

Coroner's Inquests into the London Bombings of 7 July 2005

Hearing transcripts - 11 March 2011 - Morning session

1 Friday, 11 March 2011

2 (10.00 am)

3 LADY JUSTICE HALLETT: Mr Keith?

4 MR KEITH: My Lady, there were one or two matters which

5 I believe remain to be addressed from yesterday.

6 LADY JUSTICE HALLETT: Mr Morton?

7 MR MORTON: My Lady, yes, there were two matters that were

8 left rather sort of hanging in the air at the end of

9 yesterday and I wonder if I might take a few moments to

10 deal with them.

11 LADY JUSTICE HALLETT: Of course.

12 Submissions by MR MORTON

13 MR MORTON: The first is what became known as recommendation

14 (x), and the second matter was Mr Taylor's email, which

15 we've now seen, and hadn't, in fact, seen yesterday.

16 My Lady, recommendation (x) was crafted somewhat on

17 the hoof yesterday, but one sees from the transcript

18 that you are to be invited to make a recommendation to

19 the effect that recommendations on rule 43 matters be

20 taken seriously, and even assuming for the moment that

21 you had a power to make such a recommendation -- I'm

22 going to submit in a moment you don't -- but even

23 assuming you did, such a recommendation, in my

24 submission, would be wholly unnecessary, and the reasons

25 are obvious.

1 The first is it goes without saying that you've been
2 given assurances, in any event, that your
3 recommendations will be taken seriously, as, of course,
4 they will be. You've accepted those assurances. And in
5 any event, the amended rule 43 itself makes provision to
6 monitor implementation.

7 So we say, even if you had the power, you shouldn't
8 exercise it, but more fundamentally perhaps, in any
9 event, there's no evidential basis to make
10 a recommendation in the context in which it's been
11 suggested.

12 My learned friend Ms Gallagher suggested
13 yesterday -- it's at page 168, line 3 -- that you had
14 heard evidence of the lengthy delay of more than
15 a decade in implementing the recommendations of
16 Sir Desmond Fennell's inquiry. My Lady, in our
17 submission, that's simply not right.

18 Sir Desmond's report, which I don't think, in fact,
19 finds itself into the many thousands of pages on
20 Lextranet, runs to 248 pages and he made 157
21 recommendations.

22 In general terms, you've heard no evidence at all
23 about the steps that were taken to implement
24 Sir Desmond's recommendations.

25 Mr Dunmore of Transport for London was asked about

1 one recommendation, recommendation 111, which relates to
2 the compatibility of the BTP and LFB radios in
3 Underground stations, and tied to the questions that he
4 was asked was a reference to a paragraph in the body of
5 the report which makes a slightly different point, in
6 fact, not reflected in the recommendations.

7 At paragraph 26 of chapter 16, Sir Desmond said in
8 the course of the report that London Underground radios
9 should be compatible with the emergency services' radios
10 in Underground stations.

11 So the issue that was in evidence with Mr Dunmore
12 was about compatibility of the radios, and he dealt with
13 that, 8 February, at page 24, and he explained in his
14 evidence that, following Sir Desmond's report, all 125
15 Underground stations -- by that I mean sub-surface
16 stations -- by 1991, all 125 sub-surface stations had
17 station radios in place that could be used by BTP and
18 LFB as well as London Underground.

19 That system was not made interoperable because that
20 was not thought to be desirable.

21 You've heard evidence upon that in a more recent
22 context as well.

23 More generally, Chief Inspector Short dealt with the
24 history of interservice and LUL radios in the period
25 after Sir Desmond Fennell's report, but the underlying

1 point, my Lady, is this: that CONNECT radio, and Airwave
2 radio was not introduced as a response to
3 Sir Desmond Fennell's report, and in any event, my Lady
4 can take judicial notice of the fact that it's most
5 unlikely that the digital technology on which CONNECT
6 and Airwave is based would have been available at the
7 time of Sir Desmond's report or in the early 1990s, in
8 any event.

9 So CONNECT was introduced as part of, as one would
10 expect, a continuing and developing desire to improve
11 radio communications underground.

12 Now, it is right to say that there was delay or some
13 delay in the introduction of CONNECT. Mr Collins dealt
14 with that in his evidence, 8 February, page 91.

15 But -- I'm not going to repeat the evidence, but
16 you'll be aware it was a huge project, not only
17 technologically but also financially, it was the largest
18 PFI let at the time.

19 So we submit, my Lady, that there's no evidential
20 basis for the recommendation, even if it were, in other
21 respects, a desirable recommendation, and I said I would
22 make the point that you have no power to make the
23 recommendations sought and I'll do that briefly, if
24 I may.

25 First and foremost, rule 43 should not be used as

1 a means of circumventing rule 36, and you've already
2 heard submissions on that and I'm obviously not going to
3 repeat them. But the preconditions for a recommendation
4 under rule 43 are that there are continuing
5 circumstances creating a risk of other deaths. So
6 you're looking at the position today.
7 What here is said to be the continuing circumstance?
8 I simply don't know. That's not been explained. But
9 there is none.
10 So, in my submission, there is no power here, even
11 if you were otherwise minded to make the recommendation.
12 So, my Lady, that's all I was going to say about
13 that, and then I was going to move very quickly to deal
14 with the points Mr Taylor has raised and that you raised
15 with me yesterday, if you would like me to do so.
16 LADY JUSTICE HALLETT: Sorry, just before you move on,
17 Mr Morton -- I do understand it's possibly -- definitely
18 my fault that this hare was set running --
19 recommendation 119, I appreciate it wasn't directed at
20 the London Underground, it was directed -- this is
21 Sir Desmond Fennell, or Desmond Fennell as he then
22 was -- the London Fire Brigade must improve the means of
23 radio communications between firefighters below ground.
24 Now, that, of course, they couldn't do without
25 London Underground's involvement.

1 MR MORTON: Yes.

2 LADY JUSTICE HALLETT: What happened after the
3 Desmond Fennell report to improve the radio
4 communications below ground, which, as I understand it,
5 would be in the tunnels, or are we still talking
6 platform?

7 MR MORTON: Certainly the stations. Whether it extends into
8 the tunnels, I'm not so sure. The answer to that is the
9 answer given to you by my learned friend Ms Boyd
10 yesterday, which was the introduction or extension of
11 the leaky feeder system from the RVP points down to the
12 station platforms, as I understand it, and I am just
13 checking I have that right. Yes, I have.

14 LADY JUSTICE HALLETT: So "below ground" is taken to mean to
15 the platforms? Not to the tunnels?

16 MR MORTON: I think that's right, but I'm slightly nervous
17 about giving evidence on this. But that's my
18 understanding.

19 LADY JUSTICE HALLETT: Right.

20 MR MORTON: Of course, one bears in mind that Sir Desmond's
21 report was about a fire in a station and the
22 recommendations were directed to stations. But that's
23 my understanding.

24 LADY JUSTICE HALLETT: Thank you. Right, Mr Taylor's email?

25 MR MORTON: Yes, my Lady. Mr Taylor raises a number of

1 points, only some of them relate to Transport for
2 London.
3 My Lady raised with me yesterday that Mr Taylor was
4 concerned that the new CONNECT radio system was not as
5 reliable or as resilient as the evidence had otherwise
6 suggested.
7 In fact, Mr Taylor is referring in his email, not to
8 the CONNECT radio system, but the Airwave radio system,
9 which, of course, you know the difference and I'm
10 obviously not going to explain it now.
11 But we do recognise that the Airwave, when it
12 operates underground, utilises the CONNECT system.
13 But so far as we are aware, there is no evidence of
14 unreliability or problems with it, and certainly we
15 think that there's no evidence before my Lady to suggest
16 otherwise.
17 You raised with me the question of base stations,
18 and that's also referred to at paragraph 3(c) of the
19 submissions of the British Transport Police.
20 Base stations, in this context, are being raised in
21 relation to Airwave, not in relation to CONNECT. You
22 heard the evidence in relation to CONNECT that there is
23 no shortage of channels. I think Mr Dunmore dealt with
24 that, 8 February, page 84.
25 BTP are lobbying for additional base stations. We

1 will do all that we can to cooperate with them. We have
2 no difficulty at all in assisting in any way that we
3 can, if we can.

4 LADY JUSTICE HALLETT: So they are lobbying for more base
5 stations in tunnels?

6 MR MORTON: In relation to Airwave.

7 LADY JUSTICE HALLETT: So that the Airwave system can, as it
8 were, log on to the Underground system?

9 MR MORTON: No, it can do that already. It can do that
10 already.

11 LADY JUSTICE HALLETT: I appreciate that, but at one base
12 station.

13 MR MORTON: That has a limited number of channels. I think
14 it's four or five, I'm not quite sure about the figure.
15 But an increase in the number of base stations would
16 increase the number of channels that are available.

17 LADY JUSTICE HALLETT: Because I heard evidence about it
18 wouldn't matter if one base station were knocked out
19 because it would link on to the next station, but that's
20 a different point.

21 MR MORTON: That's a different point.

22 LADY JUSTICE HALLETT: This point is about channels.

23 MR MORTON: Correct, yes.

24 LADY JUSTICE HALLETT: Therefore, the BTP are asking for
25 a recommendation that more base stations are installed

1 underground and in tunnels to increase the number of
2 channels?

3 MR MORTON: To increase the number of channels or capacity.

4 LADY JUSTICE HALLETT: On Airwave?

5 MR MORTON: Correct.

6 LADY JUSTICE HALLETT: So that would involve cooperation
7 between London Underground --

8 MR MORTON: Absolutely, yes.

9 LADY JUSTICE HALLETT: -- and all those who use the Airwave
10 system?

11 MR MORTON: Absolutely, yes. I'm told that that's a matter
12 that's presently being considered by the Home Office.

13 LADY JUSTICE HALLETT: They're coordinating --

14 MR MORTON: I think the request for additional base stations
15 and, I assume, implicit in that request for additional
16 funding.

17 LADY JUSTICE HALLETT: Do we take it that the person
18 responsible for the funding is going to be the body
19 responsible for the funding for London Fire Brigade,
20 BTP, Met Police, London Ambulance Service?

21 MR MORTON: Well, I don't know the answer to that, my Lady.

22 LADY JUSTICE HALLETT: Yes, but that's the sort of shape of
23 things?

24 MR MORTON: Yes.

25 LADY JUSTICE HALLETT: Very helpful, Mr Morton, thank you.

1 MR MORTON: I've almost finished, my Lady. I raised with
2 you yesterday while I was on my feet, and I've confirmed
3 it overnight, that more generally in relation to any
4 concerns Mr Taylor has about the CONNECT radio system,
5 I indicated to you that I thought Mr Collins had said in
6 evidence that TfL continues to keep under review and
7 assess the reliability and resilience of the CONNECT
8 system. In fact, that was at paragraph 25 of his
9 witness statement. I don't think he was, in fact, asked
10 about it, so it won't feature on the transcript. But
11 there he makes the point that, in fact, in 2011, there
12 will be a software upgrade which will improve resilience
13 and connectivity of CONNECT further.

14 Then finally, Mr Taylor raises the question of
15 tunnel telephones and how they operated or didn't
16 operate on the day.

17 Again, this was a matter dealt with by Mr Dunmore in
18 his witness statement at paragraph 21. It was not dealt
19 with in oral evidence. But in summary, Mr Dunmore
20 indicated, and would have said, had he been asked, that
21 at Aldgate and Edgware Road neither driver attempted to
22 use the tunnel telephone but there's no evidence either
23 way as to whether it would have operated or whether it
24 was damaged as a result of the blast.

25 At King's Cross, Mr Nairn did try to use the tunnel

1 telephone but it did not work, and we assume that that
2 was because of the blast, but of course, as you've now
3 heard, all drivers carry portable CONNECT radios and
4 would now be able to communicate, one hopes,
5 sufficiently.

6 So, my Lady, I have cantered through that rather,
7 but I hope that deals with the points that were left
8 hanging.

9 LADY JUSTICE HALLETT: Thank you very much.

10 MR COLTART: I'm in my Lady's hands as to whom you'd like to
11 hear from first?

12 LADY JUSTICE HALLETT: It depends what issue you're about to
13 raise. If Ms Boyd is about to raise issues following on
14 from Mr Morton, then I think I'd rather go there.

15 MR COLTART: I am too, but I am entirely in my Lady's hands.

16 LADY JUSTICE HALLETT: Let's see what the organisations say
17 first, Mr Coltart.

18 Yes, Ms Boyd?

19 Submissions by MS BOYD

20 MS BOYD: My Lady, can I take it very briefly?

21 Just so that there's no misunderstanding, the
22 recommendation in relation to the London Fire Brigade
23 arising out of the Fennell Report was to improve
24 communications below ground, which involved platform
25 level. There was no suggestion that it should be

1 extended into the tunnel, and those recommendations
2 should not be interpreted in the light of what we know
3 happened on 7/7.

4 My Lady, that recommendation was complied with
5 promptly and the leaky feeders were extended to platform
6 level, as your Ladyship heard. May I refer
7 your Ladyship to the evidence of Mr A'Court, Day 71, and
8 in particular pages 153 to 154, and he dealt fully with
9 that.

10 My Lady, the second issue arising from the
11 recommendations, as your Ladyship has been told by
12 Mr Morton, related to the compatibility of radios
13 between BTP, LUL and Fire Brigade.

14 My Lady, I don't intend to give evidence about that,
15 but it was dealt with very fully in the
16 Operation Pendulum report annexed to Mr Short's,
17 Inspector Short's, statement, and he was referred to
18 that in evidence by Mr Gibbs, and that report outlines
19 the difficulties in achieving compatibility limited by
20 the allocation of channels, technology and desirability.
21 So the recommendation was complied with so far as
22 the parties were able to do that, and he also outlines
23 how the digital technology subsequently became available
24 following a review, I think, in the 1990s by the
25 Home Office, and then, eventually, the Airwave

1 technology became available.

2 My Lady, again, so far as the Fire Brigade is
3 concerned, that was directed under the Firelink project,
4 which is also dictated by DCLG, the Government
5 department responsible for funding as opposed to the
6 Home Office so far as the London Fire Brigade is
7 concerned.

8 LADY JUSTICE HALLETT: Right.

9 MS BOYD: My Lady, I hope that clarifies the matter.

10 LADY JUSTICE HALLETT: Thank you very much.

11 MS BOYD: Thank you.

12 LADY JUSTICE HALLETT: Mr Coltart?

13 Submissions by MR COLTART

14 MR COLTART: My Lady, in a sense, there are two separate but
15 connected issues, which have been put before the court.
16 The first relates to the Fennell recommendations and
17 the second relates to the extent to which a need had
18 separately been identified to extend radio coverage into
19 the London Underground tunnels.

20 In relation to the Fennell Report, my Lady has seen,
21 I think, an email, which I sent to Mr Smith overnight
22 and which has been copied to all the parties, and
23 a further recommendation which he made, to which no
24 reference has been made this morning, was recommendation
25 116:

1 "Station staff shall be issued with radios. Station
2 radio equipment shall be made compatible with that used
3 in the running tunnels."

4 It's not entirely clear on the face of it as to what
5 Sir Desmond intended by that, and not a great deal of
6 assistance can be gleaned from reading chapter 16 of his
7 report from which it came. But in a sense, in our
8 submission, the court doesn't need to concern itself
9 with the interpretation of Fennell and whether there was
10 a failure or not to implement those recommendations,
11 because on the evidence which you have received from
12 Chief Inspector Short and others, by the late 1990s,
13 a need had been identified to extend radio coverage into
14 the tunnels.

15 The contractual negotiations and attempts to
16 progress matters with the Home Office and with the
17 Ministry of Transport did not proceed swiftly, for all
18 the reasons which you've heard, and even though specific
19 concerns on this topic had arisen out of, for example,
20 Operation Osiris in September 2003, the plain fact is
21 that, come July 2005, there was no handheld radio
22 capability within the tunnels other than that which
23 would have been made available through the specialist IT
24 vehicles available to the emergency responders, and
25 my Lady has heard evidence as to why it was that there

1 was delay in getting those vehicles to the scene.

2 So there is plenty of evidence on the topic, quite
3 separately from Fennell. That's why, in a sense, the
4 two issues are not necessarily both requiring
5 resolution.

6 LADY JUSTICE HALLETT: But the fact that a need had been
7 identified and, four or five years later, the need had
8 not been addressed in the sense that there hadn't been
9 a fully implemented Airwave CONNECT system does not mean
10 that I should adopt recommendation (x) that says my
11 recommendations are to be taken seriously, because that
12 has to be premised on the basis that
13 Sir Desmond Fennell's recommendations weren't.

14 MR COLTART: I agree.

15 LADY JUSTICE HALLETT: And there's no evidence, I'm told,
16 that they weren't taken seriously.

17 MR COLTART: Certainly there's been some evidence about
18 recommendations 111, which is compatibility, and 119,
19 which is the London Fire Brigade communications below
20 ground. It's right to say that my Lady hasn't heard any
21 evidence about recommendation 116.

22 LADY JUSTICE HALLETT: I think it goes to the -- I suspect
23 that you were drafting on the hoof between you
24 yesterday, and does it not come to this, Mr Coltart:
25 that one can only go so far in criticising organisations

1 and Government departments that are trying to create and
2 implement a very complex project, but one can say that
3 once a need that relates to the lives of millions of
4 passengers is identified, then somebody has to bang
5 heads together. I mean, that's really as far as one can
6 go, isn't it?

7 MR COLTART: Yes.

8 LADY JUSTICE HALLETT: That doesn't amount to
9 a recommendation in terms of rule 43. It may amount to
10 a side swipe.

11 MR COLTART: In addition, everyone present has had the
12 opportunity to hear it in any event. Thank you.

13 LADY JUSTICE HALLETT: Do you wish to press recommendation
14 (x) in those circumstances?

15 MR COLTART: No, thank you.

16 LADY JUSTICE HALLETT: Ms Gallagher, you are the one who
17 I think was partly forced to do some drafting on the
18 hoof. I don't really think you can press recommendation
19 (x).

20 MS GALLAGHER: No. Of course, it was drafted during the
21 break between all five of us, but, my Lady, we would
22 draw your attention to paragraph 2.6 on the guidance to
23 coroners for changes to rule 43 which makes it clear
24 that in the amended rule the coroner still continues to
25 have discretion in relation to the information that can

1 be included in the reports in the way in which you draft
2 it.

3 In terms of the side swipe, even if there is not
4 a specific recommendation, there is, of course, nothing
5 to stop you making reference to the background context
6 and this particular background context, in general
7 terms, based on the evidence, before you move on to any
8 recommendations you might wish to make.

9 LADY JUSTICE HALLETT: Thank you.

10 Now Mr O'Connor, I think, Mr Patrick O'Connor.

11 Submissions by MR PATRICK O'CONNOR

12 MR PATRICK O'CONNOR: My Lady, thank you.

13 My Lady, it would be a profound consolation for all
14 the bereaved represented before you --

15 LADY JUSTICE HALLETT: Sorry, do you want to pause,
16 Mr O'Connor? It's not your fault. Not surprisingly,
17 people wish to move on and obviously it's important what
18 you say. (Pause).

19 Right, I think we're ready, Mr O'Connor.

20 MR PATRICK O'CONNOR: Thank you very much.

21 My Lady, it would be a profound consolation for all
22 the represented bereaved before you if they could make,
23 through your Ladyship, some contribution to the better
24 protection of national security and to the --
25 potentially to the saving lives in the future, and that

1 is why all of them unite in making submissions focused
2 upon your Ladyship's rule 43 jurisdiction, your
3 discretion to report the circumstances arising on the
4 evidence to the relevant persons who have power to take
5 action.

6 I should say, and it should be publicly
7 acknowledged, that all of the bereaved accept that, by
8 reason of the strong legal restrictions upon what can be
9 included in the formal verdict at the end of any
10 inquest, it is impossible to include in such a formal
11 verdict any conclusions you may have reached on the
12 evidence about preventability. That goes without
13 saying, because we are not urging that you do so, but we
14 feel it should be spelt out.

15 Now, my Lady, as I know, although I wasn't here,
16 heard submissions based upon rule 43 yesterday and at
17 various times heard submissions about rule 43 in
18 particular and its function and its interpretation.

19 I've done my best to ensure that nothing I just say
20 by way of preliminary remarks is reproducing what was
21 said yesterday, and I sincerely think it doesn't. There
22 are one or two short points which I really do not think
23 were dealt with and were raised yesterday.

24 My Lady, the obvious one, of which you will be well
25 aware, is that, of course, rule 43 has been

1 reinvigorated, if I may put it that way, by the
2 amendments recently introduced to the rule.
3 But, my Lady, may I invite your attention, please,
4 to a reasonably close examination of rule 43(1) (b):
5 "Where (a) a coroner is holding an inquest.
6 "(b) the evidence gives rise to a concern that
7 circumstances creating a risk of other deaths will occur
8 or will continue to exist in the future ..."
9 For completion's sake, I move on:
10 "... and, in the coroner's opinion, action should be
11 taken to prevent the occurrence or continuation of such
12 circumstances", then you may report the circumstances
13 which of course emphasises that this is an entirely
14 discretionary power.
15 Now, my Lady, going back to 43(1)(b), there are four
16 critical terms: the evidence, number one, which gives
17 rise to a concern, number two, that circumstances,
18 number three, creating a risk, number four, of other
19 deaths will occur or will continue to exist in the
20 future.
21 Now, may I just very briefly go through each one?
22 The evidence. Now, the evidence, my Lady, normally
23 in a proper rule 43 case will include evidence about
24 some perhaps failing, some perhaps not optimum
25 performance by a relevant body, which may or may not,

1 and very often did not, contribute to the cause of the
2 death and thus couldn't possibly be reflected within the
3 verdict.

4 So that's the -- the evidence will include evidence
5 about the past, perfectly normally and conventionally,
6 in just about every single reported case we see, it does
7 so.

8 But the evidence will also, of course, focus on the
9 present state of play, quite rightly, in order to
10 examine whether a rule 43 report is necessary.

11 So the evidence looks backwards, as it always does
12 in an inquest, and also looks at the present, gives rise
13 to a concern, that's the second term.

14 Now, the concern must exist at the time when the
15 coroner is making the report.

16 Thirdly, circumstances.

17 Now, the circumstances, the rule says, are
18 circumstances which either will occur or will continue
19 to exist.

20 Now, that means that the circumstances actually may
21 not exist at the time of the making of the rule 43
22 report. They very often will, but they do not have to.

23 That is because the rule has two branches: circumstances
24 that will occur or will continue to exist. The latter
25 relates to circumstances at the time of the making of

1 the report, but "will occur" plainly caters for
2 circumstances which could arise in the future but do not
3 exist at the time of the making of the report.
4 My Lady, that is where, in fact, the Secretary of
5 State's submission consistently suggests that there have
6 to be present circumstances at the time of the making of
7 the report. That's not quite right in law.
8 My Lady, fourthly, "creating a risk of other
9 deaths", well, obviously the risk must be in the future.
10 That's the whole point of rule 43.
11 My Lady, the next point, if I may, arises out of the
12 terms of rule 43A. I understand my Lady has the text of
13 these precise rules before you. That deals with the
14 procedure for responses, but may I direct your attention
15 particularly to 43A(4), (5), (6) and (7) and, indeed,
16 43B.
17 43A provides for the body to whom the report has
18 been sent, and who must give a response, making
19 representations to the coroner that the details of the
20 response should not be disseminated or published.
21 Representations can be made to that effect under
22 subsection (5). The coroner can act upon such
23 representations, if appropriate, and the coroner, in
24 that case, will prepare a summary of the response, no
25 doubt excluding any legitimate concerns about

1 confidentiality.

2 Now, my Lady, there are two points that arise out of
3 this. First of all, it demonstrates that certainly the
4 Security -- nobody is suggesting the Security Service is
5 exempt from a rule 43 jurisdiction or is even any kind
6 of a special case, because your Ladyship might think
7 that these provisions are particularly apt to provide
8 a safe and protected process for recommendation and
9 response in relation to a body like the
10 Security Service.

11 My Lady, the second significance of this arises out
12 of a few submissions in the Secretary of State's
13 skeleton argument. I give my Lady just the paragraph
14 references, paragraphs 21, 24 and 30.1, where the
15 Secretary of State makes the following point: that it is
16 unfair to -- or it may be unfair, all other factors
17 being taken into account, that the Security Service
18 should be invited to have recommendations that it
19 re-examines its procedures and responds where the
20 Security Service has been hampered, by reason of the
21 natural confidentiality of its current resources and
22 procedures, from presenting the full picture to the
23 inquest.

24 Now, my Lady, this process provides the safeguard
25 and the answer to that concern, and it means that

1 my Lady does not in any way tend not to make
2 a recommendation because a body like the
3 Security Service claims it has not been able fully to
4 explain its current systems.
5 Rule 43 is focused upon the evidence in the inquest,
6 43(1)(b), and my Lady must, we respectfully submit, have
7 regard to that and have regard to that only, and there
8 is certainly no jurisdiction to have, as it were,
9 a closed evidence process for this purpose where my Lady
10 takes into account confidential material, which has not
11 been introduced into open evidence, in order to decide
12 not to make a report, and any -- well, any complaint
13 that that may result in unfairness to a body like the
14 Security Service is entirely answered by subsections (4)
15 to (7), because there is the confidential channel for
16 a body like the Security Service to satisfy my Lady
17 that, for instance, further action is not necessary and
18 to explain its current systems fully.
19 So, my Lady, those subparagraphs -- forgive me, not
20 subsections -- subparagraphs of the rule provide
21 a closed process, provide for a closed process, as it
22 were, which is precisely what does not exist, as my Lady
23 rightly held, in relation to the inquest proper and
24 evidence in the inquest proper.
25 My Lady, of course, rule 43 reports are not

1 prescriptive. May I start, though, with our submissions
2 to my Lady? They can never be prescriptive, they're
3 submissions, and they are simply to seek to assist
4 my Lady. They can be, of course, rejected in whole or
5 in part, amended, adapted, but what's more important is
6 that rule 43 reports are themselves not prescriptive and
7 our proposed recommendations are deliberately couched
8 in, really, very restrained and cautious terms. They
9 are not telling anybody, any body like the
10 Security Service, how to do their job.

11 Now, my Lady, I, if I may, please, will now move on
12 to the specific recommendations which we advance, but
13 may I say again, because it is so important to everyone,
14 that the bereaved recognise the considerable successes
15 of the Security Service in preventing many attacks in
16 recent years and they also recognise the difficulties
17 and pressures inherent in their onerous duties.

18 My Lady, a review of the recommendations that are
19 advanced -- and forgive us that we haven't actually
20 numbered them, I mean, they are plain and in heavy type,
21 but, for convenience, may I just give an overview, as it
22 were, numbering them one to nine. There are nine of
23 them.

24 My Lady, the first two relate to improving
25 assessment procedures by means of having a formal

1 written structure and improving the review of
2 intelligence strands.
3 The third stands alone but affects many -- it
4 overlaps with many other of the proposed
5 recommendations, and that is that there should be
6 a re-examination of the practice of not keeping and
7 preserving contemporaneous records.
8 The fourth and fifth relate to computer systems.
9 The fourth relates to ensuring strands of intelligence
10 can be brought together, and the fifth seeking to
11 provide for greater access to information held on
12 computers by different agencies. The sixth and seventh
13 relate to seeking to provide for the accuracy and
14 completeness of information given to the Intelligence
15 and Security Committee for the purpose of its reports,
16 and the eighth and ninth relate to the handling of
17 photographs. The eighth relates to making sure the best
18 quality is used, and the ninth to their maximum
19 dissemination consistent with other policy
20 considerations.
21 May I then go to the first, which is really the
22 first two, I suppose, and can largely be taken together,
23 at paragraphs 9 and 18? That is that procedures be
24 improved in relation to assessing the risk posed by an
25 individual and that there should be a formalised written

1 structure for the making of such assessments.
2 My Lady will not -- if I'm wrong, my Lady will
3 instantly tell me, but I do anticipate that my Lady
4 doesn't wish me to take you to each of the references
5 which are made here in the transcript. I will try to
6 select as best I can.
7 That it is plain -- my Lady may very well remember,
8 as it were, the flow of the answers given by Witness G
9 on this topic on 22 February, where he accepted, as he
10 was bound to accept, but he willingly did so, the
11 considerable importance of the assessment process and
12 its importance to the effective allocation of resources
13 in light of the assessment.
14 Eventually, my Lady, the acceptance that, first of
15 all -- I'm looking at our paragraph 12 and that
16 reference -- there is an absence of standalone records
17 of the assessments, so that reasons are not recorded,
18 and -- I'm looking at our paragraph 13 -- that there had
19 been no recorded, structured operational system for
20 assessing threat.
21 Now, my Lady, we respectfully submit that this --
22 almost especially in the light of the evidence given
23 about the current state of play, and calls for
24 a restrained and modest recommendation to the
25 Security Service that they consider the improvement of

1 these procedures and the introduction of a formalised
2 written structure.

3 Perhaps, my Lady, at the heart of the answers about
4 the current system is a particular one page from the
5 transcript. My Lady, I hope has -- it may be a yellow
6 file to make it stand out which Lovells have
7 thankfully -- I'm very grateful to them -- prepared.

8 LADY JUSTICE HALLETT: It's the law of documents,
9 Mr O'Connor. My documents will never be in the same
10 colour or form.

11 MR PATRICK O'CONNOR: No, I'm sorry, at least the yellow
12 helps to make it stand out. I'm sorry my Lady just has
13 it in the uniform black.

14 My Lady, it's really this answer on the 22 February
15 transcript at page 91. These are internally paginated.

16 LADY JUSTICE HALLETT: So you want page 91 at the bottom,
17 you say?

18 MR PATRICK O'CONNOR: Forgive me, my Lady, no. I'm about to
19 give my Lady the file pagination, and it's page 74 at
20 the bottom.

21 LADY JUSTICE HALLETT: Thank you.

22 MR PATRICK O'CONNOR: This is really where Mr G explained
23 the change, which was -- had been described in the
24 second ISC report:

25

1 "Question: A substantial change?

2 "Answer: Yes.

3 "Question: Why ...?

4 "Answer: We now prioritise by operations, by groups
5 of individuals, rather than by individuals themselves,
6 and I think that is a better reflection of how Islamist
7 terrorism operates, rather than trying to do this on an
8 individual-by-individual basis.

9

10 "Question: Why does [that] ... make a difference?"

11 Asks my learned friend Mr Keith.

12 "Answer: Because it allows us within a broader
13 canvas to make better judgments about the allocation of
14 resources.

15 "Question: Is that because you can move them around
16 within the network more easily?

17 "Answer: That's right."

18 Then this question:

19 "Question: If that new position -- the new
20 approach -- had been in place in 2004, March, April,
21 might it have made a difference to the resources
22 dedicated towards the peripherals including D and E or
23 not?

24 "Answer: It might have done. If it had done, then
25 the likelihood is that resources would have been

1 allocated to the Scraw peripherals as a group and,
2 within that, UDMS D and E were not very significant."
3 Then there's an explanation about the twelve
4 principal targets of Operation Scraw and how they
5 merited the greater degree of investigative work and the
6 reason for that.

7 Halfway down page 92 of the transcript, 75 in our
8 file:

9 "Question: I appreciate, with hindsight, it's
10 difficult to compare, but are you confident now that
11 with a new system ... you gain a better overall coverage
12 of those in whom you're interested than you had at the
13 time of 2004?

14 "Answer: That is our belief.

15 "Question: So it's not just a question of more
16 resources, which you described earlier. The
17 investigative approach and the management of your
18 investigation is now better advanced?

19 "Answer: That's very much our judgment ..."

20 Now, my Lady, what we submit is plain from the
21 answer towards the bottom of page 74, the file
22 pagination, lines 21 to 24, is that actually this
23 different -- and it is accepted improved -- system would
24 not actually have made any difference to the assessment
25 of men D and E, and the problem is that they would still

1 have been assessed as peripherals even when one is
2 approaching it by way of an examination of groups rather
3 than individuals.

4 So the heart of the problem is the assessment which
5 we will come to, and it naturally does blend in with
6 this, in our later, further submissions on behalf of our
7 particular clients about the limited assessment of men D
8 and E. It actually would have made no difference.

9 LADY JUSTICE HALLETT: I'm sorry, Mr O'Connor, I'm not quite
10 following. The answer to your question was, had the new
11 approach been adopted it might have made a difference?

12 MR PATRICK O'CONNOR: Yes, but -- and then there's a big
13 "but", which is, yes, potentially it could because there
14 is more of a focus upon groups, but he adds that, within
15 peripherals as a group, UDMs D and E were not very
16 significant, and that's the heart of the problem which
17 this change would not have addressed.

18 LADY JUSTICE HALLETT: So the peripherals get a higher
19 priority but not those at the bottom of the ladder
20 within the peripherals, that's the point you're making?

21 MR PATRICK O'CONNOR: Exactly.

22 LADY JUSTICE HALLETT: So they're still being assessed, you
23 say, in the same way because they're staying at the
24 bottom of the ladder?

25 MR PATRICK O'CONNOR: That's right.

1 LADY JUSTICE HALLETT: I follow.

2 MR PATRICK O'CONNOR: My Lady, two further short points
3 before moving on to the next recommendation.

4 We do not think -- it's difficult to establish
5 a negative over many hundreds of pages of transcript,
6 but, my Lady, we do not think that Mr G ever asserted
7 that, though there is now a formal structure -- my Lady
8 will remember there are now letter categories which
9 there were not before -- but though there is a formal
10 structure, we do not think that Mr G ever spelt out that
11 it is a written formal structure. It may or may not be.
12 My Lady, we do have a slightly greater concern about
13 the following aspects of the Secretary of State's
14 skeleton argument.

15 Does my Lady have that, their closing skeleton
16 argument?

17 LADY JUSTICE HALLETT: Yes.

18 MR PATRICK O'CONNOR: I'm grateful, and their main one,
19 their first one, paragraphs 27.2, 3 and 4.

20 LADY JUSTICE HALLETT: Yes, sorry, paragraph?

21 MR PATRICK O'CONNOR: 27.2, 3 and 4. It's their page 9.
22 This is the Secretary of State's response to the
23 suggested recommendations about assessments, and it
24 explains:
25 "1. ... now prioritises by networks ... as ... 1A,

1 1B, 2, 3 and 4."

2 That is in evidence, we're sure about that.

3 But, my Lady, 2, 3 and 4, we do not think was given
4 in evidence.

5 27.2:

6 "This categorisation system is applied by a central
7 team which uses the same criteria for the prioritisation
8 of all investigations."

9 Now obviously the point of that, if it were in
10 evidence, is that it would tend to introduce consistent
11 decision-making. But we do not think -- we'll be
12 corrected, of course -- but if that isn't in evidence,
13 then the Secretary of State cannot rely on that
14 assertion.

15 Similarly with 3:

16 "The categorisation ... is formally reviewed every
17 three months during the Quarterly review, when
18 investigative desks and their managers brief senior
19 management on the status of the investigation."

20 My Lady, broadly speaking, a picture was given that
21 that's how quarterly reviews work. We accept that:

22 "The progress against objectives for the previous
23 quarter is reviewed and new objectives set where
24 appropriate. These meetings are written up,
25 disseminated and filed."

1 So query how much of that is in evidence. We don't
2 think all of it is.

3 27.4:

4 "In the case of new leads, these are also assessed
5 centrally. Leads are triaged and initial work includes
6 determining the credibility of the lead and ascertaining
7 any links to historic or current investigations, before
8 it is assigned a priority formally allocated to an
9 investigative team. This creates a home for all new
10 leads and safeguards against incoming intelligence not
11 being actioned."

12 Now, my Lady, no transcript reference is given for
13 these assertions. That may simply be an oversight, and
14 it may all be there. In which case, perfectly good
15 point and my Lady must take this into account. But if
16 it isn't, then those assertions we submit, under
17 rule 43, must be put out of account.

18 LADY JUSTICE HALLETT: Do I take it from what you're saying
19 that this is exactly the kind of -- or these are exactly
20 the kinds of improvements you would have argued for?

21 MR PATRICK O'CONNOR: Well, they would certainly -- they are
22 certainly improvements and they would certainly, if they
23 are in evidence, would tend to promote consistent
24 decision-making, which is the concern -- largely the
25 concern behind the absence of a written structure.

1 LADY JUSTICE HALLETT: You'd have -- if these are in
2 evidence and they are -- and/or they are now applied,
3 you would have a more formalised structure, which is
4 what you're arguing for, there would be a written
5 summary of decisions because they're going to be written
6 in the quarterly review, disseminated and filed, and you
7 have what you've been arguing for: leads being looked at
8 for links to historical current investigation?

9 MR PATRICK O'CONNOR: If this is working properly, it would
10 tend to achieve all of that, yes.

11 LADY JUSTICE HALLETT: So if this is working properly, and
12 if there's evidence, subject to all your provisos, what
13 would you add to this, you say, by way of a better
14 system?

15 MR PATRICK O'CONNOR: My Lady, since both first and second
16 recommendations are in restrained and tentative terms
17 that consideration be given to improve a formal -- and
18 provide a formalised written structure and (b) reviewing
19 previous strands, if that were -- if this were the
20 response to those recommendations, then it would be for
21 my Lady to assess, in the light of all perhaps even
22 additional closed material, whether that is sufficient
23 or not.

24 If I was to say anything more clear and defined,
25 I will be in danger of becoming too prescriptive and

1 perhaps --

2 LADY JUSTICE HALLETT: True.

3 MR PATRICK O'CONNOR: -- falling into the trap of telling
4 the Security Service how to do their jobs.

5 But, my Lady, this is the kind of exchange of
6 information which we submit rule 43A is precisely
7 calculated to provide, and that is then a substantial
8 reassurance for the future. Could be.

9 LADY JUSTICE HALLETT: Right.

10 MR PATRICK O'CONNOR: So, my Lady, turning then to the
11 second recommendation that really has blended very much
12 with our submissions that we have just made. That is
13 reviewing -- considering the procedures for reviewing
14 previous intelligence strands. It blends very much with
15 our third -- and I really would like to move on to that
16 because that is important -- the making of written
17 contemporaneous records of significant operational
18 decisions. Obviously, if that doesn't happen, reviewing
19 previous strands is significantly impaired.

20 Now, my Lady, so I do move on to that, if I may, our
21 third, and that's paragraph 23.

22 My Lady, the basic answer that that is not what
23 happens and was not what happened, is at the
24 22 February, pages 153 to 155, but I needn't take you to
25 it.

1 My Lady, it was plain, first of all, that this
2 absence of contemporaneous records applies very widely
3 indeed, and that is clear from 22 February, pages 155 to
4 156, because it applies not just to negative decisions.
5 One sees the point that you don't go round recording
6 everything you don't do, and that's -- but that's rather
7 a straw man, and conjures up the kind of newspaper
8 headlines about police officers and red tape.
9 Where you make a negative decision, where you assess
10 somebody as of low priority, then that can be recorded
11 and many positive decisions which are not now recorded
12 should be recorded. It seems that really the system
13 provides for such recording of positive decisions where
14 it requires by reason of legal procedures the obtaining
15 of a warrant, for example.
16 But otherwise, as Mr G accepted, pages 155 to 156,
17 many important positive decisions go unrecorded.
18 Now, my Lady, just to pick out, we, on the next page
19 and a half, set out many examples of where this came to
20 light in the evidence. There are really very, very many
21 references in G's evidence to his saying: well, there is
22 no contemporaneous record, but ... and to list them
23 would take a very long time.
24 But may I go to (c) on our page 4 which really we
25 submit, my Lady, we are entitled to be perhaps the most

1 concerned about, and that is the lack of any record of
2 the consideration and the assessment of men D and E in
3 this case.

4 We give the citation of where that is established,
5 and so, really, there is no record. Even referring to
6 the significance of D and E, that is -- because that's
7 a very important sentence -- my Lady, that's at page 39
8 of the transcript of 22 February:

9 "There are no standalone documents in which the
10 significance of D and E is actually referred to."
11 Now, my Lady, one factor which perhaps has not been
12 put into the balance yet in relation perhaps
13 particularly to that is that it is surely in the
14 interests of the Security Service itself that there be
15 such a contemporaneous record for the following reason:
16 that, if things go terribly wrong in the broader sense
17 and a terrorist attack succeeds, and there is then some
18 internal and/or external examination of the
19 Security Service's conduct, it is surely far better from
20 their point of view that there is a contemporaneous
21 record of an assessment, because a later created
22 document after the event can always have the taint that
23 it is overly defensive and self-serving, and that may
24 well be an unfair taint, because the later record may be
25 entirely accurate and consistent with what was the

1 former assessment, but there would be those who, rightly
2 or wrongly, may well think, "Well, you would say that
3 now, wouldn't you?", and that could be unfair on the
4 Service itself.

5 Now, my Lady, the consequences -- may I pick out
6 several consequences of this practice, which has been
7 defended and justified, quite vigorously, even as to the
8 current state of play.

9 The first -- and there are many, but the first
10 arises out of our paragraph (f), our subparagraph (f) on
11 page 5, that even an internal review such as we have
12 seen has to be prepared without the assistance of
13 contemporaneous documents and has to infer, sometimes
14 accurately, sometimes maybe not so accurately, as to
15 what the assessments must have been.

16 My Lady, secondly, within any large organisation
17 there has to be effective supervision of consistent --
18 the consistency and accuracy of assessments, and the
19 supervising managers looking at the performance, as they
20 must do, of any particular case officer will find it
21 much more difficult and awkward to do so without such
22 record-keeping.

23 In fact, Mr G was prepared to defend the prospect
24 that the supervisor would have to spend time, maybe
25 months later, going to the particular case officer and

1 asking him for their verbal recollection of what they
2 had done and why. Now, that is -- tends, first of all,
3 to potential inaccuracy and, secondly, tends to waste
4 time.

5 My Lady, thirdly, it is much more difficult in
6 consequence for strands of intelligence later to be
7 assessed and drawn together, and may I draw my Lady's
8 attention, please, to one perhaps quite concrete example
9 of this.

10 My Lady will remember that a desk officer, case
11 officer, had intuitively made a potential connection
12 between Ibrahim and Zubair and men D and E, not only
13 with them, but potentially with them, because, as it
14 were, of the northern link and, I hope rightly, we
15 immediately indicated to Mr G that that was commendable.
16 It turned out to be accurate, but that was a commendable
17 intuitive connection to make.

18 Now, there's no suggestion -- I'll give my Lady the
19 reference to that. It's the 23 February transcript at
20 page 89.

21 Now, my Lady, there is no suggestion that that
22 intuitive link is recorded anywhere, and it must fall
23 within the rubric of this general picture that things
24 like this were not recorded.

25 Now, if that is right, the fragility of such

1 a connection is plain and it may very, very easily be
2 lost to other officers. One need only think the
3 officer, six months later, may have forgotten it, it may
4 have drifted from his mind, particularly when working
5 under pressure. The officer may be absent through
6 illness or on vacation when it is needed to reassess
7 this material and bring them together. The opportunity
8 may be lost.

9 Now, that is a dangerous and wasteful fragility, and
10 that kind of thing surely should be recorded for there
11 to be an efficient service.

12 My Lady, next by way of consequence of course, as
13 has been demonstrated from the many errors that were
14 made, the Security Service is far better able to explain
15 itself to the Intelligence and Security Committee and
16 allay unjustified concerns later on.

17 My Lady, the current position was defended quite
18 vigorously as being potentially wasteful and distracting
19 from, as it were, the core function. We submit that is
20 a false dichotomy, potentially. If I hadn't added the
21 word "potentially" my Lady, I would be being
22 prescriptive, and that's wrong, and I would be tending
23 to tell the Security Service what the answer is. But it
24 potentially, my Lady, is a false dichotomy and it's an
25 oversimplistic approach to put on the one side an

1 extreme picture of being bound up by red tape. Thus no
2 record-keeping at all. That's not the answer to this
3 problem because we've demonstrated, we submit, how many
4 adverse consequences follow.

5 My Lady, it's not right for the Secretary of State
6 to submit, as is done, that the only time when such
7 records are needed is when there is some kind of outside
8 review after a successful terrorist attack. That's not
9 right, and we've given many examples of other justified
10 and important functions that such records can play.

11 My Lady, regarding collecting strands together again
12 and having records, perhaps this is better -- I was
13 about to make a submission, but it really arises under
14 the next recommendations, which relates to computer
15 records and the limits to G's assessment of the current
16 state of play.

17 May I postpone that for the moment, then, and move
18 on, please, to our recommendations 4 and 5 which relate
19 to recommending that consideration be given to whether
20 existing computer systems can be improved to ensure
21 strands of intelligence can be drawn together and,
22 fifthly, that greater access can be given between
23 agencies' computer systems and to information held
24 thereupon?

25 Now, my Lady, one particular answer comes, we

1 submit, to the fore here, and that is in the yellow file
2 for 21 February at pages 74 to 75 in the transcript, and
3 thus it is file pages 14 and 15.

4 Bottom of page 14, my Lady:

5 "Question: ... Putting aside the question of
6 hindsight, putting aside what was not known at the time,
7 do the systems allow you now, and did they then, to try
8 to collate these various strands of intelligence
9 relating to a name which had occurred, we now know with
10 hindsight, in seven or eight different aspects, so that
11 you can say, 'This is a worrying development. There is
12 a feature here. This name or a variant name is popping
13 up in a number of different places. There is something
14 here to investigate'?

15 "Answer: They may do, but it will really depend on
16 how unique the name is."

17 Then my Lady asks:

18 "Lady Justice Hallett: [To separate those things
19 out then and now] ... first of all, did the systems then
20 enable to you collate these various strands or is your
21 answer the same for both?

22 "Answer: They could have done. I mean, software
23 has improved over the years and this course of
24 searching, which is known as 'fuzzy searching', is
25 better now than it is then, but is still a long way from

1 perfect on common names."
2 Now, my Lady, we respectfully submit that G, who was
3 a very careful witness indeed, would not simply be
4 saying that to refer theoretically to the obvious fact
5 that computer systems can't run the world and computer
6 systems can't provide all the answers. What G is really
7 saying there, we respectfully submit -- and he is
8 a staff officer familiar with systems -- that was one of
9 his great merits as a witness -- is really saying there,
10 we submit, the computer resources that the
11 Security Service has now may well not be at optimum
12 level, and that that's what he may well mean from still
13 a long way perfect on common names.
14 My Lady, that's brought home from this reference to
15 the McDaid lift and he was asked on the same day, at
16 page 126, at page 32 in the folder pagination, having
17 been asked about the McDaid lift on the previous page,
18 the question is, top of transcript page 126:
19 "Question: That name, Sidique Khan, and of
20 11 Gregory Street, Batley, was certainly an identical
21 name to the name of the man in whose name the phone was
22 registered that had received a call from another
23 suspected extremist Mohammed Qayum Khan, but there was
24 then, it seems, and perhaps now, no flagging system or
25 no trigger that would have necessarily brought this --

1 these two pieces of information together?
2 "Answer: That's correct."
3 My Lady intervenes to clarify the two distinct
4 questions:
5 "Lady Justice Hallett: Again, two questions in one.
6 Not then, not now? Not then, but now different, or not
7 then, not now?
8 "Answer: Not then, not now, but a higher chance of
9 now than then."
10 And, my Lady, we give in our paragraph 31 a further
11 reference -- perhaps I needn't take you to -- to G, who
12 was being, we submit, quite realistic. He wasn't, in
13 this respect, in any respect, overstating the current
14 position. He seems to have been quite modest in saying,
15 well, it is easier and it is better today, but really
16 leaving open the clear impression that things could be
17 better.
18 LADY JUSTICE HALLETT: Was the impression, do you say, that
19 any system is going to be like this, given the modern --
20 the state of technology, or was the impression that, if
21 limitless resources were spent on the most advanced
22 computer software, that it would be possible?
23 I'm afraid it wasn't quite clear to me whether it's
24 "This is where we are technologically", or "This is
25 where we, the Security Service are technologically,

1 because this is all we have and we haven't got the money
2 to buy better".

3 MR PATRICK O'CONNOR: My Lady, that is precisely, perhaps,
4 the ambiguity, which in slightly different terms,
5 perhaps slightly less clear terms, I was trying to point
6 out in that previous answer, "It's still a long way from
7 perfect on common names", and we submit it is less
8 likely that G was making a general comment, as we say,
9 about the fact that computer technology can only ever go
10 so far.

11 It is less likely, he is saying that -- because, in
12 a sense, everyone knows that -- than that he was saying,
13 "Well, things aren't actually perfect and could
14 potentially be better". That's not --

15 LADY JUSTICE HALLETT: We didn't pursue it, and perhaps we
16 should have done, but Sidique Khan may or may not be
17 a common name. 11 Gregory Street, Batley isn't a common
18 address. It's a very specific address.

19 MR PATRICK O'CONNOR: My Lady, it is indeed, and indeed, may
20 I add in to that point that G, for instance, accepted --
21 my Lady may remember he referred to dates of birth, and
22 of course indicated that, where there is something as
23 specific as that, their systems work infinitely better
24 than just with a name. He was drawing that distinction.
25 My Lady, I agree, certainly the specific

1 Gregory Street Batley address, for instance, is --

2 LADY JUSTICE HALLETT: So you say, summarising the evidence,
3 essentially G was saying, "We, the Security Services,
4 don't have the most advanced computer technology which
5 would enable us to do this with greater ease", that's
6 what you're saying I should draw as a proper inference
7 from his evidence?

8 MR PATRICK O'CONNOR: Well, my Lady, may I take a slightly
9 more restrained -- and it may be I don't have to go that
10 far, that if my Lady, as it were, has a concern -- and
11 we submit there is plenty of concern here, or plenty of
12 basis for concern -- then these answers from G have not,
13 because of these ambiguities -- which may not be the
14 witness's fault, but this is the state of the
15 evidence -- this evidence may not be sufficient to
16 dissipate those concerns, they may be dissipated by
17 responses to a recommendation or may not be.

18 But, my Lady, certainly, for instance, may I just
19 take that last answer -- we've been looking here at
20 quite a specific thing and that was the McDaid stop on
21 the particular -- not the McDaid stop. The McDaid lift.
22 That little incident -- and I think the reason behind
23 the questioning -- and it was a very good test, if I may
24 say so; I wasn't putting the questions -- is: well, here
25 is a little piece of what might appear to be, at the

1 time, pretty insignificant information of itself, but it
2 may lie there for months or a few years, but it may
3 then, if it can be retrieved, become part of a network
4 of clues which may become very significant, and thus the
5 question is asked: well, what about this? Could this
6 kind of apparently insignificant information be flagged
7 up and actually -- and it is quite specific, because it
8 would give the vehicle, the name of the registered
9 owner, and the occasion. Now, the answer is actually:
10 not necessarily now.

11 Now, we submit that is sufficient basis for concern
12 because that's specific information.

13 LADY JUSTICE HALLETT: There's a limit to what I'm ever
14 going to be able to find out in open, because, of
15 course, rightly, as you said earlier, the
16 Security Services don't want to reveal what their
17 resources are.

18 MR PATRICK O'CONNOR: My Lady, one aspect of my learned
19 friend Mr Eadie's skeleton argument which is accurate
20 and extremely fair to everyone is that it is expressly
21 recognised that we respected those boundaries in our
22 questioning. If we'd have tried to penetrate further,
23 we'd have been trespassing and we didn't.

24 So, my Lady, rule 47A potentially.

25 Now, my Lady, on, as it were, greater access to

1 information held on the computer systems of other
2 agencies, we recognise here -- can I refer to our
3 paragraph 34 which refers to links between such
4 databases? And we recognise that when that word
5 "linked" is used, it's highly unlikely that that could
6 result -- and we don't intend it to result -- in some
7 kind of free-for-all where there are direct, accessible
8 links to the detailed information held on the databases
9 of different agencies and, my Lady, may I say that the
10 objections to that, that my learned friend Mr Hill
11 pointed out, at paragraph 14 of his closing skeleton
12 argument which raise, we agree, all sorts of potential
13 privacy and technical and confidentiality -- so we
14 absolutely agree.

15 So that's not what this is about. My Lady, it is
16 simply seeking to ensure that greater access to that
17 information can be achieved. Now, that can be achieved
18 in many ways short of some kind of free-for-all, direct
19 links, which can't really happen.

20 So, for example, a trigger flag-up system. May
21 I give an example, my Lady? So on one database -- let's
22 say on the West Yorkshire Police Special Branch
23 database -- is the McDaid, the BMW pickup and it stays
24 there.

25 Now, simply to have a trigger or flag-up system, so

1 that, if the Security Service's computer interrogates
2 its liaison partners and says -- puts in "McDaid",
3 "Mohammed Sidique Khan", et cetera, all that would
4 happen is a flag would come up "Ask us about this" or
5 "There's something here", and then you get the -- whilst
6 preserving the confidentiality, you potentially get a --
7 a request is then sent "What have you got?", and the
8 West Yorkshire Special Branch consider whether they can
9 and should provide the information they've got.

10 LADY JUSTICE HALLETT: The minute you have a flag system
11 which is based on another agency's information, that is
12 providing the kind of direct access between databases to
13 which Mr Hill rightly takes exception.

14 MR PATRICK O'CONNOR: My Lady, obviously this is getting
15 into specificities, which --

16 LADY JUSTICE HALLETT: I haven't heard any evidence or
17 whether it's even possible.

18 MR PATRICK O'CONNOR: To have a flag-up system? Well,
19 my Lady, I agree. May I indicate what our source for
20 this is? And it's not falling into the trap which I was
21 complaining about before about introducing evidence.
22 This is not introducing evidence, but I must say
23 I personally am grateful for a couple of the final
24 paragraphs of the West Yorkshire Police closing
25 submissions. So all I'm doing is telling my Lady what

1 the source for this thought is, not putting some huge
2 report at you. They refer to something called the
3 Bichard report which was into Soham and Huntley, and
4 that was concerned with cross-database information about
5 people who are a danger to children.

6 My Lady, that was 2004, and that indeed -- if
7 my Lady wants the references I can give them, but I risk
8 introducing evidence. That talks about having a flag-up
9 system which is much more restrained than having, as it
10 were, a free-for-all. It's certainly possible, my Lady,
11 we submit.

12 LADY JUSTICE HALLETT: Why do you say that the system I've
13 been told now exists of vastly improved liaison
14 between -- am I still allowed to called it
15 Special Branch, I can't remember -- Special Branch and
16 the Security Services?

17 MR PATRICK O'CONNOR: My Lady, it's not called the
18 Special Branch anymore.

19 LADY JUSTICE HALLETT: Counter-terrorism.

20 MR PATRICK O'CONNOR: Yes, it's Counter-terrorism Units, the
21 special regional units. My Lady is duty-bound to take
22 that into account in this picture, yes, because really
23 this is talking about greater access to information,
24 however held, between different agencies, and the
25 regionalisation which has happened since 2005 is

1 plainly -- there is clear evidence that that facilitates
2 greater cross-access of information and in common sense
3 that is what it will achieve, we agree.

4 LADY JUSTICE HALLETT: But you are talking about a possible
5 system of flagging that is not just a question of
6 flagging between police forces. You're talking about
7 a system of flagging whereby we are flagging on the
8 computer databases of the Security Services and various
9 police forces. Is that right?

10 MR PATRICK O'CONNOR: We are --

11 LADY JUSTICE HALLETT: It is a whole different ball game,
12 I suspect.

13 MR PATRICK O'CONNOR: It is. My Lady, we would be going far
14 too far and do not address a two-way street. We are
15 simply addressing the Security Service here and what
16 they can access and a flag-up system one-way to them is
17 what we are positing.

18 LADY JUSTICE HALLETT: Right.

19 MR PATRICK O'CONNOR: My Lady, may I say that, having
20 conceded that that clear evidence about improved access
21 from regionalisation is there and must be taken into
22 account, may we indicate the concern about protecting
23 against human error? Because that is what happened with
24 the McDaid information. My Lady will remember the
25 West Yorkshire Police, the "no trace" which was because

1 somebody only checked one system and not the other and
2 it didn't come up with the McDaid BMW lift, even within
3 the West Yorkshire Police system.

4 So if there was a system of flagging up, there
5 wouldn't have to be that manual check and you may well
6 eliminate human error. But I'm going too far, my Lady.
7 I'm going to take a huge step back and move on to our
8 next recommendation. It is perhaps not harmful to
9 trespass too far, but provided it's not misunderstood,
10 we are not -- and my Lady will never be -- telling the
11 Security Service what to do. This is simply a matter
12 for review and consideration.

13 My Lady, if I may move on to recommendations 6
14 and 7, which relate to the accuracy and completeness of
15 information provided to the Intelligence and Security
16 Committee, and my Lady will need no persuasion that the
17 jurisdiction and duties of the Intelligence and Security
18 Committee are extremely important. They are statutory.
19 They are the only public body to which the
20 Security Service reports and the public depends wholly,
21 really, on their reports for the bare minimum of
22 necessary information.

23 Now, there are very, very many mistakes and
24 inaccuracies that occurred, even in the second report,
25 and it should not be forgotten that's a second report

1 years after the event and after the first report which
2 had to be so substantially restrictive.

3 My Lady, one aspect of a knock-on effect of the
4 appearance from the second report of the use of the
5 categories -- my Lady will remember that, that are set
6 out, "essential" and "desirable" -- is this: that those
7 categories were defined, and essentials were defined, to
8 include those who may have knowledge of terrorism
9 attacks. It's page 27 of ISC2 where an "essential" is
10 defined to include an individual who may have knowledge
11 of terrorist activity.

12 Now, we know that those categories weren't actually
13 used, but an interested member of the public, but more
14 particularly, a bereaved person --

15 LADY JUSTICE HALLETT: Just pausing there, and it's
16 something I'd like to hear Mr Eadie on, you say we know
17 they weren't used. It seems as if the material before
18 the ISC led them to the conclusion that they weren't
19 used. The evidence before me is that -- sorry, they
20 were used, not just for resource purposes, but for
21 investigative purposes. The evidence before me is that
22 that's wrong.

23 MR PATRICK O'CONNOR: Yes.

24 LADY JUSTICE HALLETT: So the evidence is -- it isn't
25 entirely clear because what G said was that it was only

1 used for resource purposes and that their categorisation
2 or prioritisation was much more nuanced.

3 MR PATRICK O'CONNOR: That's right. Now, my Lady,
4 Mr Eadie -- my learned friend Mr Eadie rightly makes
5 a point that there is -- submissions cannot be made and
6 a report cannot be made addressed to the Intelligence
7 and Security Committee, absolutely rightly. That's why
8 these two proposed recommendations address themselves
9 actually to the Security Service, because it doesn't
10 matter about what actually happened to start that ball
11 rolling, it doesn't matter at all, but the fact is that
12 the Security Service did not seek to ensure that the
13 report was accurate about what they'd actually done, and
14 that's why my Lady can address a recommendation to the
15 Security Service here.

16 LADY JUSTICE HALLETT: How do you say you fit into rule 43
17 in relation to this recommendation?

18 MR PATRICK O'CONNOR: My Lady, I must address that. May
19 I come to that? That's very important, I quite agree.
20 There is quite an important way in which that may
21 happen.

22 May I just finish this point --

23 LADY JUSTICE HALLETT: Yes, of course, I'm sorry.

24 MR PATRICK O'CONNOR: -- and bring it home in a sense to the
25 public and, most particularly, to the bereaved? Because

1 under that misunderstanding a bereaved person may read
2 that men D and E were categorised as "desirable" but
3 then look at the definition of "essential" and say,
4 well, this doesn't make sense because surely it's
5 impossible to say that men D and E were people who might
6 not have had knowledge of terrorist activity and thus in
7 their own minds be thinking this doesn't make sense and
8 the Security Service haven't -- have just messed this
9 completely up. In fact, that's not fair on the
10 Security Service, and it's not fair on the bereaved,
11 because that's simply not what was going on.

12 But, my Lady, it's not just the bereaved and the
13 public. We made submissions to that effect last April
14 saying: this doesn't make sense, why weren't D and E
15 made "essentials"? Well, the answer is those categories
16 weren't being used.

17 LADY JUSTICE HALLETT: Isn't there another point, that
18 according to Witness G, had those categories been used
19 they wouldn't have been categorised as "desirable"
20 anyway, they'd have been categorised as "other", common
21 criminals?

22 MR PATRICK O'CONNOR: Yes. That's an extra puzzle, because
23 there's a lot of talk that they would have been
24 categorised as "desirables", but it's questionable
25 whether on the actual categorisation of small-time

1 fraudsters whether even that would have happened. So
2 there's a lot of confusion over this.

3 But my Lady asked me -- and may I now --

4 LADY JUSTICE HALLETT: Yes, the risk to life, really, isn't
5 it?

6 MR PATRICK O'CONNOR: The risk to life, absolutely.

7 My Lady, the good repute and integrity of the
8 Security Service may unfairly -- may we just put it on
9 that basis? -- be harmed by this confusion, and serious
10 inaccuracy, we submit. There is clear evidence -- and
11 it is common sense -- that the efficacy, the operational
12 efficacy, of the Security Service is adversely affected
13 if its reputation is adversely affected, and G said
14 that, my Lady, at the transcript of 23 February,
15 page 149, and it's common sense because cooperation,
16 vital cooperation, with liaison allies abroad could well
17 be damaged if there was a perception that the
18 Security Service -- if -- and I say, however unfairly --
19 if there is some kind of taint about their integrity
20 from this kind of confusion, that could well damage the
21 Security Service operation.

22 Similarly, there must be -- and I'm sure my learned
23 friend Mr Eadie will assert this and we absolutely
24 agree -- that the trust and confidence of Parliament and
25 of the public in the Security Service is also critical

1 to its operational efficacy in terms of cooperation with
2 it by the public and resources being given and entrusted
3 to it.

4 LADY JUSTICE HALLETT: That's certainly the argument of
5 West Yorkshire Police --

6 MR PATRICK O'CONNOR: Yes.

7 LADY JUSTICE HALLETT: -- in relation to Mr Gilbertson.

8 MR PATRICK O'CONNOR: Yes, and my Lady, may I say, with very
9 considerable force in that respect. But my Lady I hope
10 sees the point.

11 LADY JUSTICE HALLETT: So it's quite a stretch --

12 MR PATRICK O'CONNOR: Yes.

13 LADY JUSTICE HALLETT: -- but you say I can, at a stretch,
14 get to it by saying it impacts upon the efficacy of the
15 Security Services?

16 MR PATRICK O'CONNOR: It may.

17 LADY JUSTICE HALLETT: Right.

18 MR PATRICK O'CONNOR: My Lady, may I say, surely my learned
19 friend Mr Eadie would be the first to accept that it is
20 extremely important that there be clarity and accuracy
21 in communications with the ISC and that the
22 Security Service does not want any possibility of an
23 unfair taint against its integrity.

24 My Lady, that really deals with our recommendations
25 6 and 7 and, my Lady, 8 and 9 relate to photographs.

1 The answer to 8 to the effect that procedures should
2 make sure that the best quality photographs are shown to
3 human sources of intelligence, the answer to that is,
4 from Mr Eadie, "Well, we surely don't need to be told
5 that".

6 Just one aspect of the evidence which we submit may,
7 depending on my Lady's view, cause you to think, "Well,
8 actually, this might need to be reinforced".

9 My Lady, it's the evidence on 21 February,
10 transcript pages 137 to 138 and in the file it's
11 pages 35 to 36, where the question, the obvious
12 question, is asked why that very badly cropped half
13 photograph was shown, and G's answer is:

14

15 "Answer: There's no contemporaneous documentation
16 on this, but my judgment would be that, when photographs
17 are cropped in this way, it is, for whatever reason, we
18 are concerned that, by including the background, we are
19 giving away too much detail about the covert means in
20 which it was collected."

21 Then he goes on, in fairness, to refer to probable
22 pressures upon the relevant case officer.

23 My Lady, over a few pages at file-page 40,
24 transcript-page 142 for 21 February, line 7:

25 "Answer: No. The cropping is all to do with not

1 revealing the techniques by which the photograph was
2 collected, rather than not identifying the individual in
3 the photograph."

4 My Lady, whilst maintaining his equanimity and
5 poise, as ever, my learned friend Mr Keith did seem to
6 express a little surprise at that rationale and we
7 submit, if any such surprise was manifested, then it was
8 justified.

9 My Lady, as for the dissemination as widely as is
10 possible granted all other policy considerations, we
11 simply point to the fact that the product of
12 Operation Warlock, those unidentified photographs, do
13 not seem to have been shown to anybody by any body
14 between 2003 and 7 July 2005.

15 Now, my Lady, those are our submissions on behalf of
16 all the bereaved in relation to those specific
17 recommendations. As my Lady knows, we have for our
18 particular clients some submissions which add to the
19 rationale potentially, we submit, for my Lady to make
20 recommendations 1, 2 and 3, in fact, on record-keeping.

21 My Lady, I see the time. It may helpfully mark the
22 divide, as it were, more particularly if I invite
23 my Lady to a break, and then -- my Lady, I'm well on
24 schedule, I'm very, very pleased to say, and, well,
25 I sincerely hope I'm going to be finished by 12.30 for

1 instance, or well before 12.30.

2 LADY JUSTICE HALLETT: Right, I will take the break now.

3 Mr Saunders, may I address you, because I've asked

4 Mr Coltart and Ms Gallagher whether recommendation (x)

5 is withdrawn? Could I ask you please to check during

6 the break that everybody else is content, because

7 I didn't get to Mr Patterson either? I keep -- poor

8 Mr Patterson, I keep missing him out. If you could

9 check that everybody is content to withdraw

10 recommendation (x).

11 MR SAUNDERS: Thank you.

12 (11.30 am)

13 (A short break)

14 (11.45 am)

15 LADY JUSTICE HALLETT: Mr Saunders?

16 MR SAUNDERS: My Lady, on behalf of those that you haven't

17 asked already we don't persist with recommendation (x).

18 LADY JUSTICE HALLETT: Thank you very much.

19 MR SAUNDERS: Thank you.

20 LADY JUSTICE HALLETT: Mr O'Connor?

21 MR PATRICK O'CONNOR: My Lady, my learned friend

22 Mr Patterson has invited me to place before you for your

23 consideration a -- perhaps less of a stretch in relation

24 to connecting the ISC and that relationship with the

25 Security Service to rule 43, and it really goes as

1 follows, and I commend it to my Lady.
2 It is very important that the mechanism of review
3 and report and supervision between the Security Service
4 and the ISC works effectively. That is the system that
5 Parliament has established, and for that relationship to
6 work effectively, it really does depend on the
7 interchange of accurate information and that there be no
8 misunderstandings between that body and the
9 Security Service.
10 If that watchdog role, which of course largely will
11 be taking place privately, if that is not working
12 properly, then the Security Service loses the benefit of
13 that productive relationship and the ISC's input and
14 contribution, which is a very important one because
15 there are very few other mechanisms which can provide
16 for such an input on good information, because it's
17 confidential and closed and, my Lady, we commend that to
18 you and I'm grateful to Mr Patterson. There are two
19 independent ways, one perhaps more of a stretch than the
20 other.
21 My Lady, going to our particular submissions on
22 behalf of our clients, may I first of all indicate what
23 we are not doing and what we are doing?
24 These submissions place before you for your
25 consideration the evidence which may found a conclusion

1 by your Ladyship that the actual assessments in this
2 case of men D and E were flawed, and that the rationale
3 advanced for them may not stand up to examination.
4 Now, we submit that that is perfectly conventional
5 material in law and in practice to trigger the beginning
6 of a rule 43 process, depending on all the other
7 requirements.

8 In the overwhelming majority of rule 43 cases, it is
9 precisely the manifestation in the evidence of the
10 surrounding conduct of a body, of a public body, which
11 may throw up failings, which may or may not have
12 actually contributed to the causing of the death, very
13 often didn't, but then begin the possibility of
14 a rule 43 report.

15 If there are such failings, then they bring home, we
16 submit, in a concrete way, any need for improvements, so
17 that -- and this is where it could potentially feed in
18 in several ways to your consideration of potential
19 recommendations. One is, this is a highly discretionary
20 jurisdiction, and it could tip the balance in favour of
21 your making a report at all.

22 Secondly, it could affect the content of your
23 recommendations in light of any failings that have been
24 found.

25 Thirdly, it may affect the content, again very much

1 within your discretion, of your explanatory rationale
2 within the report, the background you explain, to the
3 body.

4 And fourthly, with the benefit of such an
5 explanation, it gives, we submit -- if the explanation
6 is justified and accurate -- the best chance of
7 a positive response and a productive response from the
8 relevant body.

9 Of course, it is not necessary to a rule 43 report
10 at all that there are any such past failings, but it is
11 relevant and might make the difference in those several
12 respects.

13 Now, my Lady, the point about our submissions is
14 not -- and I say this slowly and with some emphasis --
15 is not to seek to demonstrate that the Security Service
16 could reasonably have prevented the 7/7 bombings. That
17 is not a conclusion that we urge upon you and it's
18 neither relevant nor necessary for the purposes of
19 rule 43.

20 The point is here that the state of the evidence may
21 reinforce the need for a rule 43 report along the lines
22 of our first three submissions. The evidence may
23 suggest -- it's absolutely for my Lady to consider and
24 conclude -- that the Security Service, even if they
25 couldn't reasonably have prevented 7/7, could have done

1 more, that their assessments were flawed and that the
2 rationale for those assessments -- which is even now
3 being advanced -- is also flawed.

4 If that is the case, then that legitimately and
5 conventionally leads to that aspect of rule 43(1)(b)
6 which gives rise to a concern and to the need to ensure
7 that systems are improved in the way we suggest in our
8 first three recommendations.

9 This would provide -- depending on my Lady's view of
10 the evidence -- a clear connection in the following way
11 between our first three recommendations and any such
12 findings you may make on the evidence because, if such
13 errors occurred, then we submit they are precisely the
14 kinds of errors which are more likely to arise where you
15 do not have an effective, structured assessment system
16 and where you have a lack of contemporaneous recording.
17 Now, I hope it helps me, therefore, to explain why
18 we're making these submissions and what we are not
19 submitting and, my Lady, I can take our written skeleton
20 in this respect really quite shortly, because it does
21 very largely follow the flow of our questioning of
22 Witness G.

23 The significance of the four known contacts between
24 the Crevice plotters and -- may I just call them the
25 "visitors from the north" or "men D and E"? -- was

1 assessed, according to the second ISC report, as being
2 that these were small-time fraudsters. That assessment
3 has never changed and there is a continuing standing by
4 and justification for that assessment.

5 Now, we submit that the themes that are identified
6 in our paragraph 3 from those four contacts would
7 justify potentially a conclusion that is inconsistent
8 with that assessment, that something more serious was
9 going on, and the rationale advanced to the ISC and
10 advanced now in paragraph 4 can be encapsulated as
11 follows, as G accepted, that they were assessed as being
12 small-time fraudsters because they were not detected
13 discussing attack planning, and they were discussing
14 fraud.

15 We submit that your Ladyship, depending on your view
16 of the evidence, will be entitled to conclude that that
17 rationale does not stand up to examination because of
18 the very many prevailing reasons which we set out in our
19 paragraph 7 for there being an absence of detected
20 attack planning talk.

21 From -- and those range from the very limited audio
22 coverage that the Security Service had, through
23 absolutely no fault of their own, of the Yorkshire
24 visitors and the tactics used at these meetings which
25 were plainly to use the visiting safer vehicle rather

1 than the Vitara of Omar Khyam.
2 My Lady has -- we set out the various clues as to
3 consciousness of surveillance including audio
4 surveillance, "Don't talk in the car" is reflected in
5 the ELG gists, that was overheard from some audio
6 surveillance, and particularly the presence of many
7 people on that -- the one significant audio product from
8 the visitors from the north, which is the evening of
9 23 March, and that is that there were really very many
10 people there and they may well have been avoiding
11 talking so widely about what was going on.
12 Now, my Lady, the point here is not at all to seek
13 to persuade you that men D and E were active Crevice
14 plotters. That is not the point. It is much more apt
15 to fall within rule 43 that we are looking at processes,
16 not the conclusions that were drawn, and the process of
17 reaching that conclusion and the rationale that was used
18 is sufficient potentially to give you cause for concern
19 about what actually happened in this case in these
20 assessments.
21 The fact that there was detected talk of fraud does
22 not take that assessment any further because that was
23 the commonplace amongst all the Crevice plotters as
24 well, so it doesn't distinguish the men D and E from
25 them. And, my Lady, there is, we submit, a -- you may

1 conclude an insufficient basis for what happened at the
2 time, which was excluding the possibility that men D and
3 E were aspirational attack planners ready and willing to
4 participate, but frustrated by the arrests and seizure
5 of the bomb material at the end of March 2004 and,
6 fortunate to escape without arrest themselves and
7 frustrated by the seizure of the material, they lay low
8 until, as we know, the history relates what happened
9 later in that year and tragically leading up
10 to July 2005.

11 So again, my Lady, may I just make one comment about
12 the -- a great deal of time was spent on the great
13 difficulties over adequately analysing the audio product
14 from 21 May -- 21 February, very sorry,
15 21 February 2004, outside The Hollows.

16 One can allow for all of that, but what we submit
17 raises a concern is that clues were not noticed and we
18 don't need to go so far as to say that those clues would
19 have led to the detection of Mohammed Sidique Khan and
20 the prevention of 7/7. That is not the point. The
21 concern arises out of the fact that -- I'm looking at
22 our paragraph 10 -- in each of the first three
23 transcripts which were available in the weeks --
24 immediate weeks and up to April 2004, there were plain
25 clues stated in those transcripts that there were at

1 least three speakers and plain indicators from the
2 detected content that visitors from a distance were
3 present.

4 One can put aside all questions about accent and the
5 problems over NM1 and 2. The fact is those clues came
6 as a surprise to G. There's no -- you know, he hadn't
7 come to give evidence that, yes, these were noticed and
8 put into the scales. They simply weren't noticed. And
9 that is, we submit, what may cause concern.

10 My Lady, the framework, we submit, for a more
11 considered assessment of men D and E was there because
12 of the elements known at the time about the potential
13 for four cells existing, about the police fear that
14 there was a second plot, and the amount of fertiliser in
15 store which was plainly sufficient to construct several
16 devastating devices.

17 So, my Lady, I repeat, we are not seeking to
18 persuade you of what conclusions would or should have
19 been drawn. It is the process which we submit you could
20 legitimately conclude at the time was flawed and gives
21 rise to a rule 43 concern, unless clearly remedied now.

22 But, my Lady, one could then apply that similarly to
23 the missed opportunity, we submit, that there was, to
24 follow up on the clues about Ibrahim and Zubair, the
25 instinctive connection that was made by the intuitive

1 desk officer.

2 The point -- and my Lady knows the chain of events
3 that we go through, which includes noticing the
4 shared -- possibly the shared flight, et cetera.

5 Now, the point here, my Lady, is not to say or to
6 persuade you that this would have all worked and would
7 have prevented 7/7 or even that the Security Service
8 would, in the end, have successfully made these
9 connections, detected it, et cetera, that's not the
10 point. The point is this wasn't noticed. It couldn't
11 get anywhere. It plainly came as a surprise to G that
12 one could look at Babar's original information, look at
13 a potential line of investigation there, in
14 Operation Downtempo from April 2005, look back at what
15 Babar had originally said, "See, gosh! Ibrahim and
16 Zubair may have been on the same flight as Akbar.
17 Akbar's been in custody for 13 months. The police have
18 been investigating his travel. We know they knew the
19 date on which he had arrived. They had his passport.
20 We'd better see if we can find out what the flight
21 number was and we may be able to find out who really are
22 the people going under those pseudonyms".
23 But it wasn't noticed, and it wasn't tried, and that
24 gives rise to a concern.

25 So, my Lady, I can say in conclusion even more

1 rapidly -- and this is my conclusion -- even more
2 rapidly than I thought it might be, that if my Lady
3 draws any such conclusions about these original
4 assessments and the rationale for them, which is still
5 maintained, I repeat, then that could well provide
6 a potent indicator to you in favour of making a rule 43
7 report along the lines of our first three
8 recommendations.

9 My Lady, those are my submissions.

10 LADY JUSTICE HALLETT: Thank you very much, Mr O'Connor.
11 Mr Patterson, I take it there's nothing you wish to
12 add or is there?

13 MR PATTERSON: My Lady, no, I had prepared full oral
14 submissions, but Mr O'Connor has covered everything that
15 I wanted essentially to cover in relation to the nine
16 recommendations that we would invite you to consider
17 and, therefore, anything that I would say really would
18 be largely repetitive, so unless I can assist with any
19 particular issue or matter, I don't propose to take up
20 any of your Ladyship's time.

21 LADY JUSTICE HALLETT: No, and I gather you played a very
22 significant part in preparing the first chunk of written
23 submissions.

24 MR PATTERSON: My Lady, it was a collaborative attempt by
25 all of us to provide assistance on identifying the

1 recommendations and trying to be careful and measured in
2 what we do invite you to consider.

3 LADY JUSTICE HALLETT: I'm very grateful to you all.

4 Right, Mr Beggs, are you going next?

5 MR BEGGS: I think so. I have been brief from the very
6 beginning of this inquest and that tradition will
7 continue now.

8 Submissions by MR BEGGS

9 MR BEGGS: My Lady, the fact that no evidence emerged in the
10 course of the preventability phase which would support
11 any of the suggested failures against my client, the
12 West Yorkshire Police, we invite you to recognise and
13 reflect somewhere in your pronouncements. I don't seek
14 to argue as to the nature of verdict now and so forth.
15 You have already mentioned the reason to Mr O'Connor
16 in argument, it's for the same reason as we make the
17 points, which I won't repeat orally, about
18 Mr Gilbertson.

19 It can sometimes be thought that that submission is
20 a rather cheap one, but of course it's actually an
21 extremely important one. West Yorkshire Police has
22 a community. The community, unlike with the
23 Security Service, can see its police officers, its
24 PCSOs, its staff, every day, it can go into its police
25 stations or not, in the case of some people.

1 It is for that reason that we ask you to reflect
2 that, despite what you know to be very extensive
3 disclosure on the part of my client, stretching -- the
4 work preparing for that has stretched over some 14 or 15
5 months -- you can be sure, and the bereaved families can
6 be sure, that there are no proper criticisms to be made
7 of West Yorkshire Police.

8 I hasten immediately to add that that doesn't
9 connote complacency and you've seen that from
10 Mr Parkinson who described he was horrified, as everyone
11 naturally was and, perhaps more importantly in that
12 regard, you've seen the ongoing improvements.

13 I underscore "ongoing" because such improvements must
14 always continue.

15 The danger of there not being a firm and clear
16 pronouncement from yourself is that some of the unfair
17 and, in some cases, frankly hysterical criticisms that
18 have emerged, particularly on the internet, do undermine
19 West Yorkshire Police's efforts in this area of
20 policing, do undermine public confidence and, therefore,
21 it's a circle that undermines West Yorkshire Police.

22 My Lady, you'll be pleased to learn that, apart from
23 making that observation, the invitation for a clear
24 reflection of what the evidence has shown, I have
25 nothing else to say at this stage, unless we can assist

1 you. We've put in fairly lengthy written submissions in
2 which we hope we've covered anything that might be of
3 concern in relation to West Yorkshire Police.

4 LADY JUSTICE HALLETT: No, I think your written submissions
5 are very full and very helpful, Mr Beggs, thank you. If
6 you will give me a moment, I'll just check. No, that's
7 fine, thank you very much.

8 Right, Mr Hill?

9 Submissions by MR HILL

10 MR HILL: My Lady, yes. Really, what I say echoes what
11 Mr Beggs has just said and that is to offer any further
12 assistance that I can provide on behalf of the
13 Metropolitan Police.

14 You will find our submissions in this area between
15 paragraphs 6 and 16 of what we placed in writing, and it
16 leaves me to just make three observations orally.

17 Firstly, to agree with that which Mr Beggs has just
18 said. We invite my Lady to reflect on our paragraph 6
19 and to reflect on the absence of the suggestion, even,
20 that there have been any failings on the part of my
21 client that could be reflected in a verdict. I say no
22 more than that.

23 With regard to the two proposed recommendations
24 reflected in Mr O'Connor QC's submissions on which we
25 felt we could give any assistance, firstly paragraphs 33

1 to 36, Mr O'Connor, our paragraphs 10 to 14, we simply
2 say that we agree with the Secretary of State's
3 submissions at her, or in Mr Eadie's case, his
4 paragraph 34, and we invite you to read across to his
5 skeleton argument those paragraphs that we've suggested.
6 In that context, of course, you will have noted --
7 when seeing our reference to the reorganisation of S012,
8 S013 into the Counter-terrorism Command and the
9 Provincial Counter-terrorism Units that we refer to at
10 our paragraph 13, you will have noted Mr O'Connor QC's
11 helpful cross-citation in his own paragraph 25 of the
12 families' submissions to your own, my Lady, judgment of
13 21 May last year in which you, yourself, referred to the
14 CTUs, Counter-terrorism Units, and their role in
15 intelligence and information sharing, a point well made
16 then and worth repeating now.
17 Finally, therefore, at paragraph 61 of the families'
18 submissions reflected in simply some comments for
19 assistance that we provide at our paragraphs 15 and 16,
20 what that amounts to is our agreement with the Secretary
21 of State at their paragraph 37 as to operational
22 sensitivity, which must be paramount, and their
23 paragraph 38.2 as to practicability. We agree with
24 what's said there.
25 Beyond that, unless I can help, that's what we say.

1 LADY JUSTICE HALLETT: Thank you very much, Mr Hill.

2 Mr Eadie?

3 Submissions by MR EADIE

4 MR EADIE: My Lady, may I start the closing submissions on
5 behalf of the Security Service where the first witness
6 statement of Witness G started, which is by expressing
7 on their behalf that it is a matter of profound regret
8 for the Security Service that it was not able to prevent
9 the murderous attacks on 7/7 and that that, in G's own
10 words, is something that is felt by every member of the
11 Security Service.

12 With that said, may I also make three very short
13 points at the outset of these submissions.

14 Firstly, there has been a very, very extensive
15 investigation conducted by my Lady and, that we have
16 reached the point that we have in relation to
17 preventability issue, is, we respectfully submit -- and
18 I hope all concerned will take what I now say in the
19 right spirit -- a tribute to you and to those within
20 your team who have been at the coalface of that
21 investigation, both for the determination to ensure that
22 all avenues are explored and, within an environment
23 creating inevitable pressures for all concerned, for the
24 unflinching courtesy with which that has been done.

25 A tribute to those representing the families for the

1 conspicuous care that they have taken, whilst probing
2 the evidence, not to trespass into sensitive areas, and
3 finally to those within the Security Service itself who
4 have worked so hard and, as usual, unseen to provide the
5 level of assistance that has been provided.

6 My Lady, my learned friend Mr Garnham promised you
7 at the outset of this process that you would have the
8 cooperation and the full cooperation of the
9 Security Service in carrying out your investigation. We
10 hope, from where we stand, that you will agree that the
11 Security Service has made good on that promise.

12 The efforts that have been put into this process by
13 numerous members of that service have been, it's no
14 exaggeration to say, enormous. The result, perhaps
15 against the initial expectations of some, has been the
16 most extraordinarily thorough of investigations, and it
17 is important for the families to know, and for us to
18 emphasise, that you and your team have had the
19 opportunity to consider every single piece of relevant
20 information, and by that I mean every single piece of
21 relevant information both open and closed.

22 Some, of course, it has not been possible to open
23 up, for good reason, but that does not mean that the
24 investigation has stopped, as it were, at the threshold
25 of the sensitive material. It hasn't.

1 It is also important to reemphasise that a very,
2 very careful process has been gone through over the
3 months involving all concerned to seek to ensure that
4 everything that could possibly be made public is made
5 public, and also to emphasise that the investigation has
6 included, not merely an investigation in its own right,
7 but also a thorough testing of the actions and of the
8 decisions of the Security Service.

9 The minutiae of the various decisions that were
10 taken, the assessments and judgments that were made,
11 have been probed. You decided in your scope ruling at
12 the very outset of this process that it should be
13 a Jamieson and not a Middleton inquest.

14 Having regard to the depth of the investigation and
15 the extent of the probing that has occurred, I would
16 challenge anyone to detect the difference now.

17 The final, short introductory point I wanted to make
18 is this. It is clear that the families have
19 acknowledged the hard work that is done, mostly, as I've
20 said, without public acknowledgment, by the
21 Security Service, and they acknowledge that, despite
22 that, no promise of absolute protection of the public
23 from this sort of terrorist outrage could be made good
24 and the Security Service is grateful for that
25 acknowledgment from the families.

1 In its turn, the Security Service acknowledges fully
2 the desire of the families to seek to ensure that
3 everything that can be done to ensure that similar
4 attacks are, if possible, prevented is done.
5 That does not place the families in opposition to
6 the Security Service; it is a shared aim, a shared
7 desire. The Security Service has been, and remains, as
8 concerned as they are to understand fully the events
9 leading up to 7/7 and to learn from them. I hope it has
10 been clear from the evidence of Witness G just how
11 seriously the Security Service has taken that
12 responsibility. Even before the inquest started, very
13 considerable efforts, time and resource have been
14 devoted to that understanding, and the inquest process
15 itself has led directly in effect to a complete
16 revisitation of the events that preceded 7/7 and of the
17 issues that they have thrown up. A re-examination,
18 a further probing, and more consideration of what can be
19 derived from those events in order to strengthen the
20 protection that can be provided to the public and the
21 Security Service's part in ensuring that that is done.
22 Lessons have indeed been learned.
23 My Lady, verdicts I can take very shortly. We are
24 also grateful to the families and to those who advise
25 them for the realistic position that has been taken on

1 verdict. They have generously and, we submit, correctly
2 acknowledged in their submissions that there were no
3 failings by the Security Service and, it follows, the
4 police that could be reflected in a verdict suggesting
5 that the acts or omissions of the Security Service were
6 a contributory cause of the deaths on 7/7.

7 My learned friend Mr O'Connor this morning has again
8 reiterated that it is no part of the families'
9 submissions to you to seek to demonstrate, as he put it,
10 that the Security Service could reasonably have
11 prevented these bombings.

12 That is not a conclusion which is urged upon you by
13 anyone and, in those circumstances, the verdict that you
14 should reach is clear and, we respectfully submit,
15 properly reflects the true and ultimately the only cause
16 of these bombings: namely, the unlawful killing of those
17 who lost their lives on 7/7 by the acts of the
18 terrorists and the bombing. That's all I wish to say
19 about verdict.

20 In relation to rule 43, I'm not proposing to repeat
21 the skeleton argument that we have put in the written
22 submissions that we've made. The only point I wish to
23 emphasise in terms of approach orally is one that
24 I suspect you've had already made to you on a number of
25 occasions so I can make the same point, I hope very

1 briefly.

2 The focus of rule 43 is on the present and the
3 future. It is not a vehicle for a judgment about the
4 past. That is reflected in its terms, both the
5 preconditions, the jurisdictional preconditions to your
6 making a report of that kind and to the subject matter
7 of the report, if made.

8 Such a report can only be made if there is evidence
9 that gives rise to a concern that circumstances creating
10 a risk of other deaths will occur or will continue to
11 exist in the future. That is a jurisdictional limit,
12 and, as I say, it indicates, in my respectful
13 submission, that it is the present that is and should be
14 the first port of call in your analysis, the present and
15 the future. If there is no such evidence about the
16 present and the future, then the precondition is not met
17 and a report would be both unnecessary and
18 inappropriate.

19 If it is your conclusion that you should not make
20 such a report, then we submit you do have jurisdiction
21 and power pursuant to the ordinary inherent jurisdiction
22 of any judicial body to explain the reasons for our
23 arriving at a decision. You can, of course, indicate
24 shortly why it is that you haven't considered it
25 necessary to make a rule 43 report or to make a rule 43

1 report in relation to any particular part of the matters
2 that you have investigated in the course of your
3 investigation.

4 It's my submission on behalf of the Security Service
5 that you should not make such a report for three
6 principal reasons.

7 Firstly, because the second criterion in
8 rule 43(1)(b) would not be met. The evidence simply
9 does not give rise to any concern about other deaths in
10 the future or continuing risk.

11 Secondly, there would on such a conclusion be
12 nothing on which the rule 43 report could properly bite
13 having regard in particular to the provisions of
14 rule 43(1) (c).

15 Third, there is perhaps a danger, if you were to go
16 at least into the past, of straying, as it were, outside
17 the permissible band of opinions which rule 43 allows
18 you to do. We do not make the submission -- I hope it
19 was clear from our written submissions -- we do not make
20 the submission that, as it were, rule 36 operates as
21 a direct constraint upon rule 43. It plainly doesn't
22 because both permit separate species of opinion to be
23 given.

24 We do respectfully submit, however, that rule 36 and
25 43, when read together and in harmony, do indicate that

1 the framers of the rules intended that the opinions that
2 were permissible to be expressed under either should be
3 limited to the opinions that were referred to on the
4 face of both.

5 LADY JUSTICE HALLETT: Sorry, could you just run that past
6 me again?

7 MR EADIE: My Lady, yes, the short point is this: that both
8 rule 36 and rule 43 specify the sorts of opinion that
9 can be given, and the short point is that that
10 indicates, that positive expression of the sorts of
11 opinion, on the face of both of those rules, that you
12 should restrict whatever report or, in the context of
13 rule 36, verdict you give, you should restrict either of
14 those to the opinions set out on the face of the rules.
15 That's the short point.

16 LADY JUSTICE HALLETT: So I should not read 43 standalone;
17 I go back to 36 to see the context in which all the
18 rules are set?

19 MR EADIE: It's perhaps even less sophisticated than that
20 I'm afraid. It simply is rule 43 specifies the opinions
21 that you can express and the jurisdictional basis for
22 your doing so. Rule 36, in effect, does the same thing
23 and, therefore, it's clear that the framers of the rules
24 have devoted their mind to the question, have turned
25 their minds to the question, what opinions should be

1 expressed at each stage.

2 LADY JUSTICE HALLETT: To what extent do you say that
3 interpretation of the rules is differing from the
4 interpretation put before me by others at all?

5 MR EADIE: We detect no difference at all between ourselves
6 at least and Counsel to the Inquest on that front, as
7 I hope I made clear.

8 LADY JUSTICE HALLETT: That's why I was puzzling.

9 MR EADIE: My Lady, can I take the families' suggestions in
10 relation to the rule 43 report? That's the only point
11 I wanted to emphasise --

12 LADY JUSTICE HALLETT: Sorry, for the sake of an outside
13 audience, when you say that your submission is
14 I shouldn't make a rule 43 report, that is on the
15 question of the Security Service, as it were, you're not
16 suggesting --

17 MR EADIE: My Lady, yes, no, no.

18 LADY JUSTICE HALLETT: For the outside audience, I think
19 your position needs to be plain.

20 MR EADIE: No, no. I'm sorry, I should have made that
21 clear. I'm simply addressing the issues of
22 preventability as they affect the Security Service.

23 LADY JUSTICE HALLETT: Indeed.

24 MR EADIE: So far as the families' suggestions for a rule 43
25 report are concerned, we make, at paragraphs 15 and

1 following of our written submissions, a series of
2 initial points, as it were.
3 Can I emphasise simply three of them by way of oral
4 submission?
5 Firstly, we submit there is simply no evidence
6 before you on which to conclude that there are extant
7 today any circumstances relating to the work or
8 practices of the Security Service which create a risk to
9 life.
10 To reach such a conclusion, there would have needed
11 to have been a detailed examination of the systems of
12 the Security Service as they are today, as they
13 currently exist. There has been no such investigation,
14 no attempt to question or to explore with G in any real
15 detail at all the basis on which the Security Service
16 operates as of today, and that, we respectfully submit,
17 is for understandable reasons, given that national
18 security concerns plainly would arise from any public
19 examination as to the way the Security Service operates
20 today. Certainly in relation to the detail.
21 To the extent that questions have been able to be
22 asked, they have been very much on -- along the lines
23 of, "Well, that's what you did in the past. Have things
24 changed today and, if so, to what extent?", and answers
25 have been given to that, and my Lady will have seen at

1 the end, I think, of the first witness statement that
2 Witness G put in that there was a relatively short set
3 of paragraphs dealing with the broad nature of the
4 changes that had been made since 7/7.

5 LADY JUSTICE HALLETT: But would the logical consequence of
6 that argument be that the rule 43 report could never be
7 made on the procedures and practices of the
8 Security Service? Because you could never analyse today
9 properly what they were?

10 MR EADIE: My Lady, it would be very, very difficult, in my
11 submission, for a rule 43 report to be made on the basis
12 that the circumstances created a risk to life if the
13 focus of that is present. That would require, as it
14 would in this situation, a detailed examination in
15 public with the constraints that that imposes of those
16 current systems.

17 Apart from anything else, if you haven't received
18 and can't take account of closed material, it's almost
19 impossible to see how any proper view could be formed
20 about whether or not those systems are currently
21 defective.

22 LADY JUSTICE HALLETT: But what if a coroner felt that the
23 evidence was inconsistent or contradictory or wasn't
24 clear and, therefore, the evidence did give rise to
25 a concern as to what happened in the past, that because

1 the coroner couldn't explore what is presently the case,
2 therefore the coroner might say, "Well, if something
3 went wrong in the past, that creates a risk of other
4 deaths, and, therefore, I'm going to say to the
5 Security Services, 'Well, I can't explore this, but can
6 you please -- I recommend you review the procedures and
7 you do what I can't do, you do, because you can look at
8 your procedures in closed, whereas I can't'."

9 MR EADIE: My Lady, I suppose a very, very broad
10 recommendation of that kind could be made, but I query
11 at that stage what the utility of that would be.

12 LADY JUSTICE HALLETT: Well, Mr O'Connor would say take
13 a category like assessments, and you've heard the
14 arguments he raised about the evidence before me on
15 assessments, and I hope you will assist me on that. But
16 just take that as a category.

17 Supposing I were satisfied that Mr O'Connor was
18 right and the evidence in relation to the assessment of
19 males D and E may or may not have been flawed, but it
20 gives rise to a concern and, therefore, D and E get
21 through the net and, sadly, murder 52 people.

22 Why wouldn't it be permissible for me to say, "Well,
23 there's a limit to how far I can go down the 'How has
24 the system changed?' but I've got enough concerns about
25 how the system was to make a rule 43 report"?

1 MR EADIE: The difficulty with that of course expressed in
2 that way, is it premises -- which is precisely why
3 I started with the approach to rule 43. It starts it on
4 the basis that there are concerns that have arisen in
5 relation to the past, and the focus of rule 43, in my
6 submission, is on whether or not the circumstances as
7 they are exist as of today, and in the future.

8 LADY JUSTICE HALLETT: The evidence gives rise -- so the
9 evidence of what has happened; why isn't that
10 legitimate? -- gives rise to a concern that
11 circumstances will occur or continue to exist.

12 MR EADIE: Quite.

13 LADY JUSTICE HALLETT: So it's the circumstances that will
14 occur or continue to exist, but the evidence is bound to
15 relate in part to what has happened.

16 MR EADIE: Suppose there was a problem in the past, or
17 a possible problem in the past, but the evidence before
18 a coroner in any particular situation was that that
19 problem had been sorted or there was no problem
20 currently. There would then be no jurisdiction to make
21 the report. You might have had a problem in the past
22 identified, but if the position, as of today, is that
23 things have moved on and they've fundamentally changed,
24 then you wouldn't have that jurisdiction.

25 LADY JUSTICE HALLETT: That's where you could have evidence

1 that things have moved on and fundamentally changed.
2 The difficulty here is I can't have much evidence about
3 what has changed. I could have a bit, better liaison
4 between various bodies and things, but I can't have
5 much. But isn't that the important point, that I'm not
6 going to get that evidence in detail --
7 MR EADIE: Well, my Lady, then --
8 LADY JUSTICE HALLETT: -- for reasons of national security?
9 It's not your fault, but --
10 MR EADIE: No, quite. Then the most that could be done is
11 a recommendation of the broadest kind, as it were, which
12 wouldn't -- it might be thought wasn't terribly useful
13 to anyone because it simply said: do look at your
14 systems, I can't know what they are, I can't make any
15 judgment about whether they're right or wrong,
16 presently.
17 I'm not trying to dissuade from you a very general
18 recommendation of that kind, but I simply raise
19 the question, well, where -- is that really useful?
20 I mean, normally what happens in these sorts of
21 situations, I fully acknowledge, is that you start with
22 the past, the Ambulance Service -- I don't wish to cast
23 any aspersions on the Ambulance Service here, but
24 a hypothetical Ambulance Service, and you conclude there
25 are failings A, B and C as a result of the evidence and

1 you can then explore whether or not those continue to
2 exist. The relevance of the past in that sort of
3 situation is, of course, that it, as it were, narrows
4 the area of focus for you on to the present.

5 So I look at the present now with a view to that
6 past concern.

7 LADY JUSTICE HALLETT: But if a coroner said to Witness G,
8 his Director General, "I have got these concerns,
9 I can't explore them further", they're bound -- because
10 they've promised me the fullest cooperation, which I've
11 received, they're bound to look at it again, are they
12 not, with care?

13 MR EADIE: Of course. If my Lady made a recommendation,
14 they would look at it with care. I'm going to come to
15 other reasons why that might not be an appropriate
16 course, but of course, just on the principle --

17 LADY JUSTICE HALLETT: Indeed. At the moment, we're on the
18 basis of supposing I was satisfied. I was just looking
19 back to rule 43 and I was just a bit concerned that --

20 MR EADIE: My Lady, I don't make the submission that you
21 could not in any case, as it were, under rule 43, have
22 regard to the past. You plainly could in order to focus
23 the appropriate direction -- the concern that arises out
24 of the evidence -- on to the present. But the
25 circumstances that are referred to in rule 43 are

1 plainly present and future.

2 LADY JUSTICE HALLETT: Indeed.

3 MR EADIE: They are prospective, as it were.

4 LADY JUSTICE HALLETT: The circumstances are.

5 MR EADIE: I don't make the broad submission that says "Thou
6 shalt never look at the past for the purpose of doing
7 the rule 43 analysis". My submission is simply that, if
8 you do look at the past, it is to provide the right
9 degree of focus on to the present and the future and, in
10 order to cross the preconditions, the jurisdictional
11 preconditions, you have to be satisfied that present
12 and/or future circumstance exists. That's the short
13 point.

14 And, if you are in a situation where you haven't
15 had, as it were, evidence to enable to you form
16 a judgment about whether or not those circumstances
17 exist, well, so be it.

18 It isn't as though the coroner in this situation is
19 the only and, indeed, perhaps the best mechanism by
20 which present and future systems are examined, probed
21 and determined, in the context of a body like the
22 Security Service.

23 The second submission I make is that such
24 investigation as has been conducted -- and all concerned
25 have tried to open up that which can be opened up; it's

1 led to relatively headline points, as it were, but
2 Witness G was concerned to answer, if he could, a number
3 of questions that were put by Mr Keith as to how things
4 had changed, and Mr O'Connor also.

5 But so far as that investigation has revealed
6 anything, it's revealed that there are no current
7 circumstances that should give rise to that sort of
8 present and future concern.

9 On the contrary, we submit, looked at fairly, that
10 evidence demonstrates both that there have in any of the
11 possible areas where problems have been identified, or
12 potential problems have been identified by the families
13 and that have been explored in the evidence, there have
14 been in almost all of those areas either, one, very
15 significant changes to working practices, or, two,
16 detailed consideration to whether or not changes should
17 be made and a conclusion by the expert and experienced
18 people involved that there shouldn't be such changes.

19 My second submission, as I say, is, to the extent
20 that that investigation of present has been possible,
21 it's indicated that the sort of circumstances that would
22 be needed are not present, and we respectfully submit
23 accordingly, as we do in our written submissions, that
24 the conclusion that you made, as it were, at first blush
25 and before the evidence had worked its way through in

1 the scope ruling, that the lessons had been learned,
2 there was no indication that there were current problems
3 and that's why the investigation would focus, as it
4 were, on the past. That, we respectfully submit, has
5 been borne out by the investigation. Of course that was
6 given prior to the evidence being received by you, but
7 my submission is that the evidence has borne out that
8 judgment rather than anything else.

9 My Lady, we are subject to the point I made about
10 a broad and possibly not very useful recommendation. We
11 respectfully urge considerable caution, despite the fact
12 that it is more attractive to present a recommendation
13 to you on the basis that it, in nature, ought to give
14 consideration rather than something prescriptive. We do
15 respectfully urge caution in relation to those sorts
16 of -- that sort of recommendation, and we do so,
17 firstly, for the reasons I've just given -- nothing to
18 suggest current problem or circumstance.

19 Secondly, because you have inevitably -- in any open
20 process, you will inevitably have only an incomplete
21 understanding of the picture and of the processes.

22 Thirdly, there is some danger of any
23 recommendations -- other than, as it were, a very broad
24 recommendation explained on the basis of an inadequacy
25 of evidence -- there is a danger of recommendations

1 being taken by those who are following and observing
2 these proceedings as a conclusion, implicit admittedly,
3 but a conclusion nevertheless, that there is a current
4 fault or failure or may be a current fault or failure
5 or, worse, that the recommendation had to be made
6 because there was a past failure. There is then a real
7 difficulty in seeking to correct that impression, if
8 that impression is given, because of the limits of what
9 can be said in open without risking damaging national
10 security.

11 Finally, in relation to the caution that we urge on
12 you in relation to that sort of recommendation, it is
13 evident, as I indicated, that almost all of the subject
14 matter of the recommendations that have -- advanced for
15 your consideration in the families' submissions either
16 have already been the subject of very detailed and
17 careful consideration by the Security Service or would,
18 in any event, be considered further, for reasons I'll
19 come to, by them.

20 We therefore question whether or not, even if all
21 other things are equal, any such recommendation with its
22 possible implicit findings and concerns that are
23 attached to it, as I've indicated, whether any of those
24 would, in fact, achieve any utility at all.

25 My submission is that you shouldn't, unless you

1 conclude that it is clearly and plainly necessary to do
2 so and that the conditions are satisfied, you shouldn't
3 require the diversion, as it were, of the further effort
4 and resource that would be required in dealing with
5 those sorts of matters, unless there is likely or
6 perceived by you to be a real advantage; ie an added
7 advantage to the consideration that the Security Service
8 either has already given or is already going to give
9 that you shouldn't make such a recommendation.

10 My learned friend Mr O'Connor focused on -- they've
11 made nine recommendations. We've sought, I hope not
12 unhelpfully, to group them under a slightly lower number
13 of six on the basis that they appear to cover six
14 subject matter areas.

15 The first of them is the one my Lady mentioned,
16 improving procedures for assessing risk posed by an
17 individual.

18 It is said that consideration should be given to
19 a formal written structure for assessing risk. That is
20 in effect what's being asked. The families refer to
21 Witness G's evidence that assessment is a critical part
22 of the work that the Security Service does, that
23 a consistent approach was important to effective
24 deployment of resources, and that a structured approach
25 would reduce the danger of inconsistent approaches.

1 The families then go on to say that the approach
2 adopted in 2005, 2004/2005, risked inconsistent
3 decisions and that there's therefore a need for
4 a formally structured set of arrangements with proper
5 oversight.

6 There are a number of difficulties, we respectfully
7 submit, with that as a recommendation.

8 Firstly, it takes insufficient account of the
9 changes that have, in fact, taken place -- and they're
10 very considerable -- since 2005. We've referred to
11 those changes in paragraphs 25.1 to 4 and 27 of our
12 skeleton. My learned friend Mr O'Connor was unable to
13 find some of the references for some of them. We may
14 not have tracked down all of them in the time available,
15 but I think the missing references that he may wish to
16 have a look at are particularly in paragraph 146 of the
17 first statement of Witness G, and see page 181 of
18 Day 68, which I think was 23 February.

19 As I say, we may be able to chase down some further
20 references directly to those or inferentially to those
21 paragraphs in the transcript. If we do, I'll give them
22 to you later.

23 LADY JUSTICE HALLETT: Before we go down the path of the
24 changes that have been made, I confess I still have the
25 confusion that I mentioned to Mr O'Connor earlier and

1 I will be grateful for any assistance you can give.
2 The evidence before the ISC appears to have been the
3 categories of "essential", "desirable" and "other", with
4 clear definitions, were used for investigative,
5 operational purposes, not just for resource allocation
6 purposes or budgetary purposes. The ISC states in terms
7 that D and E were classed as either "desirable" or
8 common fraudsters and that, presumably, is based on the
9 evidence.

10 Witness G told me in terms that that is wrong, that
11 those categories were never used for operational
12 investigative purposes. Can you help me, please, on
13 that?

14 MR EADIE: My Lady, I think you summarised it accurately.
15 I think Witness G fairly accepted that the position was
16 that, first of all, those three -- that triple, as it
17 were, categorisation was only used for funding and was
18 not used operationally, it was more nuanced, as I think
19 my Lady indicated earlier and, secondly, I think
20 accepted that that was a false impression that was given
21 by the ISC report.

22 I think work had been done to try to find out the
23 history of quite how one had got there, and there are
24 sensitivities attached to that. But my Lady has fairly
25 summarised it.

1 LADY JUSTICE HALLETT: The other confusion I have is that
2 within the ISC there seem to be two different categories
3 given to D and E.

4 Just supposing you were using the "desirable",
5 "essential" and "other", on one occasion it seems that D
6 and E -- the evidence before the ISC appears to have
7 been that D and E were "desirable", another that they're
8 dismissed as common fraudsters, which in my book would
9 come under "other". Can you help on that as to whether
10 the evidence --

11 MR EADIE: I think it's clear from the evidence, and from
12 their inclusion in Scraw, that the assessment overall
13 was that, at most, they were involved in facilitation,
14 as it were. So fraud related to terrorism. I say "at
15 most".

16 LADY JUSTICE HALLETT: Facilitation would make them
17 "desirable", wouldn't it?

18 MR EADIE: It would put them into the higher category than
19 simply engaged in criminality, and I think a fair
20 reading of the ISC report and of the evidence indicates
21 that no possibilities were excluded. I'm going to come
22 to that in a moment.

23 I think the thrust of the evidence that was given to
24 the ISC focused much more closely on the question of
25 whether they could be categorised, and should be

1 categorised, as involved themselves in active terrorism,
2 if I can call it that, rather than fund-raising for
3 that.

4 LADY JUSTICE HALLETT: In my head, Mr Eadie -- tell me if
5 I have it wrong -- I'm thinking attack planning,
6 facilitation and "other".

7 MR EADIE: Yes.

8 LADY JUSTICE HALLETT: What I'm still not really following
9 is G says they are dismissed as common criminals,
10 basically, and that would put them into "other". If
11 they are engaged in fraud to facilitate terrorism, that
12 would put them into a higher category, as we've just
13 said.

14 Now, the evidence before the ISC, to my mind, seems
15 to indicate that, however you describe it, at the time
16 they were assessed as men engaged in fraud, possibly to
17 facilitate terrorism. Is that fair?

18 MR EADIE: Yes, but not attack planning.

19 LADY JUSTICE HALLETT: Right. Was that the same as what
20 Witness G was telling me, or did he put them lower down?

21 MR EADIE: No.

22 LADY JUSTICE HALLETT: It seemed to me he was not adding the
23 facilitating bit.

24 MR EADIE: I'll double-check in his evidence, but my
25 understanding is he wasn't seeking to put them right at

1 the bottom of the tree, as it were. He was
2 acknowledging the possibility that whatever fund-raising
3 or fraudulent activities they were doing might have been
4 for the purpose of terrorism.

5 My Lady will recall that they were part of the
6 subjects of Crevice before it went, attack planning, and
7 that investigation, when it first started, was into
8 facilitation, ie into fraudulent activities for purposes
9 connected with terrorism.

10 So I don't think Witness G was, on any fair reading
11 of his evidence, as it were, excluding the possibility
12 that they were doing that.

13 LADY JUSTICE HALLETT: Right. So I have misunderstood or,
14 if I thought he was putting them into that "other"
15 category, then I've got it wrong?

16 MR EADIE: My Lady, I hesitate to say you've misunderstood,
17 but my understanding of Witness G's evidence was that he
18 was not, as it were, seeking to make a positive case
19 that these people were either assessed to be or were
20 simply involved in fraud unconnected in any shape or
21 form with terrorism.

22 LADY JUSTICE HALLETT: I don't know if Mr Keith is in
23 a position to help.?

24 MR KEITH: Can I break my Trappist silence, my Lady, and
25 simply add this: there is a reference in paragraph 87 of

1 the second ISC report to the question of why Khan was
2 assessed as only being "desirable" and the actual phrase
3 in the report talks of both financial fraud and possible
4 travel to Pakistan, but in the course of the examination
5 of G, a shorthand, we believe, started up whereby that
6 phrase became abbreviated to "financial fraud", and
7 there is a further reference later in the report to
8 small-time fraudsters. But the proper assessment was
9 financial fraud and possible travel to Pakistan, and of
10 course, the possible travel to Pakistan reflected the
11 possibility of ancillary terrorist-related activity
12 there.

13 I don't think for my part that G accepted that there
14 was -- it was simply a matter of financial fraud. It
15 was both elements. But we --

16 LADY JUSTICE HALLETT: It's what Mr Eadie is saying.

17 MR KEITH: Which is exactly as Mr Eadie has observed.

18 MR EADIE: The only wrinkle perhaps, I think, was the one
19 that you were on, which is that you can combine, as it
20 were, common criminality with travel to Pakistan and --

21 LADY JUSTICE HALLETT: And not be a facilitator?

22 MR EADIE: And not be a facilitator, and you can combine the
23 relevant combination, which I think you were asking me
24 about, is whether or not Witness G was, as it were,
25 pinning his colours to the "It's crime unconnected with

1 terrorism" --

2 LADY JUSTICE HALLETT: Yes.

3 MR EADIE: -- or whether he was acknowledging, on a fair
4 reading of his evidence, that there was a possibility at
5 least that they were involved in crime for the purpose
6 of assisting terrorism. My understanding is that it was
7 the latter.

8 LADY JUSTICE HALLETT: So in other words, you say that
9 a fair reading of everybody's evidence before the ISC
10 and before me is that D and E were categorised. If you
11 used a label, it would be "desirable", but it's more
12 nuanced than that, but they are a category down from
13 attack planners, but they're certainly not out of the
14 terrorist frame?

15 MR EADIE: Yes, exactly so, exactly so. My Lady will
16 appreciate from all the evidence that the manner in
17 which the Security Service goes about making its
18 assessments depends upon, as it were, judgments about
19 likelihood, not excluding possibilities when
20 possibilities aren't actively and positively shut down
21 and so on. But my Lady is right.

22 LADY JUSTICE HALLETT: Again, I may be pressing you, it's
23 just I am grateful for help. If you then become
24 a possible terrorist facilitator, or terrorism
25 facilitator, can you be described as on the periphery?

1 MR EADIE: It rather depends what the facilitation is.

2 That's why I emphasise the link between the actual
3 activity and its purpose.

4 LADY JUSTICE HALLETT: I suppose, if you are the one who
5 actually goes into the bank and hands over the
6 fraudulent cheque and some of the funds then make their
7 way back, you would say that would be periphery?

8 MR EADIE: You could be periphery if you were engaged in
9 fraudulent activity, as is often the case, and you raise
10 money for the purpose of whatever terrorism happens to
11 be going on or for whatever extremist activities are
12 going on.

13 That sort of facilitator is very different from the
14 sort of facilitator who is actually helping you prepare
15 attack planning, for example.

16 LADY JUSTICE HALLETT: Who buys the hydroponic --

17 MR EADIE: Exactly so. There are various degrees of
18 connection and there is a scale, there is an inevitable
19 scale. It depends ultimately upon the nature of the
20 activity -- is it fraud or is it something worse -- and
21 the purpose of the activity -- is it pure fraud or is it
22 connected with terrorism, and does it happen abroad,
23 does it happen here? There are obviously different
24 things that feed into any particular analysis.

25 LADY JUSTICE HALLETT: Right, thank you.

1 MR EADIE: My Lady, as I say, the first point we were making
2 about the assessments recommendation is that it takes in
3 sufficient account of the improvement and changes to the
4 systems that have been made, and you've seen the
5 evidence, the Service now prioritises by networks and so
6 on, it's that line of evidence that we've summarised in
7 our written submissions.

8 LADY JUSTICE HALLETT: Taking Mr -- I'm really sorry to keep
9 interrupting you, but if I don't do it when you're on
10 the subject, I'm going to forget.

11 Taking Mr O'Connor's point, he says you may well
12 prioritise by network but within the network you're
13 still going to have prioritisation of individuals, and
14 his question, therefore, to the extent that one can
15 answer it in open is, if, under the old system, they
16 become the lowest category and peripheral, even if you
17 prioritise by network, these individuals -- no matter
18 how often they pop up on the system -- are still going
19 to be at the bottom of the ladder and, therefore, not
20 investigated further.

21 MR EADIE: That can't be described, we would respectfully
22 submit, fairly as a proper criticism of the system. The
23 reality is that any body such as the Security Service
24 conducting the functions that it does has to have
25 a system of prioritisation. You can set it up pretty

1 much any way you want. You try to set it up relying on
2 the expert and experienced judgments of those involved
3 as effectively as you possibly can do.

4 Any system of prioritisation by network or by
5 individual will necessarily involve grading individuals.
6 That, after all, is what it's about, and you do that for
7 the purpose of assessing where resources should most
8 appropriately be directed.

9 So it can't be a criticism of the system to say:
10 well, some people within that system will necessarily
11 fall at the bottom. Of course they will. That's the
12 point of the system. The question is whether you've
13 got, as it were, an efficient system in place to enable
14 you to make those requisite judgments, but it can't be
15 a proper criticism of the system to say: well, some
16 people might have fallen into the bottom categories.
17 That's just a matter of expert assessment within the
18 framework of the system. It's not a criticism of the
19 system itself is my submission in relation to that.

20 LADY JUSTICE HALLETT: Thank you.

21 MR EADIE: Similarly, another point that he made about
22 formal structures existing in writing, again, that's not
23 a criticism of the system, and I know not whether there
24 is a formal written process, but the fact of the matter
25 is that, even if there wasn't, that wouldn't be

1 a criticism as long as the structure is known and is
2 properly operated.

3 That's the first difficulty, insufficient account of
4 the changes and nothing to indicate, as a result of
5 those changes, from the evidence that you have, that
6 there is a current or continuing problem with systems.

7 Secondly -- and this is an example of the general
8 point I made a minute ago -- this analysis proceeds on
9 the basis of that which it has been possible to make
10 public, and there are a good number of reasons why, and
11 obvious reasons, why you can't go into that. There are
12 difficulties associated with that, particularly in
13 relation to current systems and how they go about it.

14 You can give, as it were, headlines, but the further you
15 delve down, the more attractive it becomes for
16 terrorists to know that.

17 Thirdly, there has evidently been the most careful
18 consideration given by the Security Service to possible
19 changes to the assessment process and systems. In part,
20 in large part, perhaps, derived from the events of 7/7.

21 Those are matters, we respectfully submit, for the
22 expert and experienced judgment of those involved so
23 that they create the best way of conducting their
24 business most effectively.

25 We therefore submit that there wouldn't be any

1 utility, no purpose, in making a sort of broad
2 recommendation "Do consider your assessments" because
3 that has already occurred and judgments have been made
4 on that very subject.

5 Fourthly, that recommendation ignores, we
6 respectfully submit, the virtues of both the past and
7 the new arrangement.

8 Witness G -- I think I hope I've fairly summarised
9 his evidence -- acknowledged or assessed that the new
10 system, with its more detailed and more nuanced
11 categories, as it were, was an improvement with its more
12 formal structure, but nevertheless was concerned to
13 emphasise on a number of occasions that any such system,
14 or in any such system, flexibility is a necessary
15 virtue. It's not a vice.

16 The past system -- even the past system wasn't, in
17 his judgment, flawed as unstructured, and it might be
18 thought that that point about the inherent desirability
19 of flexibility within any system is made good by the
20 success of Operations Crevise and Rhyme.

21 So the fourth point we make is that any such
22 recommendation would risk cutting across expert
23 judgments already made.

24 Fifth, and in any event, and even if it was
25 appropriate or necessary to look to the past, G's

1 evidence, we respectfully submit, does need to be read
2 as a whole. It needs to be fairly and properly read as
3 a whole on this sort of subject and, when that is done,
4 his assessment was that there was no real risk of the
5 sort of vices that my learned friend was putting to him
6 of inconsistent decisions, of lack of oversight, of lack
7 of structure and so on, and that was because, although
8 we've got this new system now in place, the old system
9 was not, as it were, an unstructured morass. There was
10 a series of structures or organisational structures in
11 place that enabled properly supervised, effective
12 decision-making on where to target the resources, which
13 is ultimately what this sort of system is designed to
14 do: get the money and the resource to the place of
15 maximum threats.

16 His evidence, fairly read, we respectfully submit,
17 was that there was no difficulty with that in the past.
18 He referred to the quarterlies as you will recall. He
19 referred to the weekly bid processes. He referred to
20 the fact that there were continuous, almost daily, if
21 not more frequently, discussions between the various
22 desks that were running the various operations, and that
23 those involved both management and desk officers, and
24 the entirety of that discussion, the entirety of those
25 structures, was, as I say, designed to deliver with the

1 maximum efficiency and effectiveness the right resource
2 to the right threat.
3 We say that, even if you do look at the past in this
4 respect, there is no evidence of past failure to even
5 get you into the focus on concern as to present.
6 The second subject matter area involved reviewing
7 strands of new intelligence in the light of old strands.
8 LADY JUSTICE HALLETT: Shall we come to that after lunch?
9 MR EADIE: My Lady, if that would be convenient.
10 LADY JUSTICE HALLETT: 2.05.
11 (12.58 pm)
12 (The short adjournment)
13
14