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Friday, 12 April 2024

(10.00 am)

OPEN HEARING

THE CHAIRMAN: Mr Barr.

MR BARR KC: Good morning sir.

I appear today on behalf of the Inquiry with Ms Gargitter. Mr Menon King's Counsel appears on behalf of an applicant. Mr Greenhall on behalf of applicants. Mr Lowenthal, who we are anticipating is going to be joined by Ms Kilroy King's Counsel on behalf of certain applicants.

Ms Heaven on behalf of the non-State core participant group.

Mr Skelton King's Counsel with Ms Mannion on behalf of the Commissioner.

Mr Sanders King's Counsel on behalf of the designated lawyers teams officers and Mr Witham King's Counsel on behalf of those former members of the SDS represented by DAC Beachcroft.

Sir, for this restricted reporting order hearing you have two notes from Ms Gargitter and myself dated 13 March and 10 April.

You have the Commissioner's legal team's written submissions of 2 April. And a letter from the BBC dated 3 April.

1           Those represented by the Designated Lawyers' team  
2           DAC Beachcroft and the Home Office chose not to make  
3           any submissions in writing.

4           The applicants have submitted their applications but  
5           have not been given an opportunity to respond in  
6           writing. Rather, the intention is that we start today  
7           with their open oral responses to the written  
8           submissions of the Commissioner and the BBC insofar as  
9           they can be made without defeating the purpose of their  
10          applications.

11          Sir, you also wish to hear from the State  
12          participants in response not only to anything said today  
13          by the non-State core participants but also in response  
14          to the media submissions.

15          Sir, you'll be aware of the BBC's submissions and  
16          I will remind everyone that in tranche 1, after phase I,  
17          that media bodies approved by the Inquiry were provided  
18          with the full hearing bundle in advance, subject to  
19          a restriction order. The bodies which received the  
20          bundle in advance were the BBC, ITN, The Guardian, The  
21          Telegraph, the Press Association, The Daily Mail and  
22          Times Media.

23          If we maintain that approach in tranche 2 it would  
24          obviously be subject not only to a restriction order but  
25          also to any reporting restriction orders that you make

1 following today's hearing.

2 After the open session, sir, we plan to go into  
3 a series of private sessions hearing separately from  
4 each of the legal teams acting for applicants before  
5 returning for a concluding open session.

6 Sir, unless there is anything further I can assist  
7 you with at this stage, I think it is time to hear from  
8 the non-State teams.

9 THE CHAIRMAN: Certainly. Thank you. Mr Greenhall, are you  
10 going to go first?

11 Submissions by MR GREENHALL

12 MR GREENHALL: I certainly can sir.

13 In relation to the general principles I endorse  
14 what's been submitted by Counsel to the Inquiry. In  
15 relation to the application from the BBC, on behalf of  
16 those clients I represent, I would dispute that the  
17 granting of any restriction order, reporting restriction  
18 order, would amount to granting anonymity via the  
19 backdoor and that in my submission any reporting  
20 restriction order can be implemented in such a way as to  
21 allow for the media to have access to the relevant  
22 material and to publish an accurate account of  
23 the Inquiry without providing details which would  
24 identify core participants in ways which would breach  
25 any reporting restriction order that might be made.

1           But I have nothing further to say on the general  
2           principles.

3   THE CHAIRMAN: Do you accept or reject or wish to qualify  
4           the suggestion made by the BBC that the identified  
5           traditional media representatives who have received  
6           bundles in the past should do so at the start? That  
7           will enable them, I think, more accurately to understand  
8           what is going on and to be able to report in due course  
9           more accurately about what has occurred.

10           Up to now the Inquiry has experienced no difficulty  
11           with compliance with orders that have been made.

12   MR GREENHALL: Yes. Sir, we are neutral on that matter.

13   THE CHAIRMAN: You are neutral?

14   MR GREENHALL: Yes.

15   THE CHAIRMAN: Thank you.

16           Mr Menon.

17                           Submissions by MR MENON KC

18   MR MENON KC: Good morning, sir. We have no submissions of  
19           a general nature to make at this stage. In relation to  
20           the point that you just raised with Mr Greenhall, we too  
21           are neutral. We don't raise any objection to the media  
22           having the tranche 2 bundle in advance, subject of  
23           course to any restricted reporting orders that you make  
24           as a result of today's hearing.

25   THE CHAIRMAN: Undoubtedly that is so but my understanding

1 of the application is that they wish to have the bundle  
2 at the start of the hearing so that those who are  
3 attending and reporting upon them can understand what is  
4 going on, but of course subject to restriction orders  
5 that will prevent them from publishing those parts of  
6 the bundle in respect of which restriction orders of one  
7 kind or another are made.

8 MR MENON KC: Yes. We have no objection or observations in  
9 relation to the timing of the disclosure of that bundle  
10 to the media.

11 THE CHAIRMAN: Thank you very much indeed. Most helpful.

12 Mr Lowenthal, I think.

13 Submissions by MS KILROY KC

14 MS KILROY KC: I have managed to arrive a bit earlier than  
15 expected.

16 THE CHAIRMAN: I do apologise, I saw you there and I --  
17 forgive me, that is discourteous of me and I do  
18 apologise. Please say your piece.

19 MS KILROY KC: Thank you will since I wasn't expecting to be  
20 here for this bit of the session I'm not going to say  
21 very much. But I just want to address that last  
22 point --

23 THE CHAIRMAN: Yes.

24 MS KILROY KC: -- of the bundle. I don't think we are in  
25 a position to agree that at this stage and I would like

1 to address you further on the mechanics of that bundle  
2 going to accredited journalists in advance in the  
3 restricted sessions we'll be holding later.

4 THE CHAIRMAN: Certainly, that is something I think to which  
5 we may return in the final public session after I have  
6 heard submissions in private.

7 MS KILROY KC: I would be very grateful if that were  
8 possible.

9 THE CHAIRMAN: Yes. Anything else?

10 MS KILROY KC: Other than that, I mean I think that it's  
11 going to be better for me to address points of principle  
12 arising in those private sessions and then to draw them  
13 together at the close if that's all right with you, sir?

14 THE CHAIRMAN: Of course it is. You would adopt whatever  
15 course you consider best, I'm content with that.

16 MS KILROY KC: Yes.

17 So subject to that, I don't propose to say anything  
18 further now.

19 THE CHAIRMAN: Right. Do any of the State core participants  
20 who have not put in written submissions wish to say  
21 anything at this stage?

22 In that event, I think that concludes this open  
23 session and we will now go into a series of private  
24 sessions.

25 Submissions by MS HEAVEN

1 MS HEAVEN: Sorry, sir, just to interrupt you. I do have  
2 some short points to raise, clearly they can be raised  
3 now or they can be raised later on because they are just  
4 general points on behalf of the group so whatever would  
5 suit you best, sir.

6 THE CHAIRMAN: I think it's best if they are ventilated now  
7 so that when we are in private session we can take them  
8 into account.

9 MS HEAVEN: Well, sir, I've nothing add in relation to the  
10 query you raised with Mr Greenhall. Obviously we remain  
11 neutral. We haven't had the opportunity to take full  
12 instructions on the bundle to the media and nothing to  
13 add to CTI's principles and the BBC's representations.  
14 Can I just say a few comments please in relation to  
15 CTI's note at paragraph 16? And this is really for the  
16 public record.

17 I think you'll -- this is the note for -- this is  
18 the Inquiry's first note, 13 March 2024, where it's  
19 stated that disclosure was started in earnest, I think  
20 in March 2023. I think it notes that it's almost  
21 complete as at the date --

22 THE CHAIRMAN: Forgive me for interrupting you, because for  
23 some reason the sound has been set up so that it is very  
24 mute and there is noise outside the window I didn't  
25 catch all that you said then. With the greatest of

1           apologies can I ask you to repeat it?

2   MS HEAVEN:   That's fine.  I'll raise my voice and start  
3           shouting.  No, it's just a response to something CTI has  
4           said in paragraph 16 of the note and it's the first note  
5           of 13 March 2024.

6   THE CHAIRMAN:  Yes.

7   MS HEAVEN:  And it really is just to put on record obviously  
8           that part of the note it says that disclosure was  
9           started in earnest in March 2023 and is almost complete  
10          as at today's hearing.

11           Of course, sir, you'll know that certainly the  
12          non-State core participants have been raising concerns  
13          for some time about the speed of disclosure to them as  
14          compared to other CPs, in particular the police.  
15          Certainly as at 22 January 2024, many non-State CPs  
16          still have received no disclosure despite receiving  
17          rule 9 requests with much remaining outstanding.

18           I think it's fair to say certainly that we as the  
19          legal team for the group understand that several  
20          non-State CPs are still waiting for disclosure to  
21          respond to their rule 9 request.  So I've just been  
22          asked to put that on the public record today just in  
23          response to that point of CTI's note.

24           Now there's just four very short points.  If I may  
25          develop them.



1           The first is this. If reported restriction orders  
2           are to be granted, can the Inquiry please set down  
3           a clear procedure of exactly what will happen prior to  
4           onward publication and commit to giving affected  
5           non-Police State core participants the right to make  
6           written representations?

7           Sir, for your note, some procedure very briefly was  
8           set down in a letter from the Inquiry on 15 January 2024  
9           but that simply indicated that those affected may be  
10          able to make submissions. So it's really just a plea  
11          for a clear procedure and a right to make written  
12          submissions. I'm sure that will include the media as  
13          well.

14          Now, the second practical and procedural point is  
15          this. At paragraph 16 of their written submissions the  
16          Metropolitan Police make the point that core  
17          participants should not be fettered in making  
18          submissions to the Inquiry in opening and closing in  
19          respect of any material subject to an RRO. So two  
20          points arise here, sir. First there is the practical  
21          point raised by the Metropolitan Police of having either  
22          a closed addendum or Inquiry redaction prior to the  
23          opening and closing statements. Both of which we would  
24          agree are acceptable solutions.

25          But there is a second point, and this relates to

1 ensuring that closed hearings, if there are to be any  
2 more, do not further limit the ability of non-State core  
3 participants to address you on the totality of the  
4 evidence.

5 So of course, sir, the Metropolitan Police will have  
6 a global perspective of all the material, including  
7 those subject to any RRO when they make their final  
8 submissions to you, and this will obviously mean they  
9 can analyse all of that evidence in totality.

10 Now, the Metropolitan Police are indicating today  
11 that they will oppose any attempt to exclude them from  
12 a hearing following the grant of an RRO, and I'm not  
13 making any submissions on that point at this stage, but  
14 simply this.

15 If there are to be a series of further closed  
16 hearings for non-State core participants, or hearings  
17 with restricted attendance, where certain non-State core  
18 participants are to be excluded, can the co-operating  
19 groups solicitor and counsel team please attend any of  
20 those hearings, clearly that would be subject to consent  
21 from the effective non-State police core participant,  
22 but this is to ensure that the wider State group is  
23 effectively in the same position as the Met, in being  
24 able to see all of the evidence.

25 Now, this is likely to be necessary to ensure that

1           any issues of wider relevance to the group -- so for  
2           example issues around trade craft that might come up  
3           during that restricted and closed hearing -- if that  
4           does come up, clearly if the non-State co-operating  
5           group is present in those hearings, that can be  
6           identified, connections can be made if necessary and  
7           that can then be addressed in our group submissions to  
8           you in closing and that would obviously be in a closed  
9           annex if that was the appropriate procedure that was  
10          adopted by the Inquiry.

11   THE CHAIRMAN:  May I interrupt your flow there?  You as  
12           I understand it submit that there should be  
13           representation by non-State core participants in  
14           hearings that are closed even where the closed hearings  
15           are held for purposes of protecting serious public  
16           interest requirements.  I simply I'm afraid cannot  
17           accept that.

18           This is an issue that has been canvassed in  
19           correspondence before and the suggestion was made that  
20           something along the lines of special advocate could be  
21           nominated, but I'm afraid you have to depend upon  
22           Counsel to the Inquiry to represent wider interests at  
23           closed hearings.

24   MS HEAVEN:  Sorry, just to be clear I obviously wasn't clear  
25           in my submissions.  I'm not rehearsing that argument of

1 course in relation to the restriction orders. This is  
2 a narrower point. So this is if there are to be further  
3 closed hearings pursuant to the grant of an RRO for  
4 a non-State core participant.

5 THE CHAIRMAN: I do apologise. I misunderstood.

6 MS HEAVEN: I'm not seeking to re-argue the issue around  
7 attendance at closed hearings that we know happened --  
8 to the RRO. So this is any new ones for the benefit of  
9 a non-State core participant granted an RRO. Clearly in  
10 that situation, provided they consent, we would simply  
11 ask as the co-ordinating group to be permitted to attend  
12 any of those hearings if they are to be closed. So we  
13 can pick up the crossover issues for the group. It was  
14 simply that limited submission, sir.

15 THE CHAIRMAN: Forgive me. I now understand the point and  
16 I had misunderstood. Thank you for putting me right.

17 MS HEAVEN: My mistake, sir.

18 Final point is there is. It's just to seek clarity  
19 on something that is said in paragraph 7 of Counsel to  
20 the Inquiry's note. That's the first note that I've  
21 already quoted from. I'll just read it out to you, it's  
22 paragraph 27 and it's dealing with the Inquiry bundle,  
23 and it simply states this, and this is the last  
24 sentence:

25 "If orders restricting attendance at the open

1           hearings are made such that affect other CPs, for  
2           example those not involved in the events in question,  
3           then the relevant parts of the hearing bundle would need  
4           to be withheld from them."

5           Sir, it's simply a plea for a better explanation of  
6           what is meant there because we don't understand.

7           Our understanding was that there would be one  
8           hearing bundle subject to privacy redactions but  
9           certainly this sentence at paragraph 27, the last  
10          sentence, would appear to suggest that there may be  
11          other versions of the hearing bundle that are going to  
12          be in circulation, some of which have sections withheld.

13          So it's just really a plea for clarity, obviously  
14          not immediately now, sir, but at a later date just so  
15          that we can understand actually what is being meant here  
16          in paragraph 27.

17          Thank you, those are my submissions.

18   THE CHAIRMAN:  Certainly.  Does that conclude what you have  
19          to say in this opening session?

20   MS HEAVEN:  It does, sir, thank you.  Those are my  
21          submissions for the open session.

22   THE CHAIRMAN:  Thank you very much indeed.

23          Is there anybody else who wants to say anything else  
24          in the open session or shall we now go into the private  
25          sessions that I anticipate will take a certain amount of

1           time? Then we'll do that.

2           The open session is closed.

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OPEN HEARING

Submissions by MR BARR KC

THE CHAIRMAN: Mr Barr.

MR BARR KC: Thank you, sir.

I should say first of all a few words about appearances this afternoon. First of all, Mr Menon conveys his apology for the Inquiry. He's not able to re-join us for very good personal reasons but had nothing further to say.

I've also been asked by the Home Office to make clear that although they are not formally represented at today's hearing and have nothing to say, that they are following today's proceedings on the live stream assiduously.

My learned friend Ms Heaven raised an issue about the provision of documents to non-State core participants, and I have an update in that regard.

I'm told that the volume -- the proportion of documents that has been supplied to Tranche 2 non-State core participants for the purposes of witness statements now exceeds 85 per cent of the total. Of course we're doing our level best to get the balance out as quickly as we can.

Moving to the hearings that have been held in

1 private, I think it's right I should say that it has  
2 become clear during those hearings that there are  
3 applications to withhold from the hearing bundle some  
4 evidential passages with the intention that they are  
5 seen only by those who are directly involved in the  
6 evidence and their legal representatives, and it is  
7 clear that there are going to be applications to  
8 restrict attendance at some hearings.

9 I can't go into the details at this stage,  
10 particularly so in an open hearing, but it may be, sir,  
11 that you would like to give an opportunity to those  
12 representing core participants today to say anything  
13 further in principle that they wish to say about those  
14 two possibilities.

15 Unless I can assist you further, that is it from me.

16 THE CHAIRMAN: Thank you very much.

17 Ms Heaven, I think the ball is in your court at the  
18 moment is it not?

19 MS HEAVEN: Thank you sir. I think in the circumstances  
20 I probably said everything that I need to say at the  
21 moment. You recall I did make a general request that  
22 the co-operating group will be present, but that would  
23 always be subject to consent from the individual  
24 non-State core participants. So if I can just leave it  
25 at that at this stage, sir. Thank you.



1 THE CHAIRMAN: Thank you very much indeed.

2 Does anybody else have anything that they wish to  
3 say? In that event, I will declare that today's  
4 proceedings are closed and thank all of you for  
5 attending. With apologies to those who have attended  
6 only the open sessions and have had to twiddle their  
7 thumbs or do something like that in between.

8 Thank you all.

9 (3.30 pm)