

1 Thursday, 3 February 2011

2 (2.15 pm)

3 Discussion re preventability evidence

4 LADY JUSTICE HALLETT: Mr O'Connor?

5 MR ANDREW O'CONNOR: Good afternoon, my Lady. My Lady, the

6 purpose of this afternoon's hearing is to address

7 a number of general procedural and disclosure issues

8 relating to the preventability issue arising in these

9 proceedings.

10 This is to be an open hearing. As we will see as we

11 go through the matters on the agenda, there is likely to

12 be a need for a closed hearing at some point in the near

13 future and, as I understand it from Mr Smith, he is

14 hoping to list a closed hearing to take place next

15 Friday morning, although that is still subject to

16 confirmation.

17 My Lady, you should have, and I hope you have,

18 a speaking note that I have prepared on your bench.

19 There have also been some useful written submissions

20 provided by Mr Patrick O'Connor, which I hope you also

21 have.

22 LADY JUSTICE HALLETT: I do, thank you.

23 MR ANDREW O'CONNOR: My Lady, I'll follow the order of

24 matters as set out in my speaking note, if I may. The

25 first section is really a collection of matters that

1 have been outstanding from previous hearings.
2 First of all, you will recall that work has been
3 underway preparing a gist relating to the Downtempo
4 operation. That was the operation investigating the
5 identities of the Zubair and Ibrahim figures. My Lady,
6 that gist has, in fact, now, only minutes ago, been
7 concluded and circulated.

8 Could I hand up a copy of it?

9 My Lady, on a practical level, could I make the
10 point that the approach that has so far been adopted of
11 disclosing all documents to interested persons by means
12 of Lextranet has not been abandoned. All documents that
13 are being disclosed at the moment will find their way on
14 to Lextranet. We are simply disclosing them in hard
15 copy as well to speed up the process and to allow people
16 to see them as soon as possible.

17 My Lady, you'll see that the gist itself is only two
18 pages long, but what you see behind it is a series of
19 photographs. In fact they are two sets of photographs.
20 They are, first, the photographs that were shown to the
21 detainee Babar, and you'll see those are numbered 1 to
22 25. In fact, I believe there are only 24 photographs,
23 but the last two are numbered 23 and 25 rather than 23
24 and 24.

25 The second set of photographs are the photographs

1 shown to the other detainee.

2 My Lady, you'll see some redactions on these
3 photographs. My understanding is that those redactions
4 are redactions which cover photographs which are both
5 irrelevant in the sense that they do not show either
6 UDM D or E and also sensitive in the sense that they
7 show individuals who play no part in these proceedings
8 and, also, I think in at least some cases, were never
9 the subject of any further police investigation,
10 certainly not being arrested, and so it would be wrong
11 to publicise their features in this way.

12 My Lady, can I just emphasise, this draft of these
13 photographs, and in particular these redactions, has
14 only been circulated in the last few minutes. It may
15 well be that we need to come back to some of these
16 redactions, but we will do that in slower time, if we
17 may.

18 My Lady, that deals with the first matter, the
19 Downtempo gist.

20 The second matter is a matter that I know you're
21 also aware of, a further statement has been prepared by
22 Witness G. It has now been signed. I know you have
23 seen it and approved it, and I don't believe we have
24 a large number of copies of it in court, but we have
25 shown a copy of it to Mr O'Connor, he has that.

1 My Lady, could I simply at this point endorse the
2 approach that this statement reflects; that is
3 Mr O'Connor and his team raising queries about the
4 disclosure that has been provided or, in particular,
5 some of the issues arising from the first witness
6 statement of Witness G, and then those queries, where
7 appropriate, being answered by way of a further
8 statement?

9 Certainly, for our part, we believe that that is
10 a very useful process and one which is likely to make
11 the process of Witness G giving oral evidence quicker
12 and easier, and it may be that there are further issues
13 that will be able to be dealt with in that way before
14 Witness G comes to give evidence in two or three weeks'
15 time.

16 My Lady, the third point relates to the PII claims
17 made by the Secretary of State for the Home Department,
18 which you heard a few weeks ago at the beginning of this
19 year. You will recall that they related, amongst other
20 things, to the quarterly summaries prepared by the
21 Security Service and also parts of the ELG minutes. Of
22 course, parts of the ELG minutes have been gisted and
23 made available.

24 There are a number of small points to make about
25 this PII process. First of all, of the four quarterly

1 summaries in respect of which PII was claimed, you may
2 recall that gists of only three of them were placed
3 before you at the time of the PII claim. I don't
4 believe, in fact, that those have ever been circulated
5 more generally, but the position is that the entirety of
6 those gists is duplicated in Witness G's statement and
7 I've given the paragraphs there. So in substance, those
8 three gists have been made available to all the other
9 interested persons.

10 The gist of the fourth quarter wasn't available at
11 the time of the PII claim, but it has now been drafted,
12 as I understand it. It will need to be approved by you,
13 but the hope is that that process can take place in the
14 next day or so and, once it has been done, then it will
15 be circulated, probably by email, to speed up the
16 process, as well as going on to Lextranet in slightly
17 slower time. So that is the position with that.

18 There are still a number of matters outstanding in
19 relation to those PII claims, but Mr Hall and I have
20 discussed them and we have been able to reach a certain
21 amount of common ground, I believe. Our intention, if
22 you approve, is to put in written submissions relating
23 to the outstanding matters which you will be able to
24 consider and, if you require further oral argument in
25 order to dispose of the PII claim, that can take place

1 in due course, in fact, next Friday, if it comes to it.

2 My Lady, if that's an agreeable course on that,

3 that's how we shall proceed.

4 LADY JUSTICE HALLETT: Certainly.

5 MR ANDREW O'CONNOR: My Lady, item 4, Mr Tibber helpfully

6 reminded me that you will recall the quite lengthy ELG

7 gist document that has been prepared at some 60 pages

8 long. It was noticed, when that gist was initially

9 circulated, that there may be a problem with it, either

10 a duplication of one particular part of it or possibly

11 something missing. I freely confess I haven't gone back

12 to it, other than reassuring Mr Tibber that we will and

13 that it isn't going to be a serious problem. I simply

14 raise it in order to repeat my assurance that it will be

15 dealt with in the next few days.

16 My Lady, the last point I wish to make about the

17 outstanding matters is simply to, again, I hope,

18 reassure the interested persons that, although there are

19 still a small number of matters outstanding from the

20 general disclosure process that began some months ago,

21 they are not of any great moment, in the sense that they

22 are unlikely to lead to the disclosure of any great

23 volume of further material, and we hope that they will

24 be resolved fully in the next few days.

25 The reason that they haven't been resolved before

1 now, apart from simple pressure of work and so on, is
2 a better reason than that, which is that the disposal of
3 those issues has had to await certain other events,
4 including the service of Witness G's statement and the
5 other statements from the police forces, and so some of
6 those matters have necessarily been left until around
7 now, but they are few in number and we anticipate that
8 they will be dealt with soon, as I say.

9 My Lady, can I turn now to the matters that were
10 raised in Mr O'Connor's note dated 17 January and which,
11 as you are aware, have been the subject of both
12 discussions and correspondence since that date?

13 My Lady, there is at least one matter, I believe,
14 issue 8, the query about the index of material provided
15 to the ISC, which is now not pursued.

16 There are other matters from that schedule which
17 either have been already dealt with or which are in the
18 process of being dealt with, as I say, by way of
19 discussion and correspondence and so, which neither
20 Mr O'Connor nor I wish to raise with you this afternoon.

21 There is a further clutch of issues in respect of
22 which, as I've already indicated, Witness G has provided
23 a further statement this afternoon. Those were issues
24 9, 11 and 12 on the schedule. It may, of course, be
25 that Mr O'Connor wishes to come back to that and say

1 that his queries haven't been satisfactorily answered by
2 Witness G, but I'll let him do that in due course, if
3 I may.

4 My Lady, perhaps I could now turn to item 4 on the
5 list, which relates to audio and video surveillance
6 product. May I simply take a little time to make clear
7 to everyone what the position on this audio and video
8 product is.

9 The first point is that written records of all of
10 this audio and video product have been made available
11 for interested persons. In respect of the audio
12 surveillance devices, we have transcripts; in respect of
13 the video surveillance, we have logs that were written
14 describing what was shown.

15 The question relating to the tapes themselves,
16 therefore, is whether what one can hear, in respect of
17 the audio tapes, and see, in respect of the video tapes,
18 adds anything to the written records that we already
19 have.

20 As far as the audio product is concerned, my Lady,
21 there is one tape from 21 February 2004. That is,
22 you'll recall, the conversation in the car. It has been
23 disclosed -- I've given the reference on my note -- and
24 you have already decided that that tape should be played
25 when we come to hear the preventability evidence.

1 There is further audio product, two sets of audio
2 product, relating to 23 March 2004. That has been
3 disclosed and I -- again, I've given the Lextranet
4 reference to those two sets of disclosed audio product.
5 My Lady, the position with that is that we invite
6 submissions, not necessarily today, but as urgently as
7 possible, from interested persons, as to whether they
8 would wish you to play any of that product when we come
9 to hear the preventability evidence.

10 My Lady, this is a matter which we will need to have
11 clear some time in advance of the week of the 21st,
12 simply because I don't suppose anyone will be suggesting
13 that all of that product is played -- it is fairly
14 voluminous -- and so, if it is to be the case that some
15 of it is to be played, there will be some work that
16 needs to be done in extracting it, making it ready,
17 making it compatible with our systems and so on. So we
18 do ask that, if anyone is minded to ask you to play any
19 of that product, they do so as soon as possible.

20 As far as the video product is concerned, my Lady,
21 we have concluded that, in fact, none of the video
22 material that we have seen adds anything of significance
23 to the logs that have been prepared of that material
24 and, therefore, it is unnecessary to make that video
25 product available to the interested persons.

1 My Lady, may I just briefly refer to two particular
2 points in this regard. First of all, there is a video
3 surveillance product relating to the night of 20 and
4 21 March 2004. You will recall this was the occasion
5 when the Vauxhall Corsa picked up Khyam and Mahmood in
6 Crawley and drove away and then came back. The driver,
7 who we now know was MSK, is simply referred to as "UM",
8 that is "unidentified male", in the log. The point is,
9 when one looks at the footage, he is not identifiable
10 from the footage, so we do not consider that there is
11 anything that one gets from the surveillance video
12 footage itself that one doesn't get from the log. That
13 is why that video material has not been disclosed.
14 The second video product, my Lady, relates to
15 23 March 2004. Again, the log describes MSK, who is
16 clearly recognisable on this occasion as UM, but it is
17 clear that there was no serious -- the fact that he's
18 described as UM on the log does not disclose any serious
19 investigative problem, because there is a police
20 document which is dated the same day where he is
21 referred to as UDM E; in other words, the person MSK, as
22 he was then referred to.
23 So again, there is no, as we see it, significance in
24 the video product itself and, again, that video product
25 has not been disclosed.

1 My Lady, before I leave the question of audio and
2 video product, there is a separate issue which relates
3 to the audio product and that is, when this product is
4 played in court, and we know that, at the least, the
5 21 February material will be played in court, should it
6 be withheld from the public website? My Lady, I know
7 that Mr Garnham and Mr Vassell-Adams have some
8 submissions to make on that issue. May I simply say
9 this by way of introduction: the practice that has been
10 deployed or employed in these proceedings is that, when
11 evidence has been deployed in court, then ordinarily
12 that evidence has been put on to the public website by
13 way of photos, audio material and the like. You have
14 previously ruled, first of all, that you have no duty to
15 place on to the public website or to publicise in any
16 other way evidence that you hear in court and, secondly,
17 that, in exceptional circumstances, you will not put
18 material on to the website, a recent example being the
19 photograph of Tavistock Square.

20 My Lady, that is the background to this issue. If
21 it's convenient, perhaps this is a convenient moment for
22 submissions to be heard on that point.

23 LADY JUSTICE HALLETT: Certainly. Who wishes to go first?

24 Mr O'Connor? I can see Mr Vassell-Adams at the

25 back, but I think you're probably first naturally.

1 MR PATRICK O'CONNOR: We have nothing to say about that.

2 LADY JUSTICE HALLETT: It looks as if it's to you then,
3 Mr Vassell-Adams.

4 MR VASSELL-ADAMS: If I can address you very briefly,
5 my Lady, and you're no doubt relieved and delighted to
6 know I won't be referring to Scott v Scott or, indeed,
7 any other authorities. I think it comes down to
8 a relatively straightforward issue.

9 This material, as I understand it, will be played in
10 open court so that anyone who is attending court can
11 listen to it.

12 We also understand it has been disclosed to the
13 interested parties, the audio material. It also appears
14 that it was part of the evidence in the
15 Operation Crevice trial itself and, although I haven't
16 been able to receive a concrete answer to this,
17 presumably it would have been disclosed to the
18 defendants in that trial.

19 The fact of the capability of the Security Services
20 to bug cars is clearly in the public domain and, indeed,
21 the BBC website has previously published a transcript of
22 the conversation on 21 February, a fairly detailed
23 transcript, and I will pass it up to your Ladyship so
24 that your Ladyship can see it.

25 LADY JUSTICE HALLETT: Does it differ in any way from the

1 one that I have?

2 MR VASSELL-ADAMS: Unfortunately, I'm not in a position to
3 assist you on that because I haven't yet seen the one
4 that you have.

5 LADY JUSTICE HALLETT: But this is, as it were, a BBC
6 transcriber?

7 MR VASSELL-ADAMS: I can't -- my understanding in relation
8 to this was that they were not provided with the audio
9 material, they were provided with a transcript, and then
10 they produced the BBC transcript, which differs in
11 certain respects which are identified at the top of the
12 document. So you can see that it refers at the top to
13 the fact that there have been slight editorial changes
14 made to it.

15 LADY JUSTICE HALLETT: I follow, thank you.

16 MR VASSELL-ADAMS: What it seems to come down to, in my
17 submission, given the fact that this material will be
18 played in open court and that anyone can come and listen
19 to it being played, is this -- I'm sorry, I'll let
20 your Ladyship read it, because --

21 LADY JUSTICE HALLETT: I've read the transcript that's been
22 provided for me. I don't think it's -- attributions are
23 made, obviously, that aren't made on the original
24 transcript. I certainly get the drift, thank you, and
25 I have read, as I say, the other transcript.

1 MR VASSELL-ADAMS: I'm grateful. What it seems to come down
2 to is this: presumptively, if material is played in open
3 court, there are good arguments based on open justice,
4 with which your lady is very familiar, that that
5 material should be made public and put into the public
6 domain. The question really comes down to this: will
7 you be satisfied on evidence that the disclosure of that
8 material on the website or, indeed, to the media would
9 create a real risk of harm to the public interest, ie to
10 national security, that differs materially from it being
11 played in open court?

12 Now, that is a question that has to be addressed, in
13 my respectful submission, by way of evidence and not
14 submissions.

15 That implies to me that we may not be able to
16 resolve this issue today, but that is the issue,
17 respectfully, for your Ladyship, and the position, if
18 your Ladyship is satisfied that there is evidence of
19 that kind that meets that test, that's probably the end
20 of the argument.

21 LADY JUSTICE HALLETT: Evidence from whom?

22 MR VASSELL-ADAMS: I'm assuming it would be from the
23 Security Service. As I understand the nature of their
24 objection, it is that disclosure of this material on
25 a website in circumstances where it could be listened to

1 in depth might reveal operational capabilities. I won't
2 go any further than that. But whether there is evidence
3 to substantiate that remains another question, and the
4 broadcasters have a certain degree of scepticism about
5 these matters which arises from the fact that in
6 Operation Crevice we were told we couldn't have the
7 audio of the car recordings, because the fact that
8 recordings could be made in cars was itself so secret
9 that that couldn't be disclosed to us, and that clearly
10 was not the case, but nonetheless we didn't get the
11 recordings.

12 So it's a question really of your Ladyship being
13 satisfied as to whether there is a substantial objection
14 here.

15 LADY JUSTICE HALLETT: I'm just wondering whether it's
16 a case of -- you say it's obviously a case of evidence.
17 Is it obviously a case of evidence or would I not -- if
18 I heard evidence, would I not hear evidence essentially
19 along the lines that I suspect Mr Garnham is instructed
20 to make submissions? Isn't he going to be saying
21 virtually what a witness would be saying? I'm just not
22 sure whether it's an evidential situation or a situation
23 for submissions.

24 MR VASSELL-ADAMS: Well, I'm not going to suggest that you
25 can't rely upon Mr Garnham's submissions.

1 LADY JUSTICE HALLETT: No, it's a question of putting --
2 well, it's submissions and assertions.

3 MR VASSELL-ADAMS: Yes.

4 LADY JUSTICE HALLETT: But I'm not quite sure whether you
5 would ever be in a position to test evidentially, given
6 the constraints upon us all --

7 MR VASSELL-ADAMS: My Lady, what I'm trying to suggest,
8 perhaps not as skillfully as I might, is that this
9 shouldn't be a question of bare assertion. There should
10 be some real substance to this if you are to be
11 satisfied that, indeed, there is a real risk of harm to
12 the public interest here, and that's as high as I put
13 it.

14 LADY JUSTICE HALLETT: So in other words, provided I have --
15 I think the horrible expression is drilled down and
16 discovered what is at the heart of the objection and
17 satisfied myself that there is a sound basis for it,
18 you're not suggesting otherwise? Right. I follow.
19 It's all right, I misunderstood what you were saying.
20 Right, thank you.

21 So, Mr Garnham, is that as far as we can go in open
22 court?

23 MR GARNHAM: I can go a little further, my Lady, because
24 I can say this: as you understand, there's no objection
25 to the transcript being published, in large measure it

1 already has. The objection is to playing the audio and
2 the reason -- in any way that can be then published to
3 the world, and then heard repeatedly by the world.
4 The substance of the objections, if I can deal with
5 them in open, is it will reveal limitations of what the
6 Security Service can do by way of audio surveillance
7 devices in cars.
8 I can only explain what those limitations are in
9 closed.
10 So I can't go any further. I am able to say that,
11 in fact, the nature of the audio product in this case
12 would be helpful to the Security Service's case because
13 of its limitations, but nonetheless, I'm obliged to
14 assert immunity in respect of it because of what it
15 would reveal as to the limitations of such a technique.
16 Whether it's in evidence or submissions, my Lady, is
17 a matter for you. Frankly, you'll get, if you were to
18 require it, evidence that goes to the same effect as
19 I would be submitting to you --
20 LADY JUSTICE HALLETT: That's what I assumed.
21 MR GARNHAM: -- in closed.
22 LADY JUSTICE HALLETT: And I have actually listened to the
23 material myself.
24 MR GARNHAM: Yes.
25 LADY JUSTICE HALLETT: So to that extent I have heard the

1 evidence.

2 MR GARNHAM: Yes.

3 LADY JUSTICE HALLETT: Right. So, Mr Vassell-Adams, is the
4 suggestion that I should go on and hear Mr Garnham now?
5 We're not coming to this material for another couple of
6 weeks.

7 MR VASSELL-ADAMS: Exactly. So I'm not suggesting that. If
8 it's more convenient for your Ladyship to consider that
9 issue on another occasion, providing it gives
10 your Ladyship time to form a view and make a ruling
11 before the issue comes into court, as it were, entirely
12 content with that.

13 LADY JUSTICE HALLETT: If we can -- how far have we got on
14 the closed hearing for next week?

15 I think, by the sounds of it, we're optimistic that
16 we can deal with it next Friday because we're hoping to
17 arrange, as you've heard, a closed hearing for next
18 Friday, in which case that should be in plenty of time
19 to make sure everyone knows where they stand before we
20 reach the issue.

21 MR VASSELL-ADAMS: Thank you. May I be excused, my Lady?

22 LADY JUSTICE HALLETT: Thank you very much.

23 MR PATRICK O'CONNOR: My Lady, could I just say on the
24 potential playing of the 21 February audio, could we ask
25 that that not necessarily take place during the evidence

1 of Witness G? The time constraints we will all be
2 operating under in relation to that important witness
3 mean that every half hour is pretty important and,
4 frankly, it may not be necessary for him actually to be
5 in the witness-box and for it to actually be during
6 those two very important days that time is taken up with
7 that actual playing.

8 LADY JUSTICE HALLETT: I'll have to leave that to you all to
9 discuss amongst yourselves. What is the --

10 MR ANDREW O'CONNOR: My Lady, I don't think any firm plans
11 have yet been made about exactly when the audio should
12 be played. Clearly, in one sense, it doesn't need to be
13 played during Witness G's evidence, because he will, of
14 course, have heard it. Perhaps we can give some more
15 thought to that.

16 LADY JUSTICE HALLETT: Indeed. I think the other side to
17 Mr O'Connor's submissions is, if it comes out of
18 anybody's time, it comes out of yours, Mr O'Connor. Is
19 that fair, Mr O'Connor? That, if it's coming out of
20 anybody's time, it's coming out of general court time or
21 Counsel to the Inquest's time?

22 MR PATRICK O'CONNOR: It's really not Witness G's time, but
23 my Lady knows what I mean. I mean, when he's in the
24 witness-box, that's precious to all of us, and --

25 LADY JUSTICE HALLETT: I do understand.

1 MR PATRICK O'CONNOR: That's all I mean, I'm sorry.

2 LADY JUSTICE HALLETT: Thank you very much. Noted. Thank
3 you, Mr Vassell-Adams.

4 Right, now what's the next issue, Mr O'Connor?

5 MR ANDREW O'CONNOR: The next matter, I've bracketed two of
6 the requests made by Mr O'Connor together, that is
7 a transcript of evidence before the ISC and what I've
8 described as ex post facto documents, I can't recall if
9 that's the phrase he used, but I think we all know what
10 we mean. What we do mean by that is documents created
11 within the Security Service following the events of 7/7
12 but looking back over them, as it were.

13 LADY JUSTICE HALLETT: A sort of debriefing review of --

14 MR ANDREW O'CONNOR: Yes. My Lady, I know that these are
15 matters that Mr O'Connor wishes to address you on,
16 possibly in some detail. They are certainly canvassed
17 in little length in his written submissions.

18 May I simply make a few introductory points: namely,
19 those outlined on my own note.

20 Firstly, the basic relevance -- and "relevance" is
21 a word which is capable of taking away rather than
22 adding clarity in these proceedings, but the basic
23 relevance of documents in these categories is clear, and
24 it's reflected by the fact that these documents have
25 been disclosed to you. In fact, I believe that there

1 are some further ISC transcripts that have been
2 disclosed only very recently in the course of today, but
3 no one is disputing the fact that documents in these
4 categories are required to be disclosed to you pursuant
5 to the tests set out in Mr Smith's letter to the
6 interested persons some time ago.

7 The real question here is whether documents in these
8 categories are necessary to be disclosed onwards to the
9 interested persons. That is the second stage, and that
10 is the stage where some of us at least have tried to
11 avoid using the word "relevance". The question really
12 is whether documents which are relevant and have been
13 disclosed to you are so significant that they need to be
14 disclosed onwards to the interested persons and play
15 a role in the proceedings in that way.

16 Our submission is that, for documents in these
17 categories, the basic test, the starting point, is that
18 onward disclosure of documents in these categories is
19 required if they are inconsistent with the account given
20 by Witness G or relevant police witnesses in a manner
21 that would be worthy of being explored at the hearing.

22 My Lady, the reason that that last phrase is there
23 is that clearly some of these documents relate back to
24 the period very shortly after 7/7 or in late 2005, 2006
25 and so on, and at the points at which the evidence was

1 given or the documents were drafted, it may well be that
2 the understanding of the author or the witness was wrong
3 and different to what the understanding of the position
4 now. So if the inconsistency simply arises by virtue of
5 the fact that the document or the evidence was thought
6 accurate at the time but we now know isn't, that
7 wouldn't be a reason, in our submission, to disclose the
8 document.

9 The question is really whether there is a true
10 inconsistency and a significant inconsistency of the
11 nature where one would wish to explore it using the
12 document with one of the witnesses in evidence.

13 That is our submission as to the approach that
14 should be adopted.

15 There is a point made by Mr O'Connor in his written
16 submissions which we see as a slightly separate point,
17 and that is that these documents represent, as it were,
18 the most contemporaneous account of pre-7/7 events.

19 My Lady, in our submission, that is a matter that is
20 worthy of some weight, even if the documents in question
21 are, on their face, consistent or virtually consistent
22 with the accounts that are now being given.

23 We agree with Mr O'Connor that the fact that
24 Witness G was not directly involved in the events of the
25 Crevice investigation, for all that there are many other

1 things that can be said about him that make him a very
2 appropriate witness, we see from his witness statement
3 that he wasn't directly involved in those events, and
4 that is a factor which tends to support that matter
5 raised by Mr O'Connor.

6 My Lady, I'd simply make two other very brief points
7 or really one point. It may well be, although I'm not
8 in a position to go into any detail, that those
9 contemporaneous account documents may not be the ISC
10 transcripts but, rather, that the documents that better
11 fit that requirement may be in fact one or more of the
12 ex post facto documents created within the
13 Security Service.

14 My Lady, I think that is all I wish to say in
15 introduction to this issue. It may be that Mr O'Connor
16 has submissions to make now.

17 LADY JUSTICE HALLETT: Mr O'Connor?

18 MR PATRICK O'CONNOR: My Lady will now have seen from an
19 initial document we drafted some time ago, a few weeks
20 ago, and now from our skeleton argument in draft served
21 yesterday and served this morning in final form, we have
22 many cumulative submissions on this topic, and I would
23 not propose to take my Lady through them because that
24 might be offensive. My Lady, hopefully they are clear
25 and my Lady will have followed them.

1 The context which is the worrying one in the
2 interests of justice, first of all, and, secondly, and
3 very importantly, in the interests of the interested
4 persons and their participation, helpful participation
5 in these proceedings, is, first of all, that it seems
6 there are no relevant, absolutely contemporaneous MI5
7 documents at all. Having had two minutes to look at
8 Witness G's further statement, it looks as though there
9 are none.

10 Secondly, no directly involved witness involved in
11 these events and the decisions and the prioritising and
12 the supervising is going to be called.

13 Thirdly, the only evidence that's going to be called
14 is going to consist, therefore, of a witness conveying
15 to you, to the interested persons, to the public,
16 commentaries on the events conveyed in conversations to
17 him and her by those who were directly involved.

18 Now, in that context, it is absolutely clear, we
19 submit, that any record of any previous account given
20 closer to the events is likely to be more accurate, is
21 apt to provide a fair and just touchstone for any
22 explanations now given, in as much as they're different
23 at all. The explanations given to the ISC will have
24 dated from 2005 and 2006 and 2007 and 2008, several
25 years ago and closer to the events. There's no

1 suggestion from Witness G that he or she was even
2 involved in the ISC evidence-gathering and presentation
3 process.

4 So literally, in this respect, Witness G is just
5 a commentator and a conveyor of conversations with those
6 who were involved.

7 Now, in our submission, therefore, applying the
8 correct criterion for onward disclosure, fairness and
9 our ability to contribute to the interests of justice in
10 this inquest call for disclosure of any records of those
11 earlier accounts, we are concerned at the explanation of
12 how apparent inconsistencies between the records of the
13 evidence given to the ISC on either occasion and the
14 current account are being approached. It seems to be
15 suggested that, where those inconsistencies arise out of
16 earlier mistakes, then that simply means those
17 inconsistencies can be put to one side and not trigger
18 onward disclosure.

19 That is putting the cart before the horse. Who is
20 saying they are mistakes? Are representations being
21 made by the Security Service to your team, "This is
22 a mistake and that is a mistake"? And it is
23 embarrassing, in a literal sense of the word, for your
24 Inquest team to be put in the position of considering
25 such explanations, deciding that they are true, and thus

1 then deciding that onward disclosure is not necessary.
2 That's not, I would submit, having spelt it out,
3 what your Inquest team would wish to be doing. It's not
4 a position they would want to be put in.
5 If there are inconsistencies, apparently, at all, we
6 submit that that should be sufficient to trigger onward
7 disclosure, and it is particularly in the context where
8 language has proved to be extremely slippery. I say
9 that without criticism at all. Language is used in
10 a finely tuned and sometimes idiosyncratic way, not
11 surprisingly, with an inevitably inward-looking
12 organisation such as MI5, or any organisation, it
13 develops its own particular use of language. It may not
14 be shared by anyone else. It may not be shared by
15 certainly the public, it may not be shared by us, it may
16 not be shared by you, unless explained.
17 Thus, we submit there are two risks. One is,
18 without onward disclosure, that inconsistencies of
19 significance are overlooked and, thus, that the recent
20 hearsay explanations being given for decisions and
21 assessments which are at the heart of this inquest are
22 not properly tested.
23 The second danger is that your Inquest team will
24 have to be having -- they will have to perform the
25 exclusive task, without assistance from us, of

1 consistently reviewing the contents of those recorded
2 earlier explanations five years ago, three, four years
3 ago, when Witness G is giving evidence, and --
4 LADY JUSTICE HALLETT: Pausing there, I'm sorry to
5 interrupt, it is, of course, not just Counsel to the
6 Inquest, I would be a party to the constant review.
7 MR PATRICK O'CONNOR: Yes, madam, we are reassured by that,
8 as we should be.
9 But you are multitasking yet again, you are
10 assessing a witness, are you not? You're looking at
11 demeanour, you're making links all the time.
12 That should not be, at this stage, an important part
13 of your role listening to the evidence and without --
14 there not being a jury, without assistance, as being the
15 exclusive fact-finder here.
16 The procedural danger is that if we do truly hit
17 a problem because you, my Lady, detect it or your team
18 detect it, we have a problem in that tight two-day
19 timetable, because there will be a pause and an
20 adjournment. There will be debate and consideration.
21 There will be a closed hearing. You will want to give
22 proper opportunity to my learned friend to make
23 submissions about whether this makes the difference or
24 not. No doubt make an anxious decision about that.
25 If you decide there really now has to be some

1 limited onward disclosure, it would have to be carefully
2 done in careful parameters, it would have to happen.
3 My learned friends may well themselves want to ask
4 questions about it, consider the position, it would have
5 to be served on us.
6 One can see an hour, an hour and a half, two hours
7 passing over a little grouplet of apparent
8 inconsistencies and a really significant chunk of the
9 time available for Witness G's evidence going.
10 In one word, disruptive, and unnecessarily
11 disruptive, we submit, if this is being tackled in
12 advance and if there has been onward disclosure to us,
13 at the very least in relation to any apparent points
14 which leap from the page to you now, but without
15 applying that very, very high hurdle of an inconsistency
16 which you conclude leads to real evidential
17 consequences, because again, that's crystal-gazing.
18 It's very difficult to predict.
19 Obviously, there has to be a barrier, there has to
20 be a hurdle, forgive me, a hurdle. But we submit it is
21 satisfied by apparent inconsistencies.
22 My Lady, that is all we say about these transcripts,
23 but it is connected, and we're grateful to my learned
24 friend Mr Andrew O'Connor for connecting it with the
25 issue of internal review.

1 LADY JUSTICE HALLETT: Sorry, just before we move to
2 internal review, are all matters of principle resolved
3 about the principle of transcripts of this committee's
4 proceedings being disclosed publicly? Are there any
5 remaining potential claims to Parliamentary privilege,
6 to anything? Is that all resolved?

7 MR PATRICK O'CONNOR: My Lady, not at all, because they have
8 never been raised with us to participate in any kind of
9 debate about that. We have simply been told that issues
10 of relevance are being considered.

11 Now, true, they might arise, but it's for others to
12 raise them and we have indicated that, certainly,
13 Parliamentary privilege is different from public
14 interest immunity, I appreciate. We've simply, on
15 a speculative basis, ventilated whether public interest
16 immunity might arise.

17 But yes, madam, I mean if these issues of principles
18 are potentially live, the sooner they are clarified and
19 submissions are made about them, the better.

20 LADY JUSTICE HALLETT: Are you aware of any incidents where
21 transcripts of the ISC's proceedings have been
22 published, even in heavily redacted form?

23 MR PATRICK O'CONNOR: My Lady, no. I've seen a number of
24 their annual reports. Their function is to produce an
25 annual report, largely, actually, a sort of

1 administrative report overseeing how good their
2 administration is and their finances and that kind of
3 thing. They produce an annual report, and then, on
4 one-off topics, such, of course, as this, they produce
5 a particular one-off report, I think at the request of
6 the Prime Minister or something like that and that's how
7 they've done this here.

8 Of course, the ISC is not an ancient body, and
9 I don't actually -- I can't immediately bring to mind
10 other --

11 LADY JUSTICE HALLETT: See if Mr Tibber has any --

12 MR PATRICK O'CONNOR: Other than their two reports on 7/7,
13 I'm not aware of them doing a particular committed
14 report on any one incident.

15 My Lady, the note says, quite rightly -- I'm not
16 sure this does help very much -- we did get a transcript
17 of the meeting that took place between us and our then
18 clients in 2007/2008, and the committee, when they -- of
19 course, they weren't taking evidence then.

20 LADY JUSTICE HALLETT: No, and you were present and they
21 were merely giving you a record of what had happened
22 when -- using you -- obviously, you were there anyway.

23 MR PATRICK O'CONNOR: We were there anyway and we were given
24 the opportunity to provide them with many questions,
25 which we did, and I think to some extent that was

1 instrumental in ISC2, focusing as it did. So I don't
2 think that's a useful precedent. But there's a huge
3 distinction, as my Lady will immediately appreciate --
4 it's not why you're asking me the question -- between
5 something not having happened before in the relatively
6 short history of the ISC and there being actually some
7 formal legal barrier to its evidence being disclosed.

8 LADY JUSTICE HALLETT: No, it just might have assisted on
9 Parliament's attitude, that's all.

10 MR PATRICK O'CONNOR: I couldn't agree more. My Lady, on
11 this question, I've no doubt, over many months, there
12 have had to be dealings with the Secretariat and the
13 current chair of the ISC, and I would be surprised, if,
14 as it were, their views about this have not emerged at
15 some stage in their cooperation with you, whether
16 they've given to you transcripts and entered a proviso
17 saying "We must be consulted before there is any
18 question of these being passed on".

19 Interestingly, if they haven't, that might be of
20 some assistance to us.

21 LADY JUSTICE HALLETT: Thank you. You wanted to move on to
22 what we're calling the ex post facto review?

23 MR PATRICK O'CONNOR: It's only simply, my Lady, to agree
24 with my learned friend Mr Andrew O'Connor that, in as
25 much as our concerns are that by getting no record of

1 anything before the evidence to be presented before you,
2 from within MI5 and no record of any previous account at
3 all, this would be a partial answer to that, and we
4 would very much welcome, of course, any such document.
5 Forgive me.

6 LADY JUSTICE HALLETT: Sorry, I was just thinking, if, too,
7 the ex post facto review, by whatever level of officer,
8 was the basis of the evidence given, you would say we're
9 going even more to the very source of the material?

10 MR PATRICK O'CONNOR: Absolutely, my Lady. I mean, it's
11 going earlier than what was presented to the ISC. It
12 may well have been given to the ISC itself. It would be
13 surprising if it wasn't.

14 LADY JUSTICE HALLETT: Well, it depends the extent to which
15 it was encapsulated in the evidence that was given.

16 MR PATRICK O'CONNOR: I know, but one would have thought it
17 either was presented to the ISC or formed the basis for
18 the Security Service's explanation to the ISC on these
19 issues.

20 So, yes -- I have a note written here, which
21 I cannot even read. It is too long for me to read.
22 So, my Lady, there's a connection there and it's not
23 inconsistent for us to see them connected and concede,
24 I hope reasonably, that if the latter of those two
25 categories of documents is at least disclosed to us,

1 then a measure of our concern is certainly satisfied.

2 So I say nothing more about that. Shall I sit down

3 on that one?

4 LADY JUSTICE HALLETT: Unless Ms Gallagher wants to talk to
5 you about the lengthy note. (Pause).

6 MR PATRICK O'CONNOR: I think I can put this in one
7 sentence, my Lady. Even if earlier accounts contain
8 genuine mistakes, that itself may be of some
9 significance and, as I understand it, that has been
10 accepted as of some relevance in relation to the London
11 Ambulance Service, because the making of such mistakes
12 may throw light on systemic issues before the events.
13 It may be symptomatic of a state of organisation or
14 disorganisation before the events.

15 So genuine mistake is, on that, not a complete
16 answer, even if one can safely conclude that genuine
17 mistake was involved.

18 LADY JUSTICE HALLETT: Thank you very much. Mr Garnham?

19 MR GARNHAM: My Lady, you have seen the material.

20 LADY JUSTICE HALLETT: I received, five minutes before
21 I came into court this afternoon, two further
22 transcripts, so I have not seen all the material.

23 MR GARNHAM: May I say a word of explanation about that?

24 You, like us, only received it late in the day. It was
25 my learned friend Mr Hall who was rechecking it through

1 this morning who noticed that there appeared to be two
2 dates missing and it was his alertness that resulted in
3 both him and us getting the other missing pages, but
4 there we are, that's the situation with that.

5 At least so far as you have seen it, my Lady, you
6 have now seen it and you are in a position to judge the
7 need for and the propriety of passing on that material,
8 and I say nothing about the principle that needs to be
9 applied other than this.

10 With respect, Mr Patrick O'Connor's submissions,
11 particularly those he's produced in writing, proceed as
12 if this were adversarial litigation, and it's not. This
13 is your inquiry, and we would respectfully say that
14 Mr Andrew O'Connor's approach is right on relevance;
15 relevance determines the need to disclose to you and it
16 does not necessarily determine how you dispose of it for
17 the furtherance of your inquiry, but I say nothing else
18 on that. We would respectfully say it's a matter for
19 you.

20 LADY JUSTICE HALLETT: And we know nothing of the general
21 approach to the ISC, given the circumstances in which
22 they operate, that there are no points of principle that
23 you're instructed to put forward "protecting" as
24 a matter of policy?

25 MR GARNHAM: My Lady, I don't speak for the ISC.

1 LADY JUSTICE HALLETT: I appreciate that, but those who
2 instruct you cooperate with the ISC.
3 MR GARNHAM: Correct.
4 LADY JUSTICE HALLETT: Presumably on certain bases.
5 MR GARNHAM: Absolutely, but if the ISC have observations to
6 make on matters of principle, it's for them to make
7 them, not for me.
8 LADY JUSTICE HALLETT: So there are no conditions to the
9 Security Services having cooperated with the ISC that
10 you wish to rely upon other than, obviously, national
11 security?
12 MR GARNHAM: I was about to say other than national
13 security. My Lady, no, I don't think that's right.
14 Only national security.
15 LADY JUSTICE HALLETT: Thank you.
16 MR GARNHAM: But they may have concerns about Parliamentary
17 privilege but I am not in a position to speak to that
18 one way or the other.
19 LADY JUSTICE HALLETT: I follow that, thank you.
20 MR GARNHAM: On matters of practice, once you've made the
21 decision in principle that any single page of the
22 transcript should be passed on, then I would have
23 submissions to make that that would require line-by-line
24 analysis to see whether what you propose passing on
25 would have a tendency of revealing sensitive material.

1 LADY JUSTICE HALLETT: Indeed.

2 MR GARNHAM: It may or may not be that the ISC would have
3 similar observations to make. I suspect they may leave
4 that to us. The matters of principle they may lead, but
5 the matters of national security, I suspect would be
6 matters we would have to deal with.

7 That's all I have to say about the ISC documents,
8 my Lady.

9 As to the ex post facto reviews, as they might
10 conveniently be called, we agree entirely with what
11 Mr Andrew O'Connor says in paragraph 12 of his note of
12 yesterday, which was to the effect that the Inquiry team
13 have received those documents, their approach is it will
14 be -- I'm told it's a draft, but nonetheless, I will
15 adopt it because it captures what we say is the right
16 approach -- necessary to disclose such documents if, but
17 only if, they are inconsistent with the account given by
18 Witness G in a manner that may be worthy of being
19 explored at the hearing. We respectfully agree.

20 LADY JUSTICE HALLETT: What if I felt that it was important
21 for a full and effective assistance from Mr O'Connor
22 that what might be considered to be, if not a primary
23 source, as close to the primary source as we are going
24 to get, and I would therefore think it important that
25 the interested parties as represented by Mr O'Connor

1 should see it? What would you then say?

2 MR GARNHAM: I would be slightly cautious about dealing with
3 it in the abstract in that way. It depends what it is.

4 But if you take the view that that is necessary for the
5 proper performance of your inquiry, then subject to
6 managing the process in a way that is consistent with
7 national security, we, of course, would accept what you
8 say.

9 LADY JUSTICE HALLETT: Supposing, once I've been through all
10 the transcripts, I gained, subject to one or two
11 questions, the distinct impression that source material
12 of this kind may well have formed the basis for the
13 evidence given, wouldn't that then make it more sensible
14 to --

15 MR GARNHAM: Source material of what kinds, I'm sorry?

16 LADY JUSTICE HALLETT: The ex post facto review kind?

17 MR GARNHAM: That that kind of material had been the basis
18 for the evidence to the ISC?

19 LADY JUSTICE HALLETT: Evidence given.

20 MR GARNHAM: The only danger with that -- again, I'm
21 cautious about making submissions in the abstract, but
22 the only danger with that is that your review is
23 directed to what happened and what led up to 7/7, it's
24 not a review of the adequacy of the ISC process.

25 LADY JUSTICE HALLETT: Potentially, that could be the most

1 contemporaneous collation of the material available in
2 the build-up to 7/7.

3 MR GARNHAM: It may be, my Lady, it depends on what it is.

4 LADY JUSTICE HALLETT: I did say "potentially".

5 MR GARNHAM: Yes. Frankly, the most contemporaneous
6 material is the material you and your team have now got
7 that's produced during the course of the
8 Security Service's work, the logs and the like. That's
9 truly contemporaneous, but I accept that a review
10 conducted very soon after 7/7 happened, by
11 a Security Service officer looking back on what had
12 happened, may be of importance to you, in which case,
13 once I knew what it was you had in mind, I would need to
14 make submissions about how that's best handled.

15 LADY JUSTICE HALLETT: Right. Thank you very much.

16 Mr O'Connor, Mr Andrew O'Connor?

17 MR ANDREW O'CONNOR: May I briefly come back on three
18 points?

19 First, I made some rather delphic submissions
20 relating to the question of whether the ISC transcript
21 really provided the, as it were, ground-level
22 explanation of events that Mr Patrick O'Connor thought
23 they might, as one sees from his written submissions.

24 The reasons why the submissions were delphic is I didn't
25 want to say more than what was appropriate, but what

1 I know I now can say is this: it's recorded in the ISC
2 second report that the Security Service evidence was
3 provided to the ISC by the Director General. In fact,
4 as we know, both the Director General,
5 Ms Manningham-Buller, and her successor, Mr Evans, and
6 other officials, that is the term used in the report.
7 Those other officials did not include desk officers
8 or other individuals associated with the investigations
9 that are the subject of these enquiries, or the
10 provisional issues before you. That's really the first
11 point.
12 The second point is I fear I may have set something
13 of a hare running when I tried to explain the approach
14 that we have adopted in relation to inconsistencies
15 which are not sufficient to give rise to the need to
16 disclose documents on to the interested persons and
17 I used the word "mistake". If an inconsistency
18 reflected a mistake, that might not be an inconsistency
19 that warranted the document or the transcript being
20 disclosed on.
21 Can I explain by using a practical example what
22 I meant by that? We know from the ISC reports that
23 there was a considerable amount of confusion following
24 7/7 as to which photographs were available and which
25 photographs were shown to whom and when and, indeed,

1 that was a matter that was only finally clarified when
2 the ISC gave its second report.

3 I don't think I'm giving any secrets away when I say
4 that in some of the transcripts of the ISC proceedings
5 one sees, perhaps unsurprisingly, witnesses giving
6 evidence which turned out to be inaccurate, but which no
7 doubt at the time was understood to be correct. That is
8 the sort of inconsistency I was referring to when
9 I meant an inconsistency which would not, on our
10 approach, require those transcripts to be disclosed on,
11 because we now know what the position is, and there
12 would be no point in raising that inconsistency with the
13 witness.

14 My Lady, the third point simply relates to the ISC's
15 position. The ISC, I'm helpfully informed by Mr Smith,
16 was established under the Intelligence Services Act
17 I believe it is 1994. It is separately represented in
18 these proceedings, my Lady, by the Treasury Solicitor,
19 but a different team within the Treasury Solicitor than
20 acts for the Home Secretary and Security Service. They
21 are aware of this hearing today, but they have been told
22 that this hearing is really addressing the question of
23 the first stage: namely, the significance of the
24 transcripts that prima facie, as it were, need to
25 disclose some or all of the transcripts on to the

1 interested persons and they have been told that, were
2 you to reach a decision that some or all of those
3 transcripts need to be disclosed on, then they would
4 have an opportunity to raise questions as to whether
5 public interest immunity, Parliamentary privilege or any
6 other objection to that disclosure arose.
7 Our understanding, although it is a general
8 understanding, is that they may well wish to raise some
9 sort of general objection to disclosure going beyond
10 national security objections of the type Mr Garnham
11 mentioned.

12 LADY JUSTICE HALLETT: Well, Mr Andrew O'Connor, if you
13 could stay on your feet, subject to seeing the two
14 transcripts that Mr Hall discovered for me this morning,
15 I am fairly confident in my own mind at what I consider
16 to be the appropriate way forward.

17 Is that something that you would all invite me to
18 say now or is it something that people would prefer that
19 I waited and saw the other two transcripts or that --
20 what are your submissions to me as to what should be
21 done this afternoon?

22 MR ANDREW O'CONNOR: My Lady, since we are all here and
23 since the matter has been debated before you now,
24 I think that the better course would be for you to give
25 your views as to how best to proceed, notwithstanding

1 that they would inevitably have to be, to some extent,
2 provisional in circumstances where you haven't seen the
3 most recently disclosed transcripts.

4 LADY JUSTICE HALLETT: Very well. In which case, subject to
5 one or two matters, of which I shall give you chapter
6 and verse, which cause me question marks in relation to
7 the ISC minutes, I am not persuaded at present that it
8 is necessary or appropriate to provide onward
9 disclosure, but that is because I think there is better
10 material to provide Mr O'Connor and Ms Gallagher and
11 Mr Tibber with for them better to assist me, and that is
12 I would like consideration given, please, to what, if
13 any, albeit redacted or gisted ex post facto reviews
14 might exist which would show a virtually contemporaneous
15 to the bombings collation of the material available to
16 the Security Services in the build-up to the bombings.
17 So that is my approach at the moment. I prefer,
18 personally, going much further to the source before one
19 has the layers of interpretation and briefing put on
20 them.

21 MR ANDREW O'CONNOR: My Lady, I'm grateful for that. We
22 will do the work on that basis.

23 LADY JUSTICE HALLETT: But I do emphasise that I haven't had
24 as much time as I would want, as yet, to consider all
25 the transcripts, there are one or two matters I would

1 like you to discuss further with Mr Garnham or Mr Hall,
2 whoever it is, and it may well be that there will be
3 passages of the evidence that I will want Mr O'Connor
4 and Ms Gallagher to see, but it may be the matters can
5 be resolved.

6 But I am not saying that this is a blanket ruling
7 that the transcripts are not being disclosed. If I find
8 there are areas where I think I would like Mr O'Connor's
9 assistance in exploring them, then I am going to ask you
10 to consider that matter further with the
11 Security Services.

12 MR ANDREW O'CONNOR: My Lady, yes, we will pursue the matter
13 of the transcripts, we will also pursue the matter of
14 the contemporaneous document or documents. It may be
15 that there will be closed issues arising out of that
16 that we can return to next Friday.

17 My Lady, before we leave this, perhaps one also
18 ought to say this, that even if, as you indicate, the
19 transcripts are not disclosed wholesale now, as
20 Mr Patrick O'Connor indicated, they will continue to be
21 the subject of review while Witness G and the other
22 police officers give evidence.

23 LADY JUSTICE HALLETT: I intend to have the transcripts
24 available to me at all times whilst Witness G's evidence
25 is under consideration and I will continually review the

1 fact to ensure that I feel that all appropriate material
2 has been disclosed.

3 MR ANDREW O'CONNOR: I'm grateful, my Lady.

4 LADY JUSTICE HALLETT: I should say one of the reasons I am
5 particularly of this mind is that it does seem to me
6 from reading the transcripts that I suspect virtually
7 all of the material that would have been of interest to
8 the interested persons has come from the source material
9 that I want disclosed.

10 MR ANDREW O'CONNOR: My Lady, yes.

11 My Lady, then I think we can turn to the next item
12 on my note which relates to item 5 in --

13 MR GARNHAM: My Lady, before my friend does, do I take it
14 from what your Ladyship has seen that there are
15 particular documents that you have in mind?

16 LADY JUSTICE HALLETT: Mr O'Connor will explain, Mr Garnham,
17 yes. I think, Mr Garnham, given the level of the people
18 who gave evidence to the ISC, without going into any
19 more details than Mr Andrew O'Connor has done, I suspect
20 that it's plain that, given that they weren't acting on
21 their own knowledge, they have been acting on the
22 collation of material within the department, and it's
23 really going back to the most contemporaneous collation
24 of the material that I am saying we should get.

25 MR GARNHAM: I'm grateful, thank you.

1 MR ANDREW O'CONNOR: My Lady, a separate issue, the question
2 of the unredacted ISC report itself. This is raised in
3 my learned friend's skeleton argument.
4 My Lady, in my note, I have said this, that the
5 unredacted ISC report has been reviewed, both by you and
6 by us, as have the underlying documents that were relied
7 on for the purposes of composing the report, and really,
8 the redactions or the material under the redactions in
9 the ISC report fall into three categories: either they
10 are irrelevant for the purposes of our enquiries, in
11 which case, no more need be said about them; or they are
12 relevant and that material has now been disclosed
13 because, in fact, the same approach to sensitivity has
14 not been taken in these proceedings, simply, no doubt,
15 because of the passage of time and the change of
16 circumstances. So, for example, the references to Babar
17 are now open whereas previously they were redacted. So
18 that's the second category.
19 Or the third category is material that is relevant
20 but which remains sensitive.
21 So this is why we say that pursuing the material
22 which is underneath those redactions is really an
23 exercise which only leads to duplication of effort
24 because the material either is irrelevant or it's
25 already there or it's sensitive for the reasons which

1 have been explored in relation to the underlying
2 documents.

3 The submissions, or Mr O'Connor's written
4 submissions, refer to a few passages in the ISC report.
5 I won't take you to them now, but can I say that they
6 refer in the main to passages in the ISC report dealing
7 with matters such as Security Service resources,
8 funding, techniques, liaison with MI6, the absolute
9 number of targets at a particular time and the
10 categorisation of those targets.

11 In other words, most of these matters relate to
12 systems, in one way or another, and we would say, first
13 of all, those matters, speaking generally, are of highly
14 questionable relevance to your proceedings. If one
15 thinks back to the list of provisional issues that
16 relate to the Security Service, they are all of a highly
17 factual nature: did they see this man then? Should they
18 have drawn that conclusion, and so on?

19 One doesn't see, in those issues, reference to
20 systems employed by the Security Service, resources and
21 so on, as one does see with, for example, the London
22 Fire Brigade, the police and so on, in relation to
23 matters relating to the emergency response.

24 So, first of all, we query whether the matters under
25 those redactions are, in fact, of any relevance at all.

1 But to the extent that some or all of them are, we would
2 say clearly that they are the type of material that is
3 highly sensitive and some of it has already been
4 canvassed in PII applications before you; for example,
5 the PII application relating to the quarterly reports
6 dealt with the question of the absolute number of
7 targets and so on.

8 So on one or other or both of those bases, we say
9 that really this is a dead end and that nothing is going
10 to come of it.

11 LADY JUSTICE HALLETT: Mr O'Connor?

12 MR PATRICK O'CONNOR: My Lady, it's not appropriate, really,
13 to ventilate a cri de coeur, but that may be all we can
14 do as briefly as may be.

15 My learned friend, Mr Andrew O'Connor is quite
16 correct, the particular passages that we've highlighted
17 from the redacted reports relate to resources and
18 contemporaneous competing pressures on those resources
19 and the cri de coeur is really this: if those matters
20 have already been ruled upon as being subject to public
21 interest immunity, then of course, it is a dead end, and
22 the cri de coeur is simply your understanding that it is
23 very difficult indeed for us to see how we can assist in
24 examining the assertion of lack of resources and
25 competing pressures without further information, and

1 that is of considerable importance, because really there
2 are two limbs of answer to, as it were, the MI5
3 explanations, and really the first is, realistically, we
4 couldn't have put things together, the clues were too
5 thin and pressing -- the pressing urgency of active
6 plotters, that is the first limb of the answer.
7 The second limb is, even if we had done at the time,
8 it wasn't then an active plot and we had this rolling
9 programme of pressures with our limited resources such
10 as Operation Rhyme, et cetera.
11 Now, it's on that second limb and, indeed, to the
12 whole aspect -- that's really half of MI5's
13 explanations, relates to that, and it's going to be very
14 difficult for us to contribute meaningfully on that
15 without -- with all these redactions. That's all I say.
16 LADY JUSTICE HALLETT: Where do I go if one accepts, as
17 presumably one must, that if potential terrorists know
18 the resources of a national Security Service, it's going
19 to be of considerable assistance to them?
20 MR PATRICK O'CONNOR: I mean, we're not of course now
21 talking about the current position. We're talking
22 about --
23 LADY JUSTICE HALLETT: No, but if I'm looking into what
24 happened then, and then there are assurances that
25 certain things have happened since, there's going to be

1 a limit to how far we can go down the path of "But what
2 has happened since?", because that then leads you to
3 what their present resources are, and it's an area where
4 we're never going to be able to explore it fully.

5 MR PATRICK O'CONNOR: I understand.

6 Really, the cri de coeur is not that we can't
7 explore it fully. It's going to take considerable
8 ingenuity for me to find a way of exploring it really
9 hardly at all. We may find some limited lines of
10 questioning, but it's going to be difficult. But if
11 a ruling has been made that this information is subject
12 to public interest immunity, then that is it, and it is
13 a dead end. So cri de coeur is all it is.

14 LADY JUSTICE HALLETT: I think the best thing, Mr O'Connor,
15 is if you alert the Inquest team to the areas that you
16 would wish to pursue and to see whether or not you can
17 legitimately do that without offending any rulings I've
18 made. I suspect there are areas you can explore without
19 offending the rulings I've made. Obviously, the witness
20 will need to be alerted to the line of questioning on
21 that area, for fear of anybody going over the line. But
22 I suspect you will be able to ask some questions.

23 MR PATRICK O'CONNOR: May we think carefully about that and,
24 subject to other things overwhelming your team, if we
25 perhaps came back to them at the beginning of the week

1 before the hearings, so in ten or eleven days' time,
2 we'll have a discussion, so thank you for that
3 indication.

4 LADY JUSTICE HALLETT: Ms Gallagher looks puzzled. (Pause).

5 MR PATRICK O'CONNOR: Ms Gallagher's indicated that we
6 haven't, as it were, been put on the alert that this may
7 be an area for public interest immunity and, therefore,
8 had an opportunity to address you on the competing
9 factors. If I've started that with what I've called
10 a cri de coeur now, then perhaps we should have been
11 aware of this --

12 LADY JUSTICE HALLETT: We're not revealing any secrets, are
13 we, Mr O'Connor, for anyone to know that you wouldn't
14 want to say to any potential terrorist, "We are an
15 excise country and we spend so many thousands or
16 millions of pounds per year and we have so many agents"?
17 I mean, it's obvious.

18 So given that there are going to be extremes going
19 in either direction, that's really, I think, only the
20 area we're talking about. We're talking about specific
21 figures or any information of any kind of detail that
22 might be of assistance to potential terrorists.

23 MR PATRICK O'CONNOR: My Lady, I do understand. My Lady,
24 this does just trigger something I did want to mention
25 to you more generally. I don't know, just out of

1 general interest, or specifically as part of your task
2 if you have available to you the published authorised
3 history of MI5 written by the Professor from Cambridge,
4 Mr --

5 LADY JUSTICE HALLETT: You're going to provide me with some
6 bedtime reading, are you, Mr O'Connor?

7 MR PATRICK O'CONNOR: It is a thousand pages long. A lot of
8 it is Boys' Own stuff from the First World War, but
9 there are a few hundred pages relating to recent years
10 and it's written by Professor Andrews from
11 Cambridge University, it's got a foreword by the current
12 Director General, Jonathan Evans.

13 Generally, and subject to any objections, it is
14 quite an interesting read. It covers Operation Crevise.

15 LADY JUSTICE HALLETT: I think somebody had better -- I'm
16 not going to suggest give it to me as a gift, but can
17 someone get hold of a copy?

18 MR PATRICK O'CONNOR: We'll wrap it in red ribbon and send
19 it. My Lady, why I've said that, why your comment
20 triggered it in my mind is that, actually, there they
21 give specific figures at various times for the number of
22 employees in MI5. They do.

23 LADY JUSTICE HALLETT: In which case, I want to see it
24 sooner rather than later, if I may, Mr O'Connor.

25 MR PATRICK O'CONNOR: They actually do. I don't have my

1 notes with me, but in principle, the situation my Lady
2 posited is not so sensitive.

3 LADY JUSTICE HALLETT: Let me see it and then I can see
4 whether or not I have ruled in a way that I want to
5 reconsider. We'll see.

6 MR PATRICK O'CONNOR: But we will get a copy to you. It's
7 available in all good bookshops and --

8 LADY JUSTICE HALLETT: Should I be asking the team to get
9 one, so it comes out of that budget, rather than for
10 fear of receiving a present?

11 MR PATRICK O'CONNOR: I leave that to you, my Lady. I hope
12 this has not been unproductive.

13 LADY JUSTICE HALLETT: No, no, I think, by the sounds of it,
14 that is some useful preliminary reading for me.

15 MR PATRICK O'CONNOR: Yes, I think it might be, carefully
16 selected from whenever, from -- there is actually
17 a chapter, I think, headed -- the sort of lead-up to
18 the -- it's called "Holy Terror" and it's the emergence
19 of Islamic terrorism pre-9/11, and then it takes it
20 through. It's probably 100 to 150 pages max.

21 LADY JUSTICE HALLETT: Thank you very much.

22 MR PATRICK O'CONNOR: My Lady, I don't know if --

23 MR GARNHAM: I was only going to say my Lady, that as long
24 as the purchase comes out of Mr Patrick O'Connor's
25 pocket personally and not out of Ms Gallagher's, we

1 would have no objection.

2 LADY JUSTICE HALLETT: It sounds like divide and rule.
3 Somebody's already been on the internet, but I'd better
4 not name the company, although I have used them quite
5 frequently, £15.78. Can our budget stretch to that?

6 MR ANDREW O'CONNOR: My Lady, there are only two matters
7 remaining on my list of issues and they are two issues
8 raised by Mr O'Connor in his skeleton of today.

9 I hope we can deal at least with the first one
10 fairly briefly. Mr O'Connor has a number of queries
11 about transcripts of the audio product of the
12 21 February, 23 March and 28 February. Those are highly
13 detailed queries and can I simply say that we will take
14 them away, we will seek the assistance of the
15 Security Service and we will endeavour to give guidance
16 and assistance in relation to those queries.

17 There is one thing I can say, which is that,
18 certainly as far as 21 February is concerned, at least
19 part of the need for assistance arises from the
20 inability of Mr O'Connor and his team to identify
21 a number of transcripts which they think exist but which
22 they can't find in the disclosure, and what I can say is
23 that a number -- I think at least one or two -- further
24 transcripts of the 21 February audio product have been
25 disclosed in the course of the last day or so.

1 That, of course, is the audio product in respect of
2 which there are a great number of different transcripts,
3 but there are one or two further that we've received and
4 which we will make sure he gets and we will explain in
5 responding to his query.

6 LADY JUSTICE HALLETT: On the question of transcripts, sorry
7 to interrupt, have you had a chance to compare and see
8 the BBC News bomber transcript?

9 MR ANDREW O'CONNOR: My Lady, Mr Vassell-Adams has now gone,
10 but I didn't have a copy of whatever it was he showed
11 me.

12 LADY JUSTICE HALLETT: Mr Smith will hand you my copy.

13 MR ANDREW O'CONNOR: May we take that away and build it into
14 the piece of work that needs to be done?

15 The second matter arising from Mr O'Connor's
16 submissions is perhaps worth looking at. If you have
17 his skeleton argument there it's at paragraph 9.

18 You will recall, my Lady, the gist of what
19 Mr O'Connor has described as the Saddique and Imran
20 gist. What one finds at paragraph 9 is a series of
21 queries relating to that gist.

22 My Lady, this is the type of process that I said at
23 the beginning is, in our submission, really valuable
24 because it enables queries of this nature to be dealt
25 with in writing rather than the witness being put on the

1 spot and possibly needing an adjournment in order to
2 consider them.

3 Can I say that we will take those queries away? We
4 will clearly have to consult with the Security Service
5 about the extent to which, in their view, they can be
6 answered. It may well be that we will have to return to
7 those matters before you in court next Friday and you
8 will be able to hear oral submissions in closed as to
9 what response can be given to those queries that have
10 been raised by Mr O'Connor.

11 Can I say this, though, that we do, I think, intend
12 that hearing next Friday to be an entirely closed
13 hearing. There is a certain amount of administrative
14 inconvenience in trying to have an open and closed
15 hearing on that day. So to the extent that Mr O'Connor
16 wishes to elaborate his submissions that are set out at
17 paragraph 9, it would be, I think, administratively
18 convenient if he could do that today.

19 LADY JUSTICE HALLETT: I should say, Mr O'Connor, that
20 before I even saw Mr Patrick O'Connor's comments, some
21 of these concerns I had already expressed.

22 MR ANDREW O'CONNOR: Yes.

23 MR PATRICK O'CONNOR: My Lady, I've nothing further to say
24 on that.

25 LADY JUSTICE HALLETT: I'm not surprised by your response,

1 Mr O'Connor, if I may say so. I understand your use of
2 the word "delphic". I'll do what I can to make it less
3 delphic.

4 Mr Garnham, do you have anything to add on that?

5 I think it's a matter for Mr Hall, Mr O'Connor and you
6 to discuss further.

7 MR GARNHAM: It probably is.

8 LADY JUSTICE HALLETT: I think you know that I suspected
9 this might be the case and I think there are ways
10 through it.

11 MR GARNHAM: There are circumstances in which "delphic"
12 would come as a compliment, but it may need to be
13 reconsidered.

14 LADY JUSTICE HALLETT: Thank you.

15 MR PATRICK O'CONNOR: My Lady, those are all the matters
16 I wish to raise. I don't know if there are any matters
17 that anyone else wishes to raise?

18 LADY JUSTICE HALLETT: Mr O'Connor?

19 MR PATRICK O'CONNOR: My Lady, simply on the extremely
20 condensed separate document we provided listing the
21 disclosed transcripts and connecting or at least putting
22 them next to the transcripts referred to in the ISC2
23 report or in Witness G's statement, on that topic we're
24 grateful to hear that any further transcripts are being
25 disclosed to us, but of course, the central point, which

1 I'm sure Mr Andrew O'Connor is accepting, is that we
2 must be able to make a connection between what
3 transcripts are being referred to in the evidence and in
4 the ISC2 report and the transcripts which are on
5 Lextranet, and that's what we can't do because, on the
6 one hand, ISC2 and Witness G's statement don't give us
7 any handle by which that can be done, they don't give us
8 reference numbers or anything and, on the other hand,
9 the Lextranet disclosed transcripts don't provide us
10 actually with dates of when they were produced.

11 So it's that connection that's critical.

12 My Lady, then two further small points. We have
13 been assured that a legible copy of Hasina Patel's diary
14 has been put on Lextranet. This is what is there now,
15 my instructing solicitor printed out last night. It is
16 still illegible. So if it's been improved, it's still
17 not working.

18 LADY JUSTICE HALLETT: I think I'm going to leave you to
19 discuss that with Mr Smith, Mr O'Connor.

20 MR PATRICK O'CONNOR: I understand, and, my Lady, just
21 finally, Mr Tibber provided, basically to all who wanted
22 it, his schedule of code names with identities, with
23 many gaps, and asked for assistance to fill in some of
24 the gaps as best could be done. We've had an answer,
25 but it doesn't actually add anything.

1 So we would be grateful for -- this has been
2 outstanding for some time now.
3 We've received a redacted list and the problem is
4 that the redactions precisely match the gaps. So we've
5 got nowhere on this, and we would be grateful, because
6 basically reading the disclosed logs which contain the
7 code names obviously is very difficult unless one has
8 the most information that can be given to us about who
9 those code names refer to.

10 LADY JUSTICE HALLETT: Mr O'Connor, those submissions were
11 all directed at counsel.

12 MR PATRICK O'CONNOR: I'm sorry, I'm sorry.

13 LADY JUSTICE HALLETT: I'm not surprised because that's to
14 whom they should be directed. I think if you have any
15 real problem with that, let me know, but it doesn't
16 sound to me as if it's not a matter -- it's a matter
17 that can be resolved.

18 MR PATRICK O'CONNOR: I quite understand, thank you very
19 much:

20 LADY JUSTICE HALLETT: Mr Skelt, you've sat there very
21 quietly, I'm terribly sorry, because, of course, you
22 were interested in the ISC reports. Did you have
23 anything you wished to say? I assumed you would have
24 made yourself known?

25 MR SKELT: I would have done, but I have no observations to

1 make contrary to any order that's been made, but thank
2 you for asking.

3 LADY JUSTICE HALLETT: Thank you. Are there any other
4 matters we need to deal with this afternoon?

5 Thank you all very much.

6 (3.40 pm)

7 (The inquests adjourned until 11.00 am on Monday,

8 7 February 2011)

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