHN MITTING: Right. I anticipate that there would
8 have to be expert evidence of a kind which satisfied me
9 and the wider world that it is possible, by receiving
10 an image and storing it, to link up the real identity of
11 the person whose image is being shown. That will take
12 a little time, will it not?

13 MR GREENHALL: I accept that. There was -- however, this is
14 building on previous applications that have been made,
15 so if there had been expert evidence previously adduced
16 in establishing that in relation to a given witness,
17 then presumably that can be relied upon again. But in
18 relation to -- that addresses the factual potential for
19 the identification of a particular witness from
20 an image, but the ultimate balancing exercise weighs
21 that against the considerations of openness in the
22 current circumstances.

23 SIR JOHN MITTING: Forgive me, again you're addressing the
24 conclusion and not process. I am concerned with process
25 and the time that it will take.

1 First of all, there will have to be an application
2 by each of the witnesses who object, as they
3 (inaudible).

4 MR GREENHALL: I wouldn't want to preclude them from having
5 that opportunity, no, sir, but it's up to them whether
6 they wish to avail themselves of it.

7 SIR JOHN MITTING: They must have the opportunity of
8 explaining why, from their own personal perspective, it
9 would be, at a minimum, undesirable and, at worst,
10 disruptive of their health to do so. There would have
11 to be a risk assessment as to the chances of them being
12 identified if their image were to be transmitted, and
13 there might also need to be evidence in cases where
14 health was said to be at risk.

15 MR GREENHALL: Yes, sir.

16 SIR JOHN MITTING: I cannot see that taking less than
17 three months; can you?

18 MR GREENHALL: Sir, my submission would be that, given that
19 there are already pre-existing assessments that have
20 been made, the additional evidence that may be required
21 now may not take so long to achieve, and the additional
22 evidence only has to address matters within the context
23 that is proposed, and therefore, sir, if you were only
24 prepared to consider audio-visual livestreaming subject
25 to conditions of registration and conditions as proposed

1 by the Metropolitan Police, then that narrows down the
2 ambit of concerns that may need to be addressed by the
3 evidence.

4 So it may be that the concerns do not need to
5 address the permanent storage of images on the internet
6 broadcast by the Inquiry to the world at large, but are
7 in fact addressing the concerns of audio-visual
8 livestreaming being provided to persons who have
9 registered with (inaudible).

10 SIR JOHN MITTING: Would you then want the opportunity to
11 respond?

12 MR GREENHALL: Yes.

13 SIR JOHN MITTING: And, if you thought it desirable, to call
14 or to produce evidence in response?

15 MR GREENHALL: Potentially there might be a need for
16 evidence. But, sir ...

17 SIR JOHN MITTING: Would you want a hearing on the issue?

18 MR GREENHALL: Whether a hearing is needed is going to
19 depend on the nature of the dispute, but I wouldn't rule
20 it out, sir. I would still submit that there is
21 a potential to address these issues before the hearings.

22 SIR JOHN MITTING: Then give me, please, your time estimate.

23 MR GREENHALL: Two weeks for applications to be made,
24 two weeks for responses, and a hearing, if necessary,
25 shortly before the hearings are due to start.

1 SIR JOHN MITTING: And if there were to be a challenge to
2 the lawfulness of any decision that I might make?

3 MR GREENHALL: I'm sorry, sir, I couldn't catch that.

4 SIR JOHN MITTING: What if there were to be any challenge to
5 the lawfulness of any decision that I might make?

6 MR GREENHALL: There is clearly the potential for the
7 proceedings to become protracted and the potential for
8 it to impact on the proposed timetable. But it is, in
9 my submission, possible to proceed on the basis that the
10 hearings can take place, and it may well be that not
11 every decision would be challenged. And if there were
12 to be one officer who had a challenge and others didn't,
13 well, that might be addressed on a case-by-case basis,
14 and it might affect the timing of whether that officer
15 gives evidence in that phase of the Inquiry or at
16 a slightly later phase.

17 In my submission, there are limits to how far the
18 process can be managed, but it is potentially possible
19 to proceed with an application process and to deal with
20 the majority of applications by the time of the
21 scheduled hearings.

22 So it is, of course, open to you, should you wish,
23 to delay hearings if you feel that discrimination issues
24 require audio-visual livestreaming.

25 SIR JOHN MITTING: Your starting point to me was that you

1 opposed any delay. I happen to share that view. Your
2 suggestion is that any hearing should take place
3 a fortnight or so before the P2 hearing. Do you not
4 realise that that is a time when everybody will be up to
5 their eyes in work preparing for the substantive
6 hearing?

7 MR GREENHALL: I am well aware of the amount of work that is
8 involved, sir. I'm not pretending that there aren't
9 potential difficulties that arise from applications of
10 this nature, but, sir, in my submission, if there are
11 appropriate safeguards imposed on audio-visual
12 livestreaming, it may well be that the concerns that
13 might arise on a theoretical basis, when assessed in
14 light of the practical realities, are not
15 insurmountable.

16 Sir, that has to be my submission in relation to
17 this issue, that it is not something that should be put
18 aside on the basis that the process to get there
19 presents challenges. I won't pretend that it doesn't.
20 But challenges aren't always as difficult as they are
21 anticipated to be.

22 SIR JOHN MITTING: Right.

23 MR GREENHALL: Sir, if I might address you on the
24 substantive issues in relation to audio-visual
25 livestreaming.

1 As I've indicated, we are grateful that Counsel to
2 the Inquiry accepts that there is a discriminatory
3 impact, and that that is something which arises from the
4 pandemic and it affects those persons who have protected
5 characteristics on the basis of their age, race, sex,
6 pregnancy and disability.

7 In light of that discriminatory impact, in light of
8 my submission, the burden is on those seeking to
9 restrict access to audio-visual livestreaming to justify
10 it, rather than the other way around. So it is for
11 those who say that audio-visual livestreaming should not
12 take place to provide the justification for that.

13 A number of principled objections have been set out
14 in written submissions by the parties. The first
15 relates to the conduct of the Tranche 1 Phase 1
16 hearings. In my submission, the Tranche 1 Phase 1
17 hearings do not give rise to concerns which would
18 prevent audio-visual livestreaming. The 10-minute delay
19 on the transmission of the transcripts in those hearings
20 worked as it was supposed to do, on the rare occasions
21 when it was required to be relied upon, and there's
22 nothing to suppose that hearings in the future will be
23 any different.

24 In relation to concerns over whether witnesses are
25 able to give their best evidence, again, in my

1 submission this would not justify a blanket prohibition,
2 and this applies to both audio-only streaming and
3 audio-visual livestreaming. The witnesses who gave
4 evidence in Tranche 1 Phase 1 did not appear to be
5 unduly concerned about giving evidence.

6 The Metropolitan Police asserted today that if there
7 were no security measures in place in relation to
8 livestreaming of whatever form, then it will inevitably
9 impact on the quality of the evidence. In my
10 submission, there isn't an inevitability about it. If
11 there are concerns raised, well, they need to be
12 addressed on a case-by-case basis, but it would be wrong
13 to assume, as a general principle, that livestreaming of
14 whichever form is inevitably going to impact on the
15 quality of evidence heard. And of course if there are
16 specific concerns for a specific witness, then that can
17 be addressed.

18 Dealing with the difference between audio and
19 audio-visual livestreaming, we've set out in the written
20 submissions, but if I could just amplify them slightly,
21 there is a distinct qualitative difference between audio
22 and audio-visual livestreaming. The latter, of course,
23 allows for both tone and demeanour of a witness, as
24 indicated through their facial expressions and general
25 body language. That has two advantages: first, it

1 assists in understanding what the witness means, in
2 being able to follow the evidence, because tone and body
3 language are clear indicators there. It also assists in
4 the assessment of credibility, and that is something
5 which is well known to the court. And the advantages of
6 audio-visual livestreaming over audio-only are
7 recognised by the House of Lords Select Committee, as we
8 set out at paragraph 46 of our submissions.

9 Sir, those are my submissions in relation to
10 audio-visual livestreaming. In my submission, there is
11 a proper basis for re-examining the position in light of
12 the present circumstances, and in my submission the
13 logistical difficulties that that gives rise to are not
14 insurmountable.

15 If I might now turn to the specific caveat proposed
16 by the Metropolitan Police in relation to audio
17 streaming. In relation, first, to the delay of any
18 broadcast audio feed, there is no contention that
19 a 10-minute delay is problematic. In relation to the
20 underlying risk of identification of officers that has
21 been raised through audio transmission, in my submission
22 it's important to again bear in mind that we must deal
23 with any increase in risk that arises from
24 identification from audio streaming on the internet
25 versus identification from seeing a witness at

1 a hearing. There will always be people who can attend
2 the hearing, and see the witness there. And again, if
3 it is to be asserted that there is an increased risk,
4 then the assessment of that really needs an evidential
5 basis, and it is not clear that that has been provided,
6 certainly in relation to the 12 witnesses that we are
7 dealing with in Tranche 1 Phase 2.

8 Now, turning to the proposed conditions, that the
9 transmission is only accessible at the time of
10 transmission in my submission is perhaps a somewhat
11 overly restrictive approach to the need to mirror
12 an in-person hearing as closely as possible. I note
13 that the media proposed that the transmission should be
14 available for a slightly wider period of time, and in my
15 submission any risks or concerns that arise may not
16 be -- the difference may not turn on how long the
17 transmission is available for.

18 In relation to access on request and by
19 registration, one key question that arises is what
20 details are to be asked of persons during the
21 registration process, and, importantly, if there are
22 personal details collected, what happens to that
23 personal data? The Non-Police Non-State Core
24 Participants would very strongly oppose any suggestion
25 that the names and personal data of those registering

1 for an audio feed should, as a matter of routine, be
2 provided to the police. It is not, in our submission,
3 appropriate that there should be vetting of the audio
4 stream.

5 SIR JOHN MITTING: Forgive me for interrupting. I don't
6 think that suggestion has been made.

7 MR GREENHALL: I note it hasn't been explicitly articulated
8 and we simply wish to make a marker that that is
9 something we would have a significant concern about.

10 I would --

11 SIR JOHN MITTING: My understanding of the position is that
12 the Inquiry would know that information, save in the
13 event of a breach when the police might have to be
14 called upon to assist in any inquiry, but save in that
15 event the details would remain with the Inquiry and
16 wouldn't be transmitted anywhere else.

17 MR GREENHALL: Sir, that goes a long way to addressing that
18 issue. The question is whether, if it is simply
19 traceability that is sought, then the registration of
20 an email address and nothing more will provide a means
21 to trace where a particular theme has gone to.

22 So, in our submission, registration requirements, if
23 they are deemed necessary, should be kept strictly to
24 the absolute minimum and the data dealt with in
25 an appropriate manner.

1 I note that in the --

2 SIR JOHN MITTING: Forgive me for interrupting you again.

3 This is a practical matter upon which my knowledge, and
4 perhaps yours too, is imperfect.

5 If there is to be registration, your submission is
6 that the details should be held and held only by the
7 Inquiry. Have I understood that correctly?

8 MR GREENHALL: Yes, exactly.

9 SIR JOHN MITTING: That's a proposition that I accept.

10 In the event of a breach, the Inquiry would clearly
11 have to share the registration details of probably
12 everybody who had been registered, so as to permit the
13 alleged culprit to be identified. Is that something you
14 accept?

15 MR GREENHALL: I would accept that in the event of a breach
16 there may well be a need to share data, whether it would
17 have to be everyone -- as long as it was kept to the
18 minimum, then that would be the proposition.

19 SIR JOHN MITTING: Of course. This is personal data and it
20 must be processed lawfully, and that includes not
21 spreading it more widely than is necessary for
22 a legitimate purpose.

23 I think the principles we are ad idem on. The
24 practicalities probably neither of us understand.

25 MR GREENHALL: Thank you, sir. And simply the point I would

1 make is it may not even be necessary for persons to
2 provide a name. An email address provides traceability.
3 It's maybe a more minor point.

4 I would also note that in relation to the
5 Amba Hotel, my understanding was when people registered
6 that was for the purposes of Track and Trace, which was
7 in operation at the time, rather than any need to hold
8 a person's individual data. If we're mirroring the
9 in-person hearings as closely as possible, then, again,
10 the need for personal data should be kept absolutely to
11 a minimum.

12 SIR JOHN MITTING: As it happened, it served a dual purpose.
13 If and when these restrictions are lifted, then it's
14 an issue that might conceivably have to be addressed,
15 specifically and on its own. But for the time being,
16 a side benefit of the current restrictions is that we
17 can do something for public health reasons that we might
18 wish to do also for security reasons.

19 MR GREENHALL: In relation to the need for restriction
20 orders to be made and those registering for a link to
21 enter into specific restriction orders, in my submission
22 if the purpose is to make those who receive an audio
23 transmission aware that they should not record or
24 further transmit that, then that can be provided by
25 notice being made on the website where you access the

1 web feed from. Essentially it's you have to maybe click
2 a button to say "accept the terms and conditions", as it
3 were, rather than sort of a specific series of
4 restriction orders which may be overly onerous.

5 The purpose, as I understand it, is to inform
6 persons receiving the live feed that they shouldn't make
7 onward transmission of it.

8 SIR JOHN MITTING: So the restriction order does not require
9 an individual to acknowledge that they are bound by it;
10 they are bound by it. Precisely how a restriction order
11 which will apply to many people is to be applied, the
12 technical means by which it is to be applied, is
13 something that we can deal with in due course. And
14 again, it's probably something that neither you nor
15 I fully understand. But you don't oppose the making of
16 a restriction order in relation to receiving an audio
17 transmission?

18 MR GREENHALL: If it is a matter which you, sir, feel is
19 necessary, then it's not a matter which we would push
20 hard against.

21 SIR JOHN MITTING: Thank you.

22 MR GREENHALL: In relation to an audio feed only being
23 effected to those located in England and Wales, sir, you
24 have already indicated some of the technical issues that
25 arise. As a point of principle, we would submit that

1 persons located in Edinburgh and Glasgow and Belfast may
2 well wish to listen to an audio feed of proceedings, and
3 if it is possible for them to do so, they shouldn't be
4 excluded without good reason. And certainly we would
5 wish for persons located abroad to be able to apply on
6 a case-by-case basis for the provision of an audio feed.
7 There are core participants, of course, who are located
8 overseas and might well wish to be able to use the audio
9 feed.

10 In relation to the proposal by the
11 Metropolitan Police that individual officers at
12 increased risk of identification should have 14 days to
13 make applications, we would submit that the Non-State
14 Core Participants should have sight of those
15 applications and should have an opportunity to respond.
16 Without wishing to reopen matters, I would submit that
17 there is sufficient time for such applications to be
18 dealt with between now and the hearings in April.

19 The other --

20 SIR JOHN MITTING: Forgive me for interrupting, but I think
21 that is a much lesser logistical problem than starting
22 all over again on restriction orders.

23 MR GREENHALL: I would certainly accept that, sir.

24 The final point raised by Counsel to the Inquiry on
25 this matter is that there should only be -- when should

1 there only be audio streaming if public access to the
2 hearing venue is impossible. In my submission there is
3 some merit in looking at the provision of audio
4 streaming, whether or not attendance at an in-person
5 hearing is, strictly speaking, impossible or difficult
6 or whatever the conditions that may pertain. Whenever
7 the T1 Phase 2 hearings take place, it is likely that
8 there is going to be a degree of risk arising from the
9 pandemic. The level of that risk is going to depend on
10 individual circumstances and a number of factors, but
11 it's not going to go away completely, and in my
12 submission that is one reason to look for the
13 possibility of audio streaming. And also, sir, there is
14 the general duty under section 18 to allow members of
15 the public to see, or at least to hear, the proceedings,
16 subject to what is reasonable, and in my submission the
17 principle of openness should favour audio streaming,
18 certainly, of the proceedings in this Inquiry.

19 SIR JOHN MITTING: I cannot conceive of any circumstances in
20 which we have a hearing in April which is not going to
21 require audio streaming to reach more than a handful of
22 people without discrimination.

23 MR GREENHALL: Thank you, sir.

24 So unless I can assist further on streaming, audio
25 streaming, those are my submissions.

1 My final submissions, sir, relate to the Rule 10
2 question of process, and I will make very brief
3 submissions here, and Mr Menon QC is going to develop
4 the points.

5 A few brief issues. One relates to the proposed
6 10-minute delay at the end of a witness's evidence to
7 allow for lawyers to consult with core participants and
8 pose questions. There is a practical difficulty if
9 there are people who are following proceedings already
10 subject to a 10-minute delay, because by the time they
11 have caught up with those who are watching the evidence
12 live, the period of consultation has passed. So we
13 would ask that consideration be given to the timing of
14 hearings, that breaks and the like are timed to allow
15 for those following remotely to feed in questions.

16 The second point relates to funding issues, and we
17 simply say that many of the difficulties that arise in
18 the hearing process can be alleviated if a more generous
19 approach is taken to the funding of legal
20 representatives and counsel at the Inquiry. It is often
21 possible for issues to be addressed when people are
22 there in person very quickly and very efficiently which
23 are far harder to deal with when people are trying to
24 follow matters remotely. So we simply ask that that is
25 a factor that is considered by the Inquiry.

1 In relation to allowing an automatic period for
2 Non-Police Non-State Core Participants to ask questions
3 without the need to seek permission from you, sir,
4 I confine my representations to where matters genuinely
5 arise out of the evidence, the oral evidence that is
6 given at the hearing. So something that is not
7 anticipated, completely out of the blue, or where
8 a follow-up question comes to mind and something is
9 stated(?) that it can't be anticipated in advance. In
10 my submission, in those circumstances, Non-State Core
11 Participants should be allowed the opportunity to ask
12 follow-up questions.

13 The need to seek permission and, on occasion,
14 explain the basis for why the question needs to be
15 asked, can often take longer than simply asking the
16 question of the witness, and in my submission it is
17 appropriate to allow counsel representing Non-Police
18 Non-State Core Participants to ask those questions,
19 limited in that way. It's not something which counsel
20 would seek to abuse, and I'm sure if they did they would
21 be put right very swiftly. But it's simply a practical
22 matter that allows for an efficient conduct of
23 a hearing. So, in my submission, it would be
24 appropriate to allow counsel to ask such questions
25 without needing to ask permission in advance, and

1 counsel will confine those matters to things which
2 genuinely arise.

3 SIR JOHN MITTING: Mr Greenhall, I acknowledge that the
4 process adopted last time was somewhat clunky.
5 I gratefully acknowledge your proposition that you only
6 wish to have this facility to ask questions at the end
7 when it arises out of something that has occurred
8 unexpectedly, evidence given of a kind that wasn't
9 anticipated being the obvious example.

10 I think all of those having an intelligent interest
11 in the hearing will realise if something has occurred
12 that is a surprise, so I would hope that if evidence is
13 given which is not foreshadowed in the documents or in
14 the witness statement produced beforehand, then I would
15 realise that as much as you or others would, and so it
16 wouldn't take very long to say: that came as a surprise
17 to us, I want to ask about it, please. I don't think
18 that's going to take any great deal of time. Unlike the
19 rather lengthier explanations that were given for things
20 which had not arisen by surprise last time.

21 MR GREENHALL: Sir, I accept that in most occasions it can
22 be dealt with very quickly. There may be occasions
23 where a witness gives evidence which a core participant
24 recognises the significance of because they have
25 a greater understanding of matters pertaining to them,

1 which can take a bit of explaining to those who don't
2 have such direct interests in that issue, and it's those
3 circumstances which I suggest sometimes simply being
4 allowed to ask the question and get the answer is
5 quicker than having to go through the explanation. It's
6 simply very much a practical and pragmatic issue.

7 There is the more principal difficulty when, as may
8 happen, there is a need for a witness to be excluded
9 when the explanation for a particular line of
10 questioning is given, and that, on a purely logistical
11 basis, given the set-up of the Inquiry at the moment,
12 would cause some disruption, and so that is something
13 which, sir, I would ask you to consider. And my
14 overarching submission is that, simply on a practical
15 and logistical basis, counsel should be afforded the
16 permission generally to ask questions of matters
17 arising, with the caveat that they will be short and
18 discrete topics. And of course if there are more
19 controversial issues that don't clearly fall within that
20 ambit, then they can be raised with you, sir.

21 SIR JOHN MITTING: I think we are dealing, for Phase 2 at
22 any rate, with a relatively minor practical problem.
23 I don't think either your suggestion or mine are going
24 to add materially to difficulties, and given the need
25 that I do ultimately have to keep control over things,

1 I am afraid it's mine that's going to prevail.

2 But I acknowledge that there should be
3 an opportunity to ask questions arising out of things
4 that have occurred unexpectedly.

5 MR GREENHALL: Sir, unless I can assist further, those are
6 my submissions.

7 SIR JOHN MITTING: Thank you very much. That's extremely
8 helpful, and I'm sorry we had a rather lengthy debate
9 about practicalities at the start of it, but I'm trying
10 to get to the root of the difficult problems as well as
11 providing a route that has already, I think, largely
12 been signalled by Mr Barr to the easier ones.

13 MR GREENHALL: Thank you, sir.

14 SIR JOHN MITTING: Now, who is next? It's Mr Menon next,
15 I think, is it not?

16 Submissions by MR MENON

17 MR MENON: Yes. Can everybody hear me?

18 SIR JOHN MITTING: Yes, your head is slightly chopped off on
19 the screen.

20 MR MENON: Maybe because I've got a bit of light coming in
21 the top and it looks a bit odd. I'm happy to do it in
22 that way if it's better. I'm sorry about the light
23 protruding at the top of the screen.

24 SIR JOHN MITTING: No, no, it lends a nice patina to the top
25 of your head.

1 MR MENON: I'm grateful.

2 SIR JOHN MITTING: Yes.

3 MR MENON: Good afternoon, sir.

4 As you know, I have submitted discrete submissions
5 in respect of my clients. Firstly you should have
6 initial submissions and further submissions on behalf of
7 the clients which I represent together with
8 Richard Parry and Russell Fraser.

9 SIR JOHN MITTING: Yes.

10 MR MENON: You should have submissions on behalf of the
11 clients that I represent together with Jane Deighton and
12 Una Morris.

13 SIR JOHN MITTING: That's correct, I do.

14 MR MENON: With your leave, I propose to start with the
15 submissions that Mr Parry and I have submitted.

16 SIR JOHN MITTING: Yes.

17 MR MENON: Thank you.

18 On 19 January this year, the Inquiry uploaded
19 a letter onto its website from the Metropolitan Police
20 Service's director of legal services. We asked the
21 Inquiry why this letter, of all the hundreds of letters
22 and emails that the Inquiry must receive from
23 core participants, had been selected for uploading, and
24 we were told that the letter was uploaded because it
25 essentially comprises submissions on behalf of the

1 Metropolitan Police Service, and consequently its
2 contents should be made publicly available on the
3 Inquiry's website, as opposed to circulated to
4 core participants only.

5 Given the Inquiry's decision that this letter is to
6 be treated as part of the Metropolitan Police Service's
7 submissions, and the fact that we have not addressed its
8 contents in our original submissions or our further
9 submissions, we do so briefly now.

10 This letter, to put it as politely as I can, is
11 an attempt to counter the allegations made by Non-State
12 Core Participants that the Metropolitan Police Service
13 has obstructed the Inquiry, and to insist that, on the
14 contrary, the true position is that the Metropolitan
15 Police Service is committed as an institution, from top
16 to bottom, to assisting the Inquiry to completing its
17 valuable work as effectively and swiftly as possible.

18 Specific complaint is made in the letter of what was
19 said in our opening statement, namely that:

20 "The police have used every weapon in their arsenal
21 and spared no expense to obfuscate, obstruct, undermine
22 and delay an open, transparent and fearless public
23 inquiry into undercover policing."

24 You have addressed this letter this morning, sir, in
25 your introductory remarks, and have effectively

1 confirmed what the Metropolitan Police Service has asked
2 you to do, namely that there is no basis for the
3 allegation that the Inquiry's work has been or is being
4 obstructed by the Metropolitan Police Service.

5 I don't wish to go into the matter in any detail.
6 It will not surprise you that we do not agree with that
7 conclusion, but we don't wish to have any unseemly
8 disagreement with you now, as this would serve no useful
9 purpose.

10 Suffice to say that the reason that we revisit the
11 letter at this stage is because the Metropolitan Police
12 Service and other police core participants, most notably
13 the Designated Lawyer group, continue to suggest in
14 their written submissions -- wrongly, we say -- that it
15 is the Non-State Core Participants who are responsible
16 for the Inquiry not being as inquisitorial as it should
17 be. We say nothing further from the truth is in fact
18 the correct position.

19 If the Non-State Core Participants are marginalised,
20 as we say they have been, and prevented, through their
21 lawyers, from participating effectively and meaningfully
22 in the Inquiry, if the state's obsession with secrecy is
23 permitted to have a foothold in this Inquiry at the
24 expense of openness and transparency, then it can hardly
25 come as a surprise that there is, at times,

1 an adversarial air to the proceedings. It should never
2 be forgotten, in our submission, that it is the
3 Non-State Core Participants who are the victims in this
4 Inquiry of abuse of power by the state, in some
5 circumstances with the most devastating of consequences.

6 The former undercover police officers, with respect,
7 are not victims and should never be treated as such.
8 Now, we have addressed in our written submissions
9 a number of discrete issues. Counsel to the Inquiry's
10 note for today's hearing suggests that there is little
11 point in pursuing most of those matters any further
12 today, and so we don't do so. Either a decision has
13 already been made, or we are encouraged to raise the
14 matter in correspondence with solicitors to the Inquiry,
15 which we will continue to do as we have been doing from
16 the outset.

17 However, there is one issue that I do wish to
18 explore, sir, namely the Rule 10 issue and the Inquiry's
19 approach to Rule 10, notwithstanding the fact that you
20 have just indicated to Mr Greenhall at the end of his
21 submissions on behalf of the wider Non-State Core
22 Participants group that you have effectively already
23 reached a decided view on the matter. I think it would
24 be wrong if I didn't at least articulate one more
25 time -- and it will be for the very last time -- our

1 position on this issue, notwithstanding I think that the
2 matter is already an open and shut case.

3 There is no doubt that the Rule 10 issue is the most
4 vexed and contentious of issues, not only at this
5 directions hearing but, we would submit, more generally,
6 because, more than any other issue, it goes to the very
7 heart of whether or not you're going to allow the
8 Non-State Core Participants to participate effectively
9 and meaningfully in this Inquiry.

10 We will, of course, continue to submit the Inquiry's
11 Rule 10 pro formas on time, as we largely did during
12 Tranche 1 Phase 1, despite not having nearly enough time
13 with the hearing bundles.

14 However, I think it is important that I am blunt
15 about this: submitting questions on behalf of our
16 clients for somebody else to ask, as opposed to asking
17 the questions ourselves, is never going to be
18 satisfactory for our clients, and I suspect for many
19 other Non-State Core Participants as well, and is never
20 going to amount to effective and meaningful
21 participation by the Non-State Core Participants in the
22 Inquiry. Hence our application, as a compromise
23 measure, we thought, for automatic permission to
24 question witnesses for up to 30 minutes.

25 Now, it's clear from paragraph 1 of Counsel to the

1 Inquiry's note, and of course given what you've already
2 indicated this morning, that there are not only concerns
3 about our proposal, but that a decided view has already
4 been reached, but I proceed nevertheless. The note
5 reads as follows:

6 "It is important in this inquiry that [Counsel to
7 the Inquiry] and the Chairman retain oversight of
8 proposed lines of questioning so as to ensure that
9 restriction orders are not undermined and that the
10 proceedings are fair."

11 I am afraid we reject the suggestion, if it is being
12 made, that order, control and due process would be
13 undermined if you adopt our proposal.

14 On the contrary, in the long run -- and I appreciate
15 that this doesn't in particular apply to Tranche 1
16 Phase 2, because there are only ten police officers due
17 to give evidence, but in the long run, as we get into
18 Tranche 2, Tranche 3, et cetera, it will save time, in
19 my respectful submission, and more importantly, it will
20 improve relations between the Non-State Core
21 Participants and the Inquiry, something that I assume
22 that all concerned, and most importantly you, sir, would
23 very much welcome.

24 So that's all I say in general terms about that, for
25 your consideration, in case it may have any impact.

1 One more specific matter about this. As far as the
2 submission made in writing by not only the Metropolitan
3 Police Service, but by other police core participants,
4 repeated again this morning by Mr Skelton, that the
5 former undercover police officer Joan Hillier was
6 ambushed during Tranche 1 Phase 1, and your
7 intervention, sir, during the submissions of the
8 Designated Lawyer group this morning, that preplanned
9 last-minute ambushes are unacceptable, I need to make it
10 clear that our application for permission to question
11 Joan Hillier was not a preplanned, last-minute ambush,
12 if that is what is being suggested. It would be
13 inaccurate and unfair, with all due respect, to
14 characterise what happened during Tranche 1 Phase 1 in
15 such terms.

16 We put both Counsel to the Inquiry and Solicitor to
17 the Inquiry on notice the evening before we made our
18 application, which was within hours of us being informed
19 by a source about the intimate relationship between
20 a former colleague of Ms Hillier and a leading
21 Vietnam Solidarity Campaign activist. We asked Counsel
22 to the Inquiry to question Ms Hillier about this matter.
23 Counsel to the Inquiry chose not to contact us to
24 discuss the matter. Counsel to the Inquiry chose not to
25 inform, as far as we are aware, the Metropolitan Police

1 Service or the Designated Lawyer group about the matter.
2 Counsel to the Inquiry chose not to question Ms Hillier
3 about the matter. We do not know if Counsel to the
4 Inquiry put you, sir, on notice about this issue that we
5 had raised in advance. But in the circumstances, having
6 listened to the questions that were asked of Ms Hillier
7 by Counsel to the Inquiry, we felt compelled in the
8 circumstances to apply for permission under Rule 10 to
9 ask Ms Hillier about this matter.

10 We say it would have been professionally negligent
11 of us not to make the application that we did, and we
12 also say that it would have been grossly unfair if you
13 had not granted us permission to ask the questions that
14 we did.

15 In short, we were right to make the application, and
16 you were most certainly right to grant it. In the
17 circumstances, this was not, on any sensible view,
18 an ambush, and we wholeheartedly reject any suggestion
19 that it was.

20 Bearing all of that in mind, we hope that you will
21 not use what happened in Tranche 1 Phase 1, and in
22 particular what happened in relation to this particular
23 application for permission to question a witness under
24 Rule 10, as some of the police core participants
25 unsurprisingly invite you to do, as a justification for

1 clamping down and adopting an even more restrictive
2 approach to Rule 10.

3 Even if you do refuse our application for automatic
4 permission to question for up to 30 minutes, we ask you
5 to approach future applications for permission to
6 question under Rule 10, which will obviously have to be
7 made on a witness-by-witness basis, where deemed
8 necessary by the advocates, with greater openness and
9 flexibility.

10 So that's all that I wish to address you upon orally
11 as far as the submissions that Mr Parry and I have made.

12 Unless there are any questions arising from that,
13 may I turn then to the other submissions that we have
14 made about indirect discrimination.

15 SIR JOHN MITTING: There is an issue which arises out of it
16 which I would like to canvass with you, or at least to
17 express a point of view to you to give you the
18 opportunity of responding.

19 You provided to the Inquiry a little over
20 a fortnight ago a confidential explanation as to what
21 has happened. I'm not going to breach your confidence.
22 Having read it and understood all that happened, I am
23 now more convinced than I was before your explanation
24 that if such issues arise in the future, the evidential
25 basis for asking Counsel to the Inquiry to question must

1 be provided to Counsel to the Inquiry.

2 That didn't happen. Had Counsel to the Inquiry had
3 the material which you have provided to us now, he would
4 not have asked questions about it, and I would not have
5 asked him to do so.

6 MR MENON: Sir, we understand the point you're making. But
7 can I make it absolutely clear for the avoidance of
8 doubt. If Counsel to the Inquiry, having received our
9 email the night before setting out what we wished to ask
10 the witness, had contacted either Mr Parry or myself and
11 asked us what the basis of those assertions were, we
12 would have provided the full explanation. No such
13 approach was made. So I do find it difficult to
14 understand what we were supposed to do in the
15 circumstances when Counsel to the Inquiry simply ignored
16 the issue.

17 Now, we were driven in those circumstances to make
18 the application we did.

19 SIR JOHN MITTING: I will answer your question directly:
20 provide the material to him when you make your
21 application.

22 MR MENON: We understand.

23 SIR JOHN MITTING: And, again, I don't intend to betray any
24 confidences, but what you told the Inquiry in
25 confidence -- I am trying to say it in a manner that

1 doesn't betray confidences. I won't say anything more
2 about it.

3 All I can say is that if the material that you have
4 provided to us two or three weeks ago is, was available
5 to you then, then you should have provided that to
6 Counsel to the Inquiry when asking him to ask questions
7 about it, and if you had done, he would not have done
8 so, and I would not have asked him to do so.

9 MR MENON: Sir, I take the point you're making, but I don't
10 understand what the criticism is in the circumstances.

11 I --

12 SIR JOHN MITTING: It's not a criticism, it's a learning
13 curve. We're learning from experience.

14 MR MENON: Very well.

15 SIR JOHN MITTING: The experience of that incident, I've
16 tried to explain how it would have been dealt with had
17 the procedure that I wished to see adopted been adopted.

18 There is, really, no alternative but to do that
19 which I have suggested to you: namely, that if something
20 like that happens in the future, then those who seek to
21 have the issue explored must lay the evidence, including
22 things that fall far short of what would be treated as
23 evidence in a court, but the information, the evidence,
24 the material, the basis for the questioning, must be
25 provided to Counsel to the Inquiry.

1 Now, that's the base point and the only one that
2 I want to make.

3 MR MENON: I'm grateful. So far as the explanation that my
4 instructing solicitor provided to Solicitor to the
5 Inquiry is concerned, can I suggest that further
6 discussions take place in relation to that between the
7 Solicitor to the Inquiry and my instructing solicitor to
8 try to reach an appropriate way forward, if I can put it
9 as generally as that?

10 SIR JOHN MITTING: Certainly. I don't, in fact, think that
11 anything is to be gained by going over the history of
12 this matter again. It provided a useful template upon
13 which to learn. I don't think it's going to be fruitful
14 to exchange emails or even to discuss what happened in
15 that instance unless it has a bearing on what may happen
16 in the future.

17 MR MENON: Understood.

18 SIR JOHN MITTING: Do you agree with that or not?

19 MR MENON: Yes, I agree with that. Thank you.

20 Turning then, sir, to our other submissions.

21 SIR JOHN MITTING: Yes.

22 MR MENON: Sir, equality is fundamental to this Inquiry. It
23 is not an option or an add-on. The performance of the
24 Inquiry not discriminating, both as a matter of law and
25 as a matter of fact, cannot be overstated.

1 For many months now, Jane Deighton, Una Morris and I
2 have been raising concerns on behalf of those we
3 represent, namely Audrey Adams, Nathan Adams,
4 Richard Adams, Dwayne Brooks and Ken Livingstone about
5 the Inquiry's decision to provide audio-visual streaming
6 only to those that attend the screening venue and to
7 you, sir, at your home.

8 We have submitted that this administrative
9 arrangement, this operational activity, indirectly
10 discriminates against various Non-State
11 Core Participants on the grounds of age, disability
12 and/or race.

13 Indirect discrimination is complex. As Lady Hale
14 put it in the leading Supreme Court case of *Essop v*
15 Home Office, indirect discrimination is meant to avoid
16 the rules and practices which are not directed at or
17 against people with a particular disadvantage, but have
18 the effect of putting them at a disadvantage. It is one
19 form of trying to level the playing field.

20 Audrey Adams and Richard Adams are disabled and
21 black. Ken Livingstone is 75 years old. All three are
22 at a greater serious of risk or injury from Covid than
23 those who do not share their protected characteristics.
24 Consequently, the Inquiry's arrangements, which deny
25 video streaming to Non-State Core Participants who do

1 not attend the screening venue, puts them at
2 a disadvantage when compared with Non-State Core
3 Participants who do not share their protected
4 characteristics and are at lesser risk of serious injury
5 or death from Covid, were the latter to attend the
6 screening venue.

7 This, in our submission, is undoubtedly
8 unjustifiable indirect discrimination on the grounds of
9 age, disability and/or race. The provision of
10 audio-visual streaming only to those who attend the
11 screening venue and to you, sir, is not a proportionate
12 means of achieving a legitimate aim.

13 The right to privacy of former undercover police
14 officers, many of whom have the benefit of anonymity in
15 some cases granted on, we submit, the most tenuous of
16 grounds, long before Covid became a part of our daily
17 lives, should never outweigh the right of victims of the
18 secret state not to be discriminated against by a public
19 inquiry on the grounds of age, disability and/or race.

20 For the avoidance of doubt, Audrey Adams,
21 Richard Adams and Ken Livingstone are not the only
22 Non-State Core Participants with the said protected
23 characteristics. They are not the only Non-State Core
24 Participants who have suffered less favourable treatment
25 at the hands of the Inquiry. They are not the only

1 Non-State Core Participants who are disadvantaged by
2 your decision about streaming: there are many others.

3 Sir, you have our written submissions which set out
4 our position in considerable detail. I do not intend
5 this afternoon to repeat those submissions orally.

6 SIR JOHN MITTING: Please forgive me for interrupting you,
7 because we need to go over this with some care. Let's
8 get the history right first.

9 I was asked to set out the procedure that the
10 Inquiry would adopt to conduct the first part of its
11 hearings. I was asked at a time when it was obvious
12 that there were going to be restrictions. The Non-State
13 side urged upon me that there should be real-time
14 hearings in a physical space with everybody attending.
15 They objected to alternatives proposed by the police
16 side in what I thought was an acceptance by me of the
17 basic Non-State position. I said: no, we should have
18 something as near as possible to the ideal of
19 an ordinary physical hearing, with everybody attending
20 in person. I thought I was accepting a proposition
21 advanced on behalf of the Non-States in the light of the
22 changed circumstances.

23 Then, right at the last moment, the day before we
24 were due to begin, came suggestions that the proposal
25 that had been in place by then for a month or two was

1 unlawful. That was not helpful.

2 We now have more time to discuss it, and we're going
3 to.

4 MR MENON: Sir, I don't want to go over old ground, but
5 I think, in the interests of fairness, I have to say
6 this: we received your -- the Inquiry, I should say, the
7 Inquiry's second Equality Impact Assessment a few days
8 before the start of the T1P1 hearings. That triggered,
9 in a very short space of time, the submissions that you
10 are referring to that were made not in fact simply on
11 behalf of the clients who Jane Deighton, Una Morris and
12 I in fact represent, but on behalf of the Non-State Core
13 Participants raising concerns about the absence of
14 audio-visual streaming to all Non-State Core
15 Participants and inviting reconsideration of the
16 restriction orders.

17 You responded quickly to that, explaining that there
18 was too much going on at the time and you simply
19 couldn't engage with the issue, and as you will recall,
20 there was further correspondence and discussion about
21 that at the procedural hearing during the
22 Tranche 1 Phase 1 hearings and subsequently.

23 I simply say that because I don't want to revisit
24 that disagreement that existed, but we are now in a very
25 different position. We have had those hearings and

1 today's directions hearing is intended to learn the
2 lessons of what went wrong as far as the different
3 core participants are submitting and to move forward to
4 the next hearings, and it's with that in mind that we
5 are making these particular submissions about indirect
6 discrimination in the hope that the same mistake can be
7 avoided in subsequent evidential hearings, and that's
8 the spirit in which we would invite you to listen to
9 what we have to say on the matter and make your decision
10 subsequently.

11 SIR JOHN MITTING: Then we are ad idem on that, I am pleased
12 to say.

13 MR MENON: I'm grateful.

14 SIR JOHN MITTING: I think we must, in that event, given
15 that we do now have time, go right back to basics.

16 The first issue that has to be addressed is whether
17 or not I am providing a service or whether I fall under
18 section 29(6), of a person performing a public function
19 which does not provide a service.

20 Now, what do you have to say about that?

21 MR MENON: Well, can I approach it in this way -- and in
22 fact I was coming to that very point, sir, in the light
23 of what I have just been saying.

24 SIR JOHN MITTING: Yes.

25 MR MENON: In Counsel to the Inquiry's note that was

1 uploaded yesterday on to the Inquiry's website at
2 paragraphs 6-10 this issue was raised, and it was raised
3 in this way: Counsel to the Inquiry queries, or
4 questions, either word I think will do, whether your
5 decision about streaming amounts, as a matter of law, to
6 the provision of service for the purposes of section 29
7 of the Equality Act, or to the exercise of a judicial
8 function, which would, of course, mean that section 29
9 does not apply. There are some issues raised --

10 SIR JOHN MITTING: Forgive me, we have to go right back to
11 the beginning and ask whether I am providing a service.

12 MR MENON: Yes.

13 SIR JOHN MITTING: Or I am a person performing a public
14 function, which is not the provision of a service.

15 MR MENON: Yes. Well, our short answer to the question, and
16 I of course wish to develop it, our short answer to the
17 question is that your decision about streaming is the
18 provision of a service as opposed to the exercise of
19 a judicial function, and therefore the Inquiry's
20 decision-making as far as its operational activity is
21 concerned, is not exempt from the Equality Act. That's
22 our overriding submission. And we wish to raise the
23 following points in relation to that overriding
24 submission.

25 Firstly this --

1 SIR JOHN MITTING: We really have to start at the first
2 point. Am I, in the first instance, covered by
3 section 29(6) or not?

4 MR MENON: No. Sir, we're saying that your decision about
5 streaming is a provision of --

6 SIR JOHN MITTING: You've answered two questions down the
7 line. The first question that has to be answered is
8 whether or not I fall within section 29(6). Am
9 I a person performing a public function, which, is it
10 not, the provision of a service?

11 MR MENON: It depends what decision or what service you're
12 talking about. Insofar as the restriction orders are
13 concerned, and the decisions that you made in respect of
14 the officers who asked for anonymity, we accept that you
15 were exercising a judicial function.

16 Insofar as your decision about streaming is
17 concerned, which we say was an administrative
18 arrangement in respect of operational activity, that we
19 say was not an exercise of judicial function: that was
20 the provision of a service covered by section 29 of the
21 Equality Act.

22 SIR JOHN MITTING: I understand that submission, and I do
23 not for one moment suggest that there is not
24 a difference between a judicial function and
25 an administrative function. This is recognised within

1 the court service and it's one that I readily accept.

2 But I do want to get the starting point established.

3 In relation to conducting a public inquiry, am
4 I a person exercising a public function? The answer to
5 that is yes, is it not?

6 MR MENON: Sir, we have had less than 24 hours to properly
7 consider this, but --

8 SIR JOHN MITTING: You've made the submission. It's your
9 submission that I am breaching equality duties.

10 MR MENON: I understand that.

11 SIR JOHN MITTING: It's therefore your obligation to think
12 about --

13 MR MENON: I understand, and I was anticipating you saying
14 that.

15 We do not suggest that there are not decisions that
16 you make, as chairman of a public inquiry, that would
17 not amount to the exercise of a judicial function. We
18 accept that. And in particular we accept that the
19 restriction orders that you make, which include penal
20 notices, do constitute decisions that amount to the
21 exercise of a judicial function.

22 SIR JOHN MITTING: Therefore I think it is implicit in that
23 acceptance that you accept that the starting point is
24 that I am governed by section 29(6)?

25 MR MENON: Well, yes. As far as any judicial decisions you

1 make, yes. But the decision about streaming, in our
2 respectful submission, is not part of the judicial
3 function exercise, because it is an administrative
4 decision about how the Inquiry conducts its procedures
5 and conducts its hearings. There is an acceptance by
6 the Inquiry that that falls within a Public Sector
7 Equality Duty, hence the Equality Impact Assessment of
8 the Inquiry, and therefore an acceptance that that
9 particular decision, we say, implicit acceptance that
10 particular decision is covered by the Equality Act,
11 which means it must be the provision of a service and it
12 must mean that the Inquiry accepted that it was the
13 provision of a service, otherwise why have an Equality
14 Impact Assessment in respect of that?

15 SIR JOHN MITTING: I think we are either at or getting close
16 to being at a point of agreement on this.

17 You accept that in relation to some of my functions
18 I'm performing a judicial function.

19 MR MENON: Yes.

20 SIR JOHN MITTING: You therefore accept that I am governed
21 by section 29(6). Section 29(6) imposes upon me a duty
22 not to do anything that constitutes discrimination.

23 MR MENON: Yes.

24 SIR JOHN MITTING: So in relation, let us say, for example
25 to the provision of a lift to a hearing venue, I am

1 under an Equality Act duty to ensure that a disabled
2 person can get access to the lift. Put it at its most
3 crude.

4 MR MENON: Yes.

5 SIR JOHN MITTING: We then come to the more difficult
6 question, which I suggest we both think about over the
7 adjournment and come back and deal with at 2 or 1.55,
8 which is whether or not the decision to provide
9 audio transmission or audio-visual transmission of the
10 evidence being given to the hearing is the provision of
11 a service or not.

12 MR MENON: Yes.

13 SIR JOHN MITTING: I don't think that's quite as
14 straightforward a question as you assert.

15 MR MENON: Well, can I be clear, it's not straightforward at
16 all. I entirely accept it's not straightforward.

17 SIR JOHN MITTING: Even if it is, it is subject to
18 section 18(1) of the Inquiries Act.

19 MR MENON: Yes.

20 SIR JOHN MITTING: At present it seems to me that if I were
21 simply dealing with it as the provision of
22 an administrative service, section 18(1) provides
23 an answer to the video side of the equation because it
24 would breach the restriction order on the transmission
25 of an image.

1 MR MENON: Sir, this is precisely why, in the submissions to
2 which you alluded that were submitted just before the
3 start of the T1P1 hearings, we raised the question of
4 restriction orders, because ultimately there has to be
5 some engagement with those restriction orders in order
6 to resolve this issue.

7 One of the matters that you raised with Mr Greenhall
8 not long ago in relation to this was the question of
9 what will have to happen if restriction orders have to
10 be revisited, and our response to that, in brief, would
11 be this: that it's not a question of having to start all
12 over again with the restriction orders. As far as T1P2
13 is concerned, there are ten undercover police officers
14 who are due to give evidence in T1P2. All ten of them
15 have been granted anonymity and are the subject of
16 restriction orders on privacy grounds. There will be no
17 need, in our respectful submission, to delay the T1P2
18 hearings. There's plenty of time between now and April
19 to resolve this issue.

20 If you were to order an audio-visual streaming, as
21 we invite you to do, the ten officers concerned and
22 their legal representatives can be given, say, 28 days
23 to update the Inquiry in respect of any changed personal
24 circumstances that may arise, if there are substantial
25 changes. There may not be. And that would leave ample

1 time for others to make representations and for you to
2 make a decision as to whether the restriction orders
3 that you made pre-Covid, many years ago, when balanced
4 with the need of the Inquiry not to discriminate on the
5 grounds of disability, age or race, should require
6 a change in respect of the restriction orders.

7 That can easily be done in the next two months, with
8 respect.

9 SIR JOHN MITTING: That is or would be a judicial decision,
10 and therefore would not be covered by the Equality Act.

11 MR MENON: Yes, I mean the decision -- if you were not to
12 change the restriction order in respect of a particular
13 officer, yes, we accept that that would be the exercise
14 of a judicial function and could not be challenged under
15 the Equality Act.

16 Having said that, sir, we have no doubt that you
17 would be extremely keen to ensure that even if the
18 Equality Act did not apply to a particular decision that
19 you had to make, that you would not wish to discriminate
20 on the grounds of disability, age or race as a matter of
21 fact, even if the Equality Act did not in fact apply to
22 that decision.

23 So, I mean, it doesn't -- it's not the end of the
24 matter, and Counsel to the Inquiry has accepted that at
25 paragraph 9 of their note, submitted yesterday, where

1 they say that even if section 29 does not apply to
2 a particular decision, the adverse impact of the
3 pandemic on the ability of those who would otherwise be
4 protected by the Equality Act to attend hearings remains
5 a relevant factor to be taken into account under
6 ordinary decision-making principles. And you, as
7 I'm sure you appreciate, under section 17(3) of the
8 Inquiries Act, have an overriding duty to act with
9 fairness when making any decision as to the procedure
10 and conduct of the Inquiry.

11 So there's still a live issue here, we submit, even
12 if you were to take a different view as to your decision
13 about streaming.

14 SIR JOHN MITTING: The answer is there isn't. These are
15 issues that have been decided. Granted, they have
16 different consequences now, but they are not issues that
17 I am obliged to reopen, and I am not minded to, both for
18 practical reasons and because it will inevitably cause
19 upset to those from whom I wish to obtain evidence,
20 which is my primary function.

21 MR MENON: But, sir, if the consequence of not revisiting
22 the restriction orders is that you are indirectly
23 discriminating against certain Non-State Core
24 Participants, then surely the balancing exercise
25 requires you to revisit those restriction orders as

1 opposed to indirectly discriminate?

2 I mean, surely, in those circumstances, the fact
3 that certain witnesses may be upset, or the fact that
4 the Metropolitan Police Service or the designated lawyer
5 group may challenge any decision that you make should
6 not be a factor that should influence your decision.
7 Ultimately you need to do the right thing, and the right
8 thing here is not to indirectly discriminate against
9 anybody, even if it means upsetting the odd former
10 undercover police officer.

11 Those restriction orders can be revisited. Of
12 course you are not obliged to revisit them. Of course
13 we accept that. But we ask you to revisit them because
14 we are today living in very different circumstances than
15 when those orders were made, and there are fresh legal
16 issues that now need to be considered and thrown into
17 the balance, particularly where we're dealing with
18 restriction orders that have been made solely on privacy
19 grounds as opposed to on security grounds.

20 SIR JOHN MITTING: I am not minded to revisit the decisions.

21 We need to see what the consequences of that is at
22 2 o'clock.

23 MR MENON: I'm grateful. Thank you.

24 MS PURSER: Thank you, everyone. We will now take a break
25 for lunch and we will return at 2.00 pm, thank you.

1 (12.58 pm)

2 (The short adjournment)

3 (2.00 pm)

4 MS PURSER: Good afternoon, everyone, and welcome to the
5 afternoon session of the directions hearing at the
6 Undercover Policing Inquiry. I will hand over now to
7 our Chairman, Sir John Mitting, to continue proceedings.
8 Chairman.

9 SIR JOHN MITTING: Thank you.

10 Mr Menon.

11 MR MENON: Thank you, sir.

12 Sir, I have taken the opportunity during the
13 luncheon adjournment to reduce the submissions I wish to
14 make, hopefully in the interests of brevity, but still
15 covering all the matters that clearly need to be covered
16 in respect of this matter.

17 So, in conclusion, there are five points I wish to
18 make, in an attempt to bring together the threads of my
19 submissions before lunch and your observations on the
20 salient issues.

21 Firstly this. The question of whether your decision
22 on audio-visual streaming amounts to the provision of
23 a service or the exercise of a judicial function is
24 clearly complex. Counsel to the Inquiry has expressed
25 no decided view on the matter in their note, neither has

1 the Metropolitan Police Service this morning.

2 In the short time we have had since yesterday, we
3 have found no authority on point, and apparently neither
4 has Counsel to the Inquiry. In our submission, before
5 you finally rule on this matter, we submit that you
6 should allow further time for the core participants to
7 research the matter and reduce their submissions to
8 writing. There is plenty of time to resolve this issue,
9 in our submission, before the start of the T1P2 issues.

10 Secondly, we have, in our written submissions, which
11 I should have taken you to this morning, addressed the
12 issue of the provision of a service at paragraphs 22-23.
13 We did not address the exercise of a judicial function
14 in our written submissions because we were of the view
15 that the Inquiry until yesterday had not given us any
16 reason to believe that it might be that your decision
17 about streaming was potentially exempt from the
18 Equality Act. On the contrary. The Inquiry's actions
19 have suggested particularly an acceptance that the
20 Equality Act does in fact apply to its operational
21 activity, and we say quite rightly so. The Inquiry has
22 in practice identified operational activity, the
23 arrangements as to the conduct of its proceedings, as
24 being subject to its Public Sector Equality Duty. For
25 example in the final paragraph of its second Equality

1 Impact Assessment, dated 26 October last year, the
2 secretary to the Inquiry makes the following
3 declaration:

4 "I have read the available evidence and
5 I am satisfied that this demonstrates compliance, where
6 relevant, with section 149 of the Equality Act, and that
7 due regard has been made to the need to eliminate
8 unlawful discrimination, advance equality of
9 opportunity, and foster good relations."

10 Furthermore, as recently as 14 January, less than
11 two weeks ago, the Solicitor to the Inquiry wrote to my
12 instructing solicitor and said the following, and
13 I quote:

14 "The Inquiry will of course update the Equality
15 Impact Assessment as soon as possible, once a venue is
16 settled. Given the fast-evolving nature of the
17 pandemic, arrangements will of course remain subject to
18 possible change."

19 Thirdly, for the avoidance of doubt, sir, and this
20 is in relation to the point that you raised with me at
21 the very beginning of my submissions, we say that you
22 are, for the purposes of your decision as to streaming,
23 a service-provider under section 29(1) of the Equality
24 Act. Consequently, section 29(6) that you raised with
25 me does not, in fact, apply, because section 29(6)

1 applies to the exercise of a public function that is not
2 the provision of a service. And of course we say your
3 decision about streaming is a provision of a service.
4 I'm sorry if I indicated anything before lunch to the
5 contrary. I just thought it was important that
6 I clarify that.

7 So section 29(1) is the relevant provision because
8 it defines you for the purposes of this particular
9 decision as a service-provider.

10 Fourthly, sir, just before lunch you indicated that
11 you are not minded, for reasons that you explained, to
12 revisit any restriction orders in this case. This issue
13 I anticipate, sir, is not going to go away; it's going
14 to keep arising. Consequently, if we may, we would
15 caution against any blanket refusal to visit any
16 restriction orders. Restriction orders, however
17 difficult they were to resolve, however long they
18 took -- and of course we accept that, given there's
19 148 of them -- they are not sacrosanct. They fall to be
20 reconsidered if there has been any fundamental change in
21 circumstances, particularly if they were granted on
22 privacy as opposed to security grounds.

23 The reality is that a restriction order made long
24 before any of us had even heard of Covid is, we submit,
25 out of date and needs to be revisited, taking into

1 account the current reality. A fresh balancing exercise
2 needs to be performed. Relying on an out of date
3 restriction order is not a proportionate means of
4 achieving a legitimate aim, particularly if the
5 restriction order is being relied upon to justify
6 indirect discrimination on the grounds of age,
7 disability and/or race. We do not accept that this is
8 going to be a massive task, as we explained before
9 lunch.

10 In respect of the next phase, there's only ten
11 witnesses this applies to. We of course accept that in
12 relation to future tranches and phases it may well apply
13 to more. But it doesn't necessarily mean that there is
14 going to be a wealth of further information that you're
15 going to have to consider on a witness-by-witness basis
16 in relation to the officers concerned. There may be
17 some further information for you to consider, but
18 ultimately it may be about a fresh balancing exercise,
19 taking into account what the circumstances are today as
20 opposed to years ago when those restriction orders were
21 initially made.

22 And finally, sir, our fifth point, whatever decision
23 you ultimately make on the section 29 point, and we hope
24 that you will accept our invitation to adjourn that
25 until further written submissions can be made by all

1 core participants who have an interest in the matter,
2 but when you make that decision, sir, eventually, you
3 will wish to avoid at all costs, we have no doubt,
4 indirectly discriminating as a matter of fact against
5 any Non-State Core Participants on the grounds of age,
6 disability, race or any other protected characteristic
7 for that matter. You will not wish to, undoubtedly,
8 discriminate against black people, the disabled, or
9 those who are older simply because you have decided as
10 a matter of law, if that is your decision, that you can.
11 Equality, I repeat, is absolutely fundamental to this
12 inquiry. I have no doubt that you and I agree on that.
13 And therefore it remains absolutely essential, whatever
14 your decision eventually on the section 29 point, that
15 we avoid any discrimination, whether it is in relation
16 to the law or whether it is in relation to fact,
17 whatever your eventual decision is.

18 Sir, unless I can assist any further, those are my
19 submissions on this matter.

20 SIR JOHN MITTING: I and the Inquiry solicitor and all of us
21 have always accepted that in making decisions about
22 practicalities, by way of example the facilities to be
23 provided at a hearing room, that we are covered by the
24 duty not to discriminate and the Equality Act applies in
25 full.

1 My initial view was that the decision under
2 section 18(1) whether or not to afford the facility to
3 members of the public and reporters to hear and see the
4 proceedings of the Inquiry by audio-visual link was
5 within the judicial remit, because it involved the
6 making of a judicial decision, not because it was
7 exclusively a judicial decision but that it involved it,
8 and therefore that sufficed to mean that the service
9 provisions of the Equality Act did not apply to it.

10 My understanding is that you think that's, as I do,
11 quite a difficult question. I, with the aid of my
12 team -- and I make credit to them -- then thought
13 through the consequence if we were to treat it simply as
14 the affording of a facility, which is one of the
15 definitions of providing a service. That then would
16 mean, as I think you have acknowledged, the duty is
17 subject to the prior requirement in section 18(1) that
18 I must not infringe a restriction order. That then
19 reopens the question -- that then opens the question
20 should I reconsider the restriction orders already made.
21 And that, as I think you acknowledge, would necessarily
22 be a judicial decision.

23 MR MENON: Yes. We accept that the making of a restriction
24 order is in the exercise of your judicial function.

25 SIR JOHN MITTING: Or its revocation or qualification or

1 alteration?

2 MR MENON: The only reason I'm hesitating is clearly it's
3 a matter that is of central importance, but thinking on
4 my feet, if I can put it that way, yes.

5 SIR JOHN MITTING: Yes, I'm not for one moment -- I don't
6 for one moment claim that these are not difficult
7 questions or that we can all have instantaneous
8 perfectly thought-out answers to them. They are
9 difficult questions and, as sometimes happens in the
10 law, one needs to think before answering.

11 I am not aware of any authority or provision in the
12 statute which gives an unequivocal answer, except the
13 judicial functions answer, which I think is unequivocal.

14 MR MENON: Yes. But it's the fact that your decision in
15 relation to streaming which we say -- and clearly this
16 may have to be the matter of further argument, but we
17 say is an administrative decision that falls under what
18 the Inquiry's Equality Impact Assessment calls
19 "operational activity", the fact that that decision has
20 in the background restriction orders that you made years
21 ago, which we accept were in the exercise of a judicial
22 function, does not mean that the decision about
23 streaming itself is in the exercise of a judicial
24 function. That's the point that we're seeking to make;
25 that there is a distinction to be made between what we

1 say is the provision of a service, an administrative
2 decision in relation to the facilities, very much along
3 the lines as you have described, and the underlying
4 restriction orders, which may well be, and we've
5 conceded, in the exercise of a judicial function.

6 I think that is the point that needs to be
7 investigated further, we hope before you make a final
8 decision on the matter.

9 SIR JOHN MITTING: I'm not sure that further investigation
10 would do any good, would it? It's an identified problem
11 of construction. I think that you and I agree on the
12 basic principles, and I couldn't see what further
13 research would throw up.

14 MR MENON: Well, I'm just conscious that until you, sir,
15 expressed a view on the matter, nobody else, including
16 your counsel, has expressed a decided view on this,
17 which potentially reflects the complexity of the matter.

18 Given that it has arisen -- I appreciate that this
19 is our application, but I've explained why we didn't
20 address this point, because we didn't believe it was
21 potentially going to arise in the way that it has, but
22 given that it has now arisen at fairly short notice, and
23 given that we have more than two months -- three months,
24 in fact, I think, before we start the next evidential
25 hearings, is there any need, we ask, to reach a decided

1 view on the matter before all parties concerned can
2 research it further and make appropriate submissions to
3 you for your consideration?

4 It may not require an oral hearing, but at least the
5 core participants, in my submission, should be entitled
6 to do further research to see whether there are any
7 points that may be of assistance to you. Because it's
8 so important, isn't it? Because if you rule that the
9 decision about streaming isn't the exercise of
10 a judicial function, then clearly the Equality Act point
11 falls away, even though the larger point about
12 discrimination, in our submission, does not.

13 SIR JOHN MITTING: Well, shall we for one moment address the
14 underlying merits, leaving the law to one side for the
15 moment.

16 MR MENON: Yes.

17 SIR JOHN MITTING: The Metropolitan Police have put forward
18 a viable proposal for audio streaming.

19 MR MENON: Yes.

20 SIR JOHN MITTING: It contains one or two qualifications
21 which might or might not be practicable and might or
22 might not be acceptable, but forget about the
23 comparative details.

24 If I decide that there should be audio streaming,
25 and I make no secret of the fact that I am minded to do

1 so --

2 MR MENON: Yes.

3 SIR JOHN MITTING: -- then that will overcome, will it not,
4 all but the opportunity for those who hear the stream to
5 see the witness speaking?

6 MR MENON: Yes.

7 SIR JOHN MITTING: Now that seems to me to be a pretty minor
8 discharge.

9 MR MENON: This is, I am afraid, sir, where we disagree.

10 I don't want to repeat the submissions that Mr Greenhall
11 has already made on this point. I adopt them. But
12 whilst of course we welcome audio streaming -- it's
13 clearly an improvement over the situation that we had
14 with the rolling transcript in T1P1, that goes without
15 saying -- it isn't tantamount, with all due respect, to
16 audio-visual streaming.

17 You will know, sir, the importance that both judges
18 and juries frequently place on what they are actually
19 able to see in a courtroom. I have lost count of the
20 number of occasions when I have appeared in the Court of
21 Appeal Criminal Division and I have raised a criticism
22 or another about something that's happened in a criminal
23 trial and the learned Lord Justices have said to me: the
24 learned trial judge was best placed to assess this
25 point, and we're not going to go behind what the learned

1 trial judge found. And that's always based on what they
2 can see and they can hear. It's never based solely on
3 what they can hear.

4 So we should never underestimate, with all due
5 respect, sir, as I'm sure you're not doing, the
6 significance of actually seeing evidence as opposed to
7 merely hearing it.

8 SIR JOHN MITTING: For those who have to make judgments
9 about truthfulness, accuracy and so forth, I take your
10 point. It is I think now regarded as a traditionalist
11 view, and there is academic research which suggest that
12 it may have been overrated, but I am of the old school
13 in that respect.

14 MR MENON: So am I.

15 SIR JOHN MITTING: Good. But as far as those who wish to
16 follow what is going on, it's the difference between
17 hearing the news on the wireless and seeing it on the
18 television, and for my part I don't find much
19 disadvantage by listening to the news by comparison with
20 seeing it, except when there is some dramatic
21 photographed event occurring.

22 MR MENON: Sir, I think to answer that fully, I think
23 I would merely have to repeat what has already been said
24 by others and what has been set out in detail in
25 writing. I think that whatever I say on this matter you

1 and I are not going to agree. I think, in my
2 submission, the visual aspect of audio-visual streaming
3 is what would rescue your decision from falling foul of
4 the Equality Act, and the principle of unfairness as
5 underlined by section 17(3) of the Inquiries Act where
6 you are encouraged to act with fairness, that's the word
7 in the section, in respect of all your decision-making
8 in respect of procedures and conduct. And I think
9 that's all I can say about it.

10 Of course audio streaming is an improvement, but it
11 doesn't, with all due respect, go far enough for all the
12 reasons I have set out, and I don't think repetition
13 will strengthen the point.

14 SIR JOHN MITTING: A wise acknowledgment.

15 At some stage during the course of the afternoon
16 there will be a break in this hearing, or maybe we will
17 reach an end earlier than we expect, but what I would
18 like to do is to discuss with my team, in particular
19 with Mr Barr, the suggestion that you make for putting
20 in further written submissions. I'm not intending to
21 conduct another hearing, I don't think that's necessary.
22 On discrete questions of law like this, paper is at
23 least as good as oral submissions.

24 Would you please wait behind then and give us
25 a little time to discuss it between ourselves?

1 MR MENON: I understand. I'm most grateful, thank you, sir.

2 SIR JOHN MITTING: Thank you very much indeed.

3 Ms Williams now, I think it is, is it not?

4 MS WILLIAMS: Good afternoon, sir. I was anticipating you
5 would hear from Mr Ryder but is that not the case?

6 SIR JOHN MITTING: I'm so sorry, I do apologise. I'd say
7 I'd forgotten him -- terrible confession -- but I had
8 not got my list in front of me, and you are quite right:
9 Mr Ryder is next in sequence and I will hear him first
10 and then come back to you.

11 Mr Ryder, with apologies.

12 Submissions by MR RYDER

13 MR RYDER: Not at all.

14 I represent five core participants in part 2,
15 Lord Hain, Ernest Rodker, Jonathan Rosenhead and
16 Christabel Gurney are new core participants, who are
17 represented by Hodge Jones & Allen, and Celia Stubbs who
18 is represented by Bhatt Murphy.

19 Much of what I would have said has been covered
20 either by those who have gone before me today or even in
21 some of the correspondence that has taken place very
22 shortly before this hearing started, and that's been, if
23 I may say so, quite helpful. So I adopt the submissions
24 made by Mr Greenhall and Mr Menon without repeating
25 them. So I only have some very short points to make,

1 four short points.

2 The first point is related to a matter which was set
3 out in paragraph 30 of the Counsel to the Inquiry's note
4 that we were given, which related to the funding for
5 advocates only on the day that the core participants
6 they represent would be giving evidence, and therefore
7 advocates would only be permitted to attend on those
8 days.

9 I understand that there has been some clarification
10 of that since that note was provided this morning,
11 indicating that there is an understanding that there
12 will be occasions when those who are representing
13 core participants may have a direct involvement in
14 proceedings, even if the core participant isn't giving
15 evidence on that day, and therefore there will be some
16 flexibility about us being able to apply to attend
17 a hearing if there is some important reason why we
18 should be there even if the core participant we
19 represent is not giving evidence on that particular day.

20 We're grateful for that degree of flexibility. If
21 we may respectfully say, sir, we think it is important.
22 We understand, of course, that we would need to explain
23 why we need to be there, but we would be grateful for
24 some flexibility and some thought to being given every
25 time we do make a representation that we would need to

1 be there because sometimes it is important, both for our
2 clients and to ensure that we can deal with anything
3 that arises in the proceedings that would assist the
4 Inquiry.

5 So for that reason, I am not going to address that
6 much further, other than to say we are grateful that
7 there is some level of flexibility past paragraph 30.

8 The only comment I would make about it is a more
9 general comment, which is that when one is listening to
10 some of the comments from those representing state
11 core participants, there is sometimes a feeling that
12 they are suggesting that any degree of flexibility that
13 you, as the chair of this Inquiry, allow opens
14 a floodgate of -- a beginning of adversarial proceedings
15 that will suddenly turn into a kind of chaotic mess of
16 everybody taking things out of control. And of course
17 you will very much appreciate, and we hope it's been
18 clear from part 1, that the benefit of having
19 experienced, often senior counsel representing
20 core participants is to guard against that very
21 difficult issue arising, and that we will act
22 responsibly if we are given some flexibility, and that
23 there shouldn't be too much anxious about allowing
24 a degree of flexibility when it comes to asking
25 questions or attending proceedings, to ensure that we

1 can assist, because if it is applied too rigidly then we
2 are at risk of not being able to assist and our clients
3 feeling that they are not being given an opportunity to
4 participate fully through us.

5 SIR JOHN MITTING: If I may respond to that.

6 MR RYDER: Yes.

7 SIR JOHN MITTING: Of course the Inquiry, all of us, are
8 conscious of the need to react to individual situations
9 as they arise, and nothing is utterly set in stone, but
10 there has got to be a framework where we start, and any
11 departure from it must be obviously a departure and must
12 not become, unless there is very good reason,
13 established by practised routine.

14 That's why I and our team do favour the Rule 10
15 approach of requiring those who want topics to be
16 investigated to suggest them to Counsel to the Inquiry.
17 As you know, it's now accepted that there should be
18 a face-to-face meeting, or video meeting, perhaps, so
19 that any difficulties can be ironed out, explanations
20 given, and so forth. But the basic principle is that
21 questions must be addressed through the Inquiry unless
22 by way of re-examination of your own witness, or unless
23 something surprising occurs in the course of the
24 hearing, or where there are full-blown disputes of
25 matters of fact of importance that are covered in

1 earlier statements issued by me.

2 I hope that meets what you're suggesting. If it
3 doesn't, do please ...

4 MR RYDER: We fully understand that, and I'm grateful for
5 that further elaboration because that is as we
6 understand it. I think really all I am saying is that
7 we are encouraged by the fact that, having learned from
8 the experience of part 1, there seems to be
9 an acknowledgment that one mustn't set the bar too high
10 in saying, well, there may need to be a departure from
11 the default position in this particular case. Because
12 realistically we are not going to seize on every small
13 departure from the standard process in order to say:
14 well, the precedent has now been set and this must be
15 done, et cetera, et cetera.

16 We are anxious to make sure that we are able to make
17 good representations as to when we might need to ask
18 questions or might need to attend, and we are encouraged
19 by the fact that there is an acknowledgement that we can
20 do so, and that in doing so that each application will
21 be considered on a case-by-case basis but there is no
22 written in stone rule that we would have to dislodge in
23 order to be able to make our position accepted to the
24 Inquiry.

25 So I think I'm expressing gratitude that the

1 approach seems to be slightly more flexible and that we
2 want to be in a situation where we're not moving towards
3 having to make some insurmountable hurdle in order to
4 say: it would be helpful if we could attend on this
5 particular occasion or ask an additional question.

6 SIR JOHN MITTING: We are, I think, then speaking along
7 either precisely the same lines or so close that it
8 doesn't matter.

9 MR RYDER: Thank you very much.

10 The second point I would make is just really to flag
11 an issue which may arise, which is that we do remain
12 concerned -- those of us representing core participants
13 in part 2 do remain concerned that there are no
14 core participants in relation to some aspects of what
15 might be relevant events. And I'm thinking in
16 particular of events in Red Lion Square in June of 1974.
17 There are currently no core participants in relation to
18 that. We believe that there may need to be some further
19 consideration of whether those who are able to provide
20 evidence about those events would be in a position to
21 assist the Inquiry, not least because they are similar
22 to the events of 23 April 1979 and would give some --
23 potentially greater background, a greater understanding
24 to the Inquiry.

25 So I don't propose to make submissions now, but we

1 may be making some written submissions in due course, or
2 written applications in due course, for the Inquiry to
3 consider whether there are others who could assist, in
4 particular with those other events.

5 SIR JOHN MITTING: Yes, if that's going to be done, it will
6 have to be done quite quickly.

7 MR RYDER: Yes. There is a need to strike a balance --
8 sorry, sir, I'm talking across you.

9 SIR JOHN MITTING: Not at all. I need to think this
10 through.

11 One of the obvious blanks in the Inquiry's coverage
12 of Non-State Core Participants have been, can I call
13 them this, Trotskyist groups really throughout the
14 period. Beyond Tariq Ali, to whom I am indebted for his
15 evidence, it was informative and reflective, we really
16 don't have many people willing to participate at all.
17 The Socialist Workers' Party, as I understand it, took
18 a decision collectively not to participate. So our one
19 attempt to try to approach an individual who did play
20 a significant part in that group declined to cooperate.
21 So we have tried, but not so far succeeded.

22 MR RYDER: Well, I think the concern that I'm expressing,
23 I don't want to talk about particular groups in this
24 regard, but the concern that I'm expressing really is
25 that there are occasionally what appear to us to be gaps

1 in what might be the full picture for the Inquiry. I've
2 highlighted one in relation to one particular incident
3 in 1974. Sir, you highlighted another area that you
4 think is lacking in evidence. And we simply raise the
5 point that we will, as soon as we can, try to ensure
6 that if there are applications for you to consider about
7 others who may be core participants or may be able to
8 give helpful evidence, that we'll get them to you as
9 fast as we can.

10 There is a tension, which you're very well aware of,
11 which is that because we get the bundles so close to the
12 hearing, there is a frantic rush to make sure that
13 everything that arises out of looking at the bundles
14 that we may need to deal with, and may need to make
15 applications to you about, we do in sufficient time.
16 That is difficult, but obviously we will do our best in
17 relation to that.

18 SIR JOHN MITTING: I fully understand that difficulty, and
19 it is created by the problem of physically creating the
20 bundle, of going through what it contains, doing the
21 necessary redaction exercises, checking them all. It
22 really is quite a major exercise and it involves more
23 than those who are core participants in this Inquiry.

24 MR RYDER: Yes.

25 SIR JOHN MITTING: We are going to do our level best to get

1 the bundles to you, as you know, by 1 March, which is
2 approximately eight weeks before we start the evidential
3 part of the process.

4 As you know, you are getting the annual reports
5 earlier than that, and I hope that it will be possible
6 to provide other significant material of a general kind
7 to you before then, but I'm not willing to make any
8 promises that I can't definitively keep about that, and
9 I am afraid that's the best I can do about that for this
10 phase of this bit of the Inquiry.

11 MR RYDER: Well, thank you. We understand that. And my
12 third point was about bundles, and it's really a short
13 point, which is that we welcome the fact that there has
14 been greater access given to various people in relation
15 to the bundles.

16 There is an issue that when we see the bundle we
17 anticipate that there may be yet further people who we
18 think could assist by having access to the bundle,
19 partly because it would concern matters relating to them
20 or relevant evidence they could give the Inquiry, and so
21 we are just, I think, giving some warning that there may
22 be applications for others to have access to the bundle
23 fairly quickly after we receive the bundles. And the
24 sooner we can give you the application, the better it is
25 for everybody. At the same time, if we're required to

1 meet a very high hurdle as to why something is relevant
2 in the bundle that therefore prompts the application, it
3 means that we have to wait until we have perused the
4 entire bundle before we can make the application. So
5 there is a balance to be struck there.

6 SIR JOHN MITTING: This issue was addressed in part in the
7 privacy rulings that I made -- now, I think, I can't
8 remember how long ago it was now, but some time ago,
9 when I indicated that bundles would be shown to
10 core participants, insofar as it affected them,
11 containing the names of numerous other people, on the
12 basis that they were not to disclose those names
13 elsewhere, but that there was an instantaneous
14 possibility of applying back to the Inquiry for
15 permission to show them elsewhere, which would be
16 readily given. I think that deals with the point you're
17 raising, or are you raising some more (inaudible) point?

18 MR RYDER: I think it does. I think I'm not really raising
19 a question of the strict rule; I'm really raising
20 a question of just alerting you to the fact that we
21 already anticipate, even before we have received the
22 bundle, that there are a number of people who we think
23 we may want -- we may be applying in relation to.

24 SIR JOHN MITTING: Well, (inaudible) in principle is already
25 there. I've said it's available and it will be

1 exercised rapidly and with a view to allowing you to do
2 it, if possible.

3 MR RYDER: Well, that's very helpful, and that indication
4 about the process is very helpful to us, so I wanted to
5 cover that.

6 Thank you, that is very helpful.

7 SIR JOHN MITTING: It isn't the whole bundle, because that's
8 not what I had in mind when I made those observations
9 and -- well, it's not a ruling, but when I made that
10 statement. If your suggestion is we need to show the
11 whole bundle to a whole lot of other lawyers and their
12 clients to peruse at your cost, then that's a different
13 kettle of fish.

14 MR RYDER: I think each application will set out exactly
15 what we need, and I don't anticipate many will go that
16 far, but if they do we will set it out. The reality is
17 that this is helpful because it allows those of us
18 preparing to peruse the bundle for part 2 to know that
19 very quickly we can make the application within the
20 framework that you have set out, and that you and the
21 Inquiry team are ready for those sort of applications to
22 be made as soon as the bundles have been given to us.
23 So that is very helpful to us.

24 My final point, really, is one which relates to
25 a concern expressed to us by the core participant

1 Celia Stubbs, and I think it's important that I mention
2 it to you just so that you have an understanding of her
3 perspective.

4 She is, as you know, the partner of Blair Peach, who
5 was killed by a police officer, and his killer hasn't
6 been brought to justice, and she's now 80 years old.
7 She's significant, in one sense, to this Inquiry --
8 well, in many senses, but in one sense in that she's
9 probably the first core participant who you will be
10 hearing from who was the subject of surveillance and
11 undercover spying in the context of campaigning for
12 justice in relation to a loved one who had suffered harm
13 through police misconduct. So her perspective and her
14 particular position as one of the core participants in
15 this Inquiry is one shared by others, but one that you
16 will have very much in mind as what's been called
17 a victim of that surveillance in a very real sense.

18 She actually attended -- notwithstanding her age and
19 Covid, she actually attended many of the hearings.

20 SIR JOHN MITTING: So I understand.

21 MR RYDER: And she watched them. And I think it is
22 important that I mention to you that she asked us to
23 make clear that she felt disillusioned and unhappy at
24 the hearings. She felt that the structure of how she
25 was able to be involved and the way the Inquiry was

1 carried out was unsympathetic and to some extent, she
2 sometimes felt, hostile to her concerns and her
3 interests as a core participant.

4 Now, I mention that, sir, because I thought you
5 would want to know if that was something that someone in
6 her position felt when they attended, and we mention it
7 because really it's just to suggest that it illustrates
8 that there are times when the nature of the framework of
9 how people are able to participate, how the system is
10 set up, can give those involved in the process a feeling
11 that they are not fully engaged and can give them
12 a feeling of losing confidence in the process. And if
13 someone like Celia Stubbs, a campaigner in her 80s, who
14 is very engaged and very interested in participating, is
15 left feeling lacking in confidence in the Inquiry, that
16 is, we say with respect, a concern for all of us.

17 We as lawyers representing core participants, and as
18 you know I represent a large number of core participants
19 that will go through many tranches, will need the
20 assistance of the Inquiry to enable our clients to feel
21 confident that the Inquiry is being carried out in their
22 interests, and so we welcome in that regard
23 an understanding about how to improve on what happened
24 in part 1; that at times there will be scope for a less
25 restrictive view about things I've already mentioned,

1 questions or attendances, and that the clients will be
2 able to feel that their lawyers are participating fully
3 and are able to engage. Obviously within the context of
4 this framework and the rules that you have set out, we
5 understand that you have to make judgments about where
6 the rules should be, what the framework should be, but
7 those who are participating feel that their lawyers can
8 engage goes a very long way.

9 I say this because while you must balance a number
10 of considerations, including the costs of having people
11 participate and the cost of the Inquiry, the duration,
12 the way the Inquiry is carried out, the confidence of
13 those who are core participants is, of course, very,
14 very important in ensuring that the Inquiry fulfils its
15 function, and we think it's important, without seeking
16 to be overtly critical or make great criticism of the
17 way things have happened in part 1, to ensure that you
18 understand that those who are core participants want to
19 be engaged, and if they don't feel that they are fully
20 engaged, then that has a knock-on effect for the
21 confidence in the Inquiry and the way they feel they are
22 able to participate.

23 All I would say really from that is that we welcome
24 a constructive and engaged approach, and we understand
25 this directions hearing and others are an attempt to

1 really make sure that we engage core participants as
2 fully as possible, but we do urge you to proceed with
3 caution sometimes when State Core Participants are
4 urging you to take a restrictive approach in some areas,
5 because -- and I would summarise it in this way: there
6 is little to be gained from an Inquiry that -- if it
7 concludes -- doesn't end up with the confidence of those
8 it was set up to benefit, and only has the confidence of
9 the State Participants it was set up to scrutinise.

10 Therefore the confidence of those core participants
11 is something that is valuable, is very important, we
12 know, to the functioning of the Inquiry and to the end
13 result of the Inquiry, and therefore we do hope that
14 through part 2 and following parts, we can be in
15 a situation where the core participants do feel
16 confident, do feel engaged, and I feel it would be
17 remiss for me not to have shared that with you so that
18 you understand the process and you understand that the
19 core participants do want to be engaged but didn't feel
20 fully engaged in part 1.

21 SIR JOHN MITTING: Yes. That is an important point.

22 As far as the particular instance goes, I don't
23 know, but has Celia Stubbs contacted those responsible
24 for organising the hearings, or the Solicitor to the
25 Inquiry to raise her concerns?

1 MR RYDER: She didn't feel able to, and my understanding is
2 that part of it was because the -- and I don't want to
3 retread old ground, but part of it is because when it's
4 set up in a way that she doesn't have representation at
5 the Inquiry, she didn't feel able to address problems as
6 they arose in terms of difficulties she was having or
7 points she wanted to make.

8 Now, it may be that some of the points she wanted to
9 make or some of the difficulties she was having needn't
10 have troubled members of the Inquiry or troubled you,
11 certainly, as you were conducting the Inquiry. But had
12 she had solicitors or lawyers with her, we would have
13 been able to help her resolve those issues as they were
14 arising.

15 Now, this isn't a plea for me to say: lawyers must
16 be present on every single occasion for every person who
17 wants to attend. I am not extending it in that way.
18 But what I am saying is that the approach that is being
19 taken does cause core participants who attend in her
20 position to sometimes feel disconnected in being able to
21 engage in that way, and it does require some thought,
22 and sometimes some flexibility, some level of
23 flexibility about someone's own lawyers being engaged in
24 order to make sure that people can feel as though their
25 voices are being heard.

1 Sir, if I may say so, one answer could be she can
2 approach the lawyers in relation to the Inquiry, and
3 I understand in theory that may be an option in many
4 circumstances, but there are times when, in order for
5 this Inquiry to fulfil that purpose of the confidence of
6 the core participants, some flexibility in allowing what
7 might seem like a slightly more convoluted process of
8 her own lawyers being engaged can actually end up in
9 a result which everybody feels more satisfied by.

10 SIR JOHN MITTING: Two things I would like to say to you
11 arising out of that.

12 The first is that if she is willing to do it, it
13 would certainly assist those running the hearings if
14 they were to hear her criticisms of the way that the
15 hearings were run or, if she has any, her praise of
16 aspects of the way the hearing was run.

17 But we are on a learning process, and I for myself
18 wish to learn, and so do those other members of my team
19 responsible for conducting the hearings. All of us wish
20 to learn. And the personal experience of somebody like
21 Celia Stubbs, who did attend on many of the days of T1P1
22 and who has shown continuing and informed interest in
23 what is going on, would be valuable.

24 Could I ask you to pass that message through to her,
25 please.

1 MR RYDER: Yes, and sir, I think we're very grateful for
2 that sentiment. I will certainly pass that on and that
3 is very, very helpful.

4 SIR JOHN MITTING: The second thing you may not be so
5 pleased about, I have a statutory duty under
6 section 17(3) to have regard to the expenditure of
7 public money on the Inquiry, and suggestions as to how
8 legal representation, legal attendance is to be
9 organised is an ongoing topic of discussion at the
10 moment. If the Inquiry is to provide the funds for
11 legal representation in one area, it may ask those in
12 another area to coalesce and agree upon joint
13 representation for certain purposes during certain parts
14 of the time, and so this may prove to be a two-way
15 exercise, and not merely receiving a request and either
16 saying yes or no to it. It may be: yes, if you will do
17 something else in return.

18 MR RYDER: Yes. And sir, if I may, I don't want to prolong
19 this discussion about expenditure but if I may just for
20 the moment take up one point. The understanding that we
21 must all work to try to work efficiently, and that may
22 mean at times one lawyer representing a number of
23 interests rather than several lawyers doing so. I think
24 we all understand that, and those of us who are
25 experienced and senior understand the importance of

1 doing that and we do that where we can.

2 I think the point I'm making really is that all
3 Inquiries are expensive and they need to achieve their
4 aims by fulfilling their terms of reference, but also
5 achieving what they set out to in terms of the
6 core participants feeling that they have had a hearing
7 that they feel satisfied in, if that's at all possible.

8 I suppose what I'm really saying, sir, is that there
9 are times when what might seem like a useful way to
10 reduce expenditure in one particular way can end up
11 being a slightly false economy in two ways: one,
12 literally because a rigid rule which one must follow,
13 subject to exceptions, can, we all appreciate, end up
14 becoming more costly when you are having to do
15 an elaborate amount of work to explain why you fall into
16 an exception. So there's always a risk of that.

17 And, secondly, and perhaps more elusively, it can be
18 costly in terms of the cost of the confidence of the
19 core participants. And one mustn't lose sight of the
20 fact that sometimes a small additional expenditure in
21 one area can reap enormous returns of investment in the
22 confidence the core participants have in how the
23 questions are being asked or how the evidence is coming
24 out. This isn't a plea to completely restructure how
25 you are allocating the resources in this, but it's

1 simply to say that there is a point at which a small
2 degree of flexibility which may seem to be giving
3 slightly more expenditure in one area can be enormously
4 beneficial in ensuring that core participants feel that
5 they are having a hearing where their lawyers are
6 involved, and that can be very well worthwhile, even if
7 it is slightly more costly than a reduced cost which in
8 the end results in core participants not feeling
9 engaged. That's the point I'm making there.

10 SIR JOHN MITTING: I have been doing my best to explain the
11 position of the Inquiry, which will be dealt with in
12 detail by Dr Bishop when he discusses these matters with
13 you, but I wanted everybody simply to be forewarned that
14 if there is give in one area, there may be take in
15 another.

16 MR RYDER: Well, sir, those are all the points I have to
17 make, and I'm grateful for you making the point, and for
18 the points you have made particularly in relation to
19 Celia Stubbs, which will be passed on, thank you.

20 SIR JOHN MITTING: Thank you very much indeed.

21 Now, I have got the right person now, Ms Williams.

22 Submissions by MS WILLIAMS

23 MS WILLIAMS: Yes, thank you, sir.

24 SIR JOHN MITTING: Ms Williams, it's 2.50 now. As

25 I indicated, I did want to discuss with my team a point

1 raised by Mr Menon. If you would rather make your
2 submissions in one go, I'm perfectly happy to break now,
3 a bit earlier, to take a slightly longer break to
4 discuss what I need to do about Mr Menon's point.

5 Or, alternatively, if you want to start now and
6 break about quarter-past, 20-past, I am more than happy
7 with that as well.

8 MS WILLIAMS: Sir, I was intending to be brief, so I will
9 be -- unless something unexpected arises, I will
10 anticipate finishing a long way before the time that you
11 have mentioned for a break. I wouldn't have thought
12 I would be more than about 10 minutes.

13 SIR JOHN MITTING: Oh, in which case, carry on, please.

14 I may say one or two things to you which might elongate
15 your remarks.

16 MS WILLIAMS: Of course, but we should still finish before
17 3.15, so it probably makes sense for me to commence and
18 see how I go. Thank you, sir.

19 Sir, as you know, I represent the Category F and
20 Category H Core Participants. In terms of the general
21 issues that you have already heard submissions on from
22 Mr Greenhall, Mr Menon and Mr Ryder, I adopt those
23 submissions. My remit is to deal with specific issues
24 that arise in relation to Category F and Category H Core
25 Participants.

1 Sir, the main reason why I can be short today,
2 subject to matters you want to raise with me, is in
3 light of your decisions that were communicated yesterday
4 in Counsel to the Inquiry's note in relation to access
5 to the hearing bundle, and also in relation to access
6 and attendance at the hearing.

7 There is nothing further I need to say on those
8 particular topics in terms of the detail of the
9 representation arrangements, that's something that we
10 anticipate, as indeed is foreshadowed in Counsel to the
11 Inquiry's notes, will be the subject of discussion
12 between the RLRs and solicitors to the Inquiry in the
13 near future.

14 So, sir, I can move on from that area entirely
15 unless there is anything I can assist you on.

16 SIR JOHN MITTING: Not at all. You had a good point and, at
17 my instruction, the Inquiry has conceded it.

18 MS WILLIAMS: Sir, I should say, on behalf of my clients we
19 are very grateful for that access which is, indeed, very
20 important to our clients.

21 I do want to make a few observations, if I may, sir,
22 about the questioning of witnesses, and in particular
23 the two topics that we raised in our written
24 submissions. I will be brief because, as has already
25 been observed, this is really a question of case-by-case

1 decisions, but since Mr Whittam made some brief
2 observations this morning, if I may, sir. And also the
3 first topic, if I may highlight that we -- one of the
4 two topics we raised in our written submissions has not
5 yet been addressed to you in oral submissions and,
6 indeed, was not referred to in Counsel to the Inquiry's
7 note. It might have slightly got lost in the point we
8 made responding to the Slater and Gordon submissions.

9 But the other topic was this, which was dealt with
10 at paragraph 69 of our written submissions, which was
11 that where there is a situation of a significant dispute
12 of fact, significant as regards the Inquiry's terms of
13 reference, such that consideration is being given to
14 questioning of a witness by legal representatives and
15 not simply by Counsel to the Inquiry, you had previously
16 indicated, sir, that a core participant would not be
17 permitted via their legal representative to ask
18 questions unless they were willing to undertake that
19 they too would give evidence.

20 We simply wish to put down a marker, as we have done
21 in paragraph 69, that it would be appropriate to allow
22 for situations where that will not be appropriate; that
23 it should not be a hard-and-fast rule, and indeed it's
24 not something that Rule 10 of the Inquiry Rules
25 mandates, and that there may be circumstances where in

1 particular, although not as exclusively as a result of a
2 psychological vulnerability of a particular
3 core participant, it simply would not be appropriate to
4 require that commitment of the core participant in
5 question. To take that approach does not, as appeared
6 to be suggested in the third set of submissions from
7 Slater and Gordon, involve the Inquiry accepting on
8 a predetermined basis everything that a particular
9 core participant is saying; rather, it is simply the
10 Inquiry properly taking into account what may be -- or
11 what is fair and appropriate in a particular situation.
12 And it would, in our submission, be inappropriate, sir,
13 for you to fetter your discretion in advance of any such
14 situation and not be willing to take such matters into
15 account. Hopefully that's not the case anyway, but we
16 thought it right to just put down that general marker,
17 if I can call it that.

18 SIR JOHN MITTING: Can I respond to that? All those years
19 ago now, I was making a proposal that I thought would be
20 of benefit to those who do have very significant
21 disputes of fact with an undercover officer, or
22 sometimes a manager, when it's a disputed fact between
23 an undercover officer and a manager. I thought it would
24 be of benefit to them and to me to permit those who
25 experienced the events about which they have a dispute

1 to put questions to each other via their counsel in the
2 traditional way, and history has demonstrated it's
3 usually a fairly good way of trying to get to the truth,
4 and I was offering that facility rather than the
5 standard form of questioning by Counsel to the Inquiry.

6 I can readily understand, and this may well arise
7 in P2, because there is one potential witness, and now
8 Non-State Core Participant, whose statement I have yet
9 to receive, but once I have received it, will have to
10 consider how her evidence is to be admitted, if she is
11 willing to give it, and what, if any, particular
12 arrangements are needed for it, and this very issue
13 might arise.

14 If it does, a fair answer, and potentially the only
15 truly fair answer, is for questions of both sides to be
16 conducted by Counsel to the Inquiry.

17 But, as you rightly indicate, on delicate questions
18 like that I have an open mind and will hear what
19 everybody has to say once I know more about the details
20 of the facts, as in this instance I don't. All I know
21 is that there is a dispute of fact.

22 MS WILLIAMS: Yes, I entirely agree, sir. And, as you
23 rightly observe, it could very well arise in relation to
24 the forthcoming Phase 2 for the reason that you have
25 alluded to, and that's why we thought it useful to just

1 mention it at this stage. But it must, I think we would
2 all agree, a case-by-case basis approached once the
3 detail of the particular situation is available to those
4 concerned, and we accept that.

5 SIR JOHN MITTING: I would like to make it clear to the
6 individual concerned and those that represent her,
7 through you, that in requesting that she produces
8 a witness statement first before I discuss with her
9 representatives what, if any, measures should be taken
10 to permit her to give her evidence, if she is willing to
11 do so, I am not doing anything other than trying to
12 inform myself before I make a significant decision.

13 MS WILLIAMS: Indeed, sir. I'm sure that will be heard by
14 those who instruct me, but I will ensure that it is
15 passed on.

16 SIR JOHN MITTING: Thank you.

17 I only mention that because I had seen almost
18 a passing comment somewhere which suggested that I was
19 doing something odd or unusual. I wasn't intending to.

20 MS WILLIAMS: If it's a comment that I made, then
21 I apologise. I don't recall.

22 SIR JOHN MITTING: It wasn't you.

23 MS WILLIAMS: Thank you, sir.

24 SIR JOHN MITTING: As often in the Inquiry, it's those who
25 know less about the facts who make comments that turn

1 out to be, let's say, controversial, perhaps, but at any
2 rate not in keeping with my task of trying to get at the
3 truth.

4 MS WILLIAMS: Yes, sir.

5 Then the second aspect I just wanted to raise, which
6 again we raised in our written submissions, in the
7 paragraphs that immediately precede paragraph 69, was
8 a response to the proposal put forward in the first set
9 of submissions by Mr Whittam on behalf of
10 Slater and Gordon. That's the 7 January submissions,
11 paragraph 17, where they proposed that where a witness
12 was questioned, with your permission, sir, by a legal
13 representative of a core participant, there should be
14 an understanding of reciprocity, namely that then the
15 legal representative of the person who had faced
16 questioning would themselves be able to question the
17 person whose account had been challenged.

18 Again, sir, we entirely accept, as your Counsel to
19 the Inquiry has observed in paragraph 44 of the note
20 circulated yesterday, that that is something to be
21 determined on a case-by-case basis. The reason why we
22 responded to it is because it appeared to us from the
23 way that it was put by Mr Whittam that he appeared to be
24 advancing a point of principle. Paragraph 17 suggested
25 that it should ordinarily be the case that in such

1 circumstances, as it were the second party to give
2 evidence to the dispute would face questioning by the
3 other party's representative if they had been
4 questioned. It would appear to us that it is, again,
5 inappropriate to approach that on a hard-and-fast rule
6 and that it must be a question of considering the
7 particular circumstances again. And this will arise in
8 all likelihood in relation to Category H. One will be
9 dealing with core participants who have suffered
10 considerable trauma and ongoing psychological
11 difficulties, and we don't put it any higher than that
12 for now; simply that that is something that should be
13 taken into account in the relevant circumstances.

14 It does appear from the way that Mr Whittam
15 addressed you this morning, sir, that he may in fact be
16 putting it on a more nuanced basis, because this morning
17 he talked about -- he said that:

18 "In such circumstances I may make an application to
19 question ..."

20 As opposed to suggesting, as I understood it, that
21 there should be some hard and fast rule. So it may be
22 that there is nothing between us in terms of the process
23 to be adopted.

24 Like Mr Whittam, as he observed this morning,
25 I would respectfully ask that if there were to be any

1 further in-principle determination on this matter that
2 we should have an opportunity to participate in it.
3 Whenever I say "we", whoever is acting on behalf of the
4 Category H Core Participants at the time.

5 SIR JOHN MITTING: Yes, to these particular situations, they
6 have got to be addressed on a case-by-case basis. There
7 is no alternative but to deal with them sensitively and
8 on that basis. I wasn't attempting, when I said that
9 there could be cross-examination of witnesses on
10 critical matters where they have different -- radically
11 different accounts, I wasn't attempting to suggest that
12 that was the only way of doing it, merely that that was
13 an opportunity of doing it, which I thought would be
14 welcomed, and I think in principle it was.

15 But, of course, every case of every witness, in
16 particular those who have got vulnerabilities, must be
17 looked at sympathetically and on a case-by-case basis.
18 You are pushing at a wholly open door there.

19 MS WILLIAMS: I'm very grateful, sir. As I say, the reason
20 we raised that point was because it -- now put in a more
21 nuanced way by Mr Whittam this morning, but it did
22 rather appear from paragraph 17 that he was arguing for
23 something rather more than that. But, sir, we're very
24 grateful to hear the reassurance that you have given in
25 that regard.

1 SIR JOHN MITTING: And that he did, actually. His
2 observations were sensible and sympathetic, I thought.

3 MS WILLIAMS: His observations were, sir, yes. I readily
4 accept that.

5 Of course, one of the difficulties for my clients --
6 I say this merely to give a bit of context, not
7 suggesting that we embark on a lengthy discussion of
8 this, one of the difficulties for my clients in
9 Category H is that many of them don't know yet what the
10 accounts of the undercover officers will be. From their
11 perspective, the officers know what the women's accounts
12 are. Apart from anything else, they heard those in
13 detail in the opening statements. But in many instances
14 they have no idea of what, from their perspective, the
15 person who perpetrated this gross deception upon them
16 now says, and so they feel they are in something of
17 a state of limbo. And, sir, I don't say that to suggest
18 we have a long discussion about it at this stage, but it
19 is an important context to the concerns that they raise.

20 SIR JOHN MITTING: With very, very limited exceptions, I too
21 am in precisely the same boat. I don't know what
22 they're going to say.

23 MS WILLIAMS: Yes, we understand that, sir.

24 That being so, I don't believe there's anything
25 useful I can add on those points.

1 The only other issue I wanted to address you on
2 very, very briefly, sir, because I appreciate Counsel to
3 the Inquiry have made the point in their note of
4 yesterday that it is, strictly speaking, outside of
5 scope of today's hearing, is a point in relation to
6 disclosure issues, which will be dealt with in more
7 detail in our written submissions and is, if I may, sir,
8 simply to make two very short observations.

9 Firstly, Counsel to the Inquiry in this section of
10 their submissions referred to the fact that their
11 approach is set out in the disclosure note in relation
12 to tranche 1. Sir, respectfully, we're aware of that
13 and our written submissions were intended to respond to
14 what is there set out. We are heartened to see from the
15 note of yesterday that there is anticipated to be
16 a further written response from your Inquiry team, and
17 we're grateful for that.

18 Sir, the second point that I wanted to make just
19 arises from something you said this morning at the
20 beginning, sir, and is purely by way of clarification.
21 The Category H Core Participants are aware that the
22 Inquiry does not currently have the Registry Files. It
23 is not that they are under a misunderstanding that the
24 Inquiry does have them. And they appreciate, as is
25 said, for example, in that disclosure note, that the

1 Inquiry has taken the view that it would be
2 disproportionate to obtain them. They also appreciate
3 that parameters have to be drawn and that the Inquiry is
4 dealing with a vast amount of documentation.

5 But, that said, they do submit, as we did in the
6 written submissions and as has been set out in earlier
7 correspondence from Birnberg Peirce with the Inquiry, we
8 do submit that there are particularly compelling
9 arguments that, in the case of the Category H Core
10 Participants, obtaining the contents of those files or
11 even some of the contents of those files would likely
12 inform the matters within the Inquiry's terms of
13 reference, in particular why particular women were
14 targeted for the development of these deceptive sexual
15 relationships and, secondly, the methodology that was
16 used.

17 You heard a lot in the opening statements made by
18 myself and by Ms Kaufmann, on behalf of our respective
19 clients, about the techniques that were adopted by the
20 officers in developing a false air of commonality and
21 empathy with the women in question, and mirroring their
22 interests and so forth, and it is a long-term concern of
23 the Category H Core Participants that much of the
24 material that officers obtained in order to enable them
25 to act in that way was likely obtained from this sort of

1 source.

2 And so, sir, it is for those reasons, not to, for
3 example, see in more general terms what other reporting
4 there was about them, that the Category H Core
5 Participants have been particularly concerned to
6 understand the contents of these files. So it is all
7 about the targeting, their targeting, and the
8 methodology used by the undercover officers in
9 developing these relationships, which we respectfully
10 submit is within the terms of the Inquiry and therefore
11 it is a proportionate line of inquiry.

12 SIR JOHN MITTING: Thus far I have seen and read nothing to
13 indicate that undercover officers went back to search in
14 Registry Files to find out about individuals with whom
15 they were interacting and upon whom they were reporting.
16 Nor, unsurprisingly, have I found any reference at all
17 to intimate relationships with individuals by the
18 undercover officer who had the relationship in the
19 intelligence files that I have read. One simply
20 wouldn't expect to see that there and, unsurprisingly,
21 it isn't there.

22 Thus far, the only material that I have encountered
23 that deals with deceitful relationships are documents
24 which come into existence after the existence of the
25 deceitful relationship has been discovered by

1 operational managers. And that's all, in effect,
2 hindsight. It tells you what they knew after the event.
3 It doesn't tell you anything about what their
4 predecessors knew at the time.

5 MS WILLIAMS: Yes, sir, as regards your first point, of
6 course, as you yourself mentioned a few moments ago, you
7 have not, at this stage, had the benefit of the accounts
8 from many of the undercover officers, the majority of
9 the undercover officers who were involved in these
10 relationships.

11 It perhaps underscores the importance when witness
12 statements are being taken from these officers to ask
13 them in detail about their targeting and their
14 methodology, and it may be that that would indicate
15 reliance on the sort of information that one would find
16 in these files. We simply don't know that at this
17 stage.

18 SIR JOHN MITTING: Your point is well made, and those who
19 draft the Rule 9 requests will, I have no doubt at all,
20 if they haven't already had them in mind, take them on
21 board.

22 But it isn't the intention of the Inquiry routinely
23 to obtain or to try to obtain Registry Files, for the
24 reasons that I have explained: they contain a whole lot
25 of material, no doubt, if they still exist, which

1 I simply don't know that they do or not, but if they
2 still exist they will contain a whole lot of material
3 that has nothing to do with the Inquiry and it would not
4 be a proportionate search.

5 As far as the personal files go, to which you also
6 referred in your note, they are, of course, Security
7 Service files, and I have no legitimate justification
8 for compelling The Security Service to go beyond what it
9 has already done, to the great assistance of the
10 Inquiry, by requiring them to produce personal files
11 even if I know what the number of the file is.

12 MS WILLIAMS: Yes, sir. If I may also respond to the second
13 point you made about the registry files, if it's not
14 trespassing too far on the indulgence you are giving me.
15 You made the point about, well, one wouldn't expect to
16 see reference to the undercover officer's sexual
17 relationship in the contents of the files. Sir, of
18 course that's right, but equally that provides -- as,
19 again, I believe we touched on in the written
20 submissions -- another reason why the situation of the
21 Category H Core Participants is distinct and another
22 reason for obtaining the information, which is this: one
23 doesn't get any sense of the scope of what the officer
24 did from looking at the documents in the files, in the
25 same way that if an officer is reporting back on

1 a particular organisation or individuals within the
2 organisation, then obviously the officer has a reason to
3 make written record or those he or she communicates with
4 has a reason to make written record of those
5 observations. Here, on the face of it, officers had
6 every incentive to try to keep it under the radar. And
7 it's precisely because of that, that therefore, in order
8 to understand the scope and the nature of the
9 relationships, it may be necessary to look wider.
10 A point that was made, as I say, I believe it was
11 touched on in our submissions, it was certainly made in
12 the earlier correspondence, is that by going to these
13 wider files one may pick up clues, one may see
14 references to events that the officer attended. I think
15 an example is given of a wedding that an undercover
16 officer attended, a reference that was seen in a file
17 that was disclosed in other proceedings, and that
18 triggered a recollection that the officer had, in fact,
19 taken the woman that he was engaged in a deceptive
20 sexual relationship with to that event.

21 Now, that's only one small example, but it's
22 an example of how having the detail that was contained
23 in those files one can begin to build up a picture of
24 the extent of the relationship, which you will
25 appreciate in some instances is either denied or

1 minimised, my clients say, by the officer in question.
2 One can build up that relationship in a way that
3 otherwise one may have very little contemporaneous to go
4 on at all and you are largely reliant on the witness
5 evidence. So, sir, that's the other benefit.

6 We do understand the concerns about proportionality,
7 but we do respectfully suggest there are particular
8 circumstances that apply in relation to Category H in
9 this regard.

10 We have set them out in more detail in our written
11 approximate submissions and in the earlier
12 correspondence from Birnberg Peirce and we do ask that
13 they're taken into account before your team reply to us
14 or reply more widely in relation to the disclosure
15 issues.

16 SIR JOHN MITTING: Thank you for that. You've only gone
17 a minute over the time estimate, which is not bad for
18 a pair of lawyers, you and me.

19 MS WILLIAMS: No. And that covers everything that I wanted
20 to say, sir. So thank you for the opportunity.

21 SIR JOHN MITTING: Thank you.

22 I'm going to ask that we take a slightly longer
23 break than usual now, because I know that I do have
24 questions of two people who have made submissions,
25 Mr Skelton and Mr McAllister, and I know that Mr Barr

1 may want to say something at the end as well, and
2 I certainly want to discuss with him what I was talking
3 to Mr Menon about.

4 So I'm going to suggest that we break until 3.40, to
5 give us just over 20 minutes to do that.

6 MS WILLIAMS: Thank you, sir.

7 SIR JOHN MITTING: Thank you very much for your submissions.

8 MS PURSER: Thank you, everyone, we will now take a break
9 until 3.40. Can those of you in the virtual hearing
10 room please move into your breakout rooms. Thank you.

11 (3.16 pm)

12 (A short break)

13 (3.40 pm)

14 MS PURSER: Welcome back, everyone. I will now hand over to
15 the Chairman to continue proceedings.

16 SIR JOHN MITTING: Thank you.

17 Ms Williams, may I come back to you first.

18 MS WILLIAMS: Yes, sir, of course.

19 SIR JOHN MITTING: I want to correct and qualify something
20 I said to you about RF and PF files, I have been put
21 right. A process that I had not realised was undertaken
22 was -- is being undertaken.

23 Although we don't have the RF files, we've never
24 collected them and don't intend to, likewise PF, where
25 there is a particular reason for our counsel to look at

1 the RF or PF file of an individual, and this arises in
2 the case of each Category H Core Participant, their
3 files are looked at and anything relevant is extracted
4 from them, and later to be put to a test of necessity if
5 any such thing is found. So it is right that I should
6 qualify that. I misunderstood the position, and I have
7 now stated what the position truly is on the basis of
8 having been told by people who know.

9 As regards documents, what I said about the
10 intelligence files remains the case. We are on the
11 lookout for documents dealing with deceitful
12 relationships, and when I said that nothing had been
13 turned up apart from retrospective analyses of what had
14 happened, that wasn't quite right: a very, very small
15 amount of other material has come to light which in due
16 course will be put through the usual process, and into
17 the public domain.

18 MS WILLIAMS: Thank you very much, sir.

19 It's very helpful to have that clarification. In
20 relation to the approach that you have clarified the
21 Inquiry is taking in relation to the RF and PF files, we
22 would respectfully submit that that would support our
23 proposition that this is one of the circumstances in
24 which it would be proportionate to conduct some
25 investigation into those files.

1 SIR JOHN MITTING: Well, not only is it obviously
2 proportionate, it is, I understand, being done.

3 MS WILLIAMS: Thank you very much.

4 SIR JOHN MITTING: Mr Menon.

5 MR MENON: Sir, yes.

6 SIR JOHN MITTING: Mr Menon, you asked for time to put in
7 written submissions on your question that we were
8 debating. The answer to that is: yes. Can you do it
9 within seven days, please?

10 MR MENON: Yes, we can do it within seven days.

11 SIR JOHN MITTING: Thank you.
12 Mr Skelton.

13 MR SKELTON: Yes, sir.

14 SIR JOHN MITTING: You heard the submission that the
15 restriction orders made in the case of the undercover
16 officers who were going to give evidence in P2 should be
17 reopened. Is there anything you want to say now about
18 that in addition, perhaps, to putting something in in
19 writing seven days later?

20 MR SKELTON: No, sir, beyond the fact that obviously that
21 would be a course that we would oppose. And I think it
22 was within my submissions made this morning that it
23 would undermine the confidence of the officers in the
24 Inquiry process to have all of that revisited which they
25 have gone through previously and are now working on the

1 expectation that they will give evidence with security
2 or their identities protected. But may I take up your
3 offer of putting something in writing as necessary?

4 SIR JOHN MITTING: Yes.

5 Mr McAllister?

6 MR McALLISTER: Sir, if you can hear me, I simply echo
7 Mr Skelton: it's a course I would urge against, and
8 I would take the opportunity for written submissions, if
9 that were being suggested.

10 SIR JOHN MITTING: Well, it is being suggested, I am giving
11 the opportunity to make written submissions about that
12 issue, and about the legal issue that Mr Menon raised;
13 whether and if so to what extent the decision about
14 audio-visual transmission involves the exercise of
15 a judicial function or is purely administrative.

16 MR McALLISTER: Yes, sir, and I take up the offer.

17 SIR JOHN MITTING: Right. Does anybody else want to
18 intervene in that issue? If so, please say so now.

19 MR GREENHALL: Sir, on behalf of the Non-Police Non-State
20 Core Participants, might I also take up the opportunity
21 of seven days for written submissions?

22 SIR JOHN MITTING: Yes, you may.

23 MR GREENHALL: Thank you.

24 MR SKELTON: Sir, may I say on behalf of the Met that
25 we will avail ourselves of that opportunity as well, and

1 if we could have a date obviously following on from the
2 submissions of the Non-State participants since they, of
3 course, have raised the issue.

4 I don't know whether your counsel will opine before
5 you would want to hear from the state participants or
6 whether you would like to hear from us before.

7 SIR JOHN MITTING: This is a matter that I do need to
8 determine quickly because I'm going to issue a written
9 decision consequent upon today's hearing, a written
10 reasoned decision, and I must do it soon so that
11 everybody knows where they stand; and therefore I'm
12 going to ask everybody not to do it sequentially, but to
13 put in their own submissions, if they have any to make,
14 within seven days.

15 MR SKELTON: Understood. Thank you, sir.

16 Sir, you raised some other questions with me this
17 morning and I gave some answers. May I add a few words
18 to that, with your leave?

19 SIR JOHN MITTING: Certainly.

20 Further submissions by MR SKELTON

21 MR SKELTON: Thank you.

22 First in relation to watermarking. So the MPS's
23 position is that it would be a highly valuable security
24 practical change to add watermarking to the audio-only
25 transcript, should you so order. We understand it to be

1 easy to do as a matter of practicality, although
2 obviously you will take advice from your IT consultants.
3 It will have two obvious benefits: firstly, it will
4 disincentivise breaches of the restrictions orders, and;
5 secondly, it will facilitate enforcement of any breaches
6 of the restriction orders, and therefore we think it is
7 a basic security measure which, without being oppressive
8 in any way to the recipients of the audio feed, ought to
9 be put in force, and so to that extent we say it should
10 form part of the essential package.

11 Sir, a slightly different position in respect of the
12 jurisdiction issue which you raised. We stand by the
13 point I made earlier: that it would be valuable were you
14 to ensure that your feed, such as it is, is only
15 available within the jurisdiction of the Inquiry,
16 because that will inevitably lead to the consequence
17 that you can enforce any breaches of the restriction
18 orders you have made within your own jurisdiction.

19 However, mindful of the ability of those who may be
20 hostile to the witnesses to get past that restriction,
21 we recognise that it would probably be wrong to make it
22 an essential requirement, although we nevertheless ask
23 for you to include it in any event, because it does have
24 some value.

25 Sir, lastly, the media raised the possibility of

1 having an audio feed which could be paused and rewind.
2 The MPS understands the reason why that would be
3 beneficial to media organisations, although we think
4 that that benefit should be considered in the context of
5 a transcript, which we understand will now be available
6 with exactly that practical possibility. In other
7 words, the transcript can be stopped and rewind so that
8 you can re-read the bits that you may not have heard or
9 may have misheard. That seems to us to reduce the need
10 for an audio feed that has that same practical
11 possibility.

12 We are, in any event, concerned that any form of
13 recording which inevitably would be required by a feed
14 which could be rewind or paused would create the risks
15 which I addressed you on earlier. So, subject to
16 further consultation on the practical possibility of
17 that being done safely, in other words without any
18 recording of any kind, we would object to such a course.
19 I hope that assists.

20 SIR JOHN MITTING: No, not at all. These things have arisen
21 during the course of the hearing and I'm grateful to you
22 for your submission.

23 MR SKELTON: Thank you.

24 SIR JOHN MITTING: Does anybody else, apart from Mr Barr,
25 want to make any further submission now, because now is

1 your time and, if not taken, will be lost.

2 MR BUNTING: Yes, sir. On behalf of the media organisations
3 I don't want to make any submissions. I just simply
4 want to ask for the opportunity, if so advised, to make
5 the written submissions that you have in mind. I don't
6 have instructions from all of the various bodies, and it
7 may not be that we ultimately do avail of that
8 opportunity.

9 SIR JOHN MITTING: I cannot think that the media have any
10 interest in that issue, so if you want to, you can.

11 MR BUNTING: Thank you.

12 SIR JOHN MITTING: But I'm not expecting to get anything
13 from you and won't be disappointed if I don't.

14 MR BUNTING: Thank you.

15 SIR JOHN MITTING: Anybody else?

16 No. Then Mr Barr.

17 Submissions in reply by MR BARR

18 MR BARR: Thank you, sir.

19 The only issue that I wanted to reply on concerns
20 applications to remove redactions and gists. I wanted
21 to say two things: the first is that people watching can
22 be assured that the Inquiry Legal Team take very
23 seriously the importance of being as transparent as we
24 can, and when members of the legal team are considering
25 and responding to applications for restriction orders,

1 and in those cases which can't be agreed you, sir, deal
2 with them. The need to accord proper weight to
3 transparency and openness is at the forefront of our
4 minds.

5 The second thing is that when people who are going
6 to receive the bundle do so, there is the facility to
7 apply to set aside or vary a redaction or a gist. Given
8 the care that we have put into doing so, we anticipate
9 that it's only going to be if people reading the
10 documents have knowledge that we don't, for example, or
11 in other exceptional circumstances that they may have
12 information that might have changed the decision.

13 But if they do, please do come forward, but please
14 do so promptly. The restrictions order protocol at
15 paragraph 54 sets out the procedure, and we encourage
16 prompt applications. That was all, sir.

17 SIR JOHN MITTING: Thank you.

18 Then I think that concludes today's proceedings.
19 I will issue in due course a reasoned written decision,
20 but that will not be put out, self-evidently, until
21 I have received the written submissions within
22 seven days that are going to be made.

23 MS PURSER: Thank you, everyone. The directions hearing for
24 today has now concluded. Those of you in the virtual
25 hearing room may now leave the meeting. Thank you.

1 (3.53 pm)

2 (The hearing adjourned)

3

4

5

6

7

8

9

10

11

12

13

14

15

16

17

18

19

20

21

22

23

24

25

INDEX

1		
2		PAGE
3	Submissions by MR SKELTON	5
4	Submissions by MR BOYLE	22
5	Submissions by MR McALLISTER	23
6	Submissions by MR WHITTAM	35
7	Submissions by MR BUNTING	41
8	Submissions by MR GREENHALL	49
9	Submissions by MR MENON	78
10	Submissions by MR RYDER	118
11	Submissions by MS WILLIAMS	137
12	Further submissions by MR SKELTON	159
13	Submissions in reply by MR BARR	162
14		
15		
16		
17		
18		
19		
20		
21		
22		
23		
24		
25		