

Coroner's Inquests into the London Bombings of 7 July 2005
Pre-Inquest Proceedings - 27 April 2010 - Morning session

1 Tuesday, 27 April 2010

2 (10.30 am)

3 LADY JUSTICE HALLETT: Yes, Mr O'Connor? May I, through
4 you, address everybody? We've tried to improve the
5 facilities for hearing, but I think we've been let down
6 on the technological front. So if everyone can speak
7 up. I won't consider it discourtesy if you appear to be
8 shouting at me.

9 Submissions by MR O'CONNOR (continued)

10 MR O'CONNOR: Madam, thank you. We resume our submissions
11 to you, madam, that the scope of this inquest should
12 include the issue of reasonable preventability by state
13 agencies. Our submissions are, of course at A2/12B and
14 this issue is entered upon at pages 27 really and 28.
15 In law and in common sense, where a court, as you,
16 madam, is being asked to investigate failings such as
17 these, it's, of course, necessary to look at the state
18 of play as it is now and to look at what investigations
19 have already taken place for their adequacy, and that
20 applies to the position both under the
21 European Convention and at common law.
22 Of course, the first Intelligence and Security
23 Committee report dealt, partly justified by the
24 sub judice rule, but dealt very, very briefly with the
25 critical issues of the contacts between the 7/7 bombers

1 and the Crevice plotters.

2 So really, we go to the second report which deals

3 with the issues over, really, 50 pages in terms of the

4 contacts between those two groups.

5 May I say on this, when considering the second ISC

6 report, that it was launched, announced, published, on

7 9 May of last year.

8 Certain of our clients were allowed a very

9 restricted opportunity to view it a few hours before the

10 Prime Minister presented it to Parliament.

11 These were under extraordinarily strictly-controlled

12 circumstances. It was called a lock-in. No mobile

13 phones were allowed and no lawyers. We were barred from

14 being with our clients when this prior, very short

15 opportunity, was given.

16 Valiantly though they tried and we tried, when we

17 could see it, it was impossible at the time to penetrate

18 the veneer of authority and detail which this report

19 presents at first reading.

20 In fact, we submit that, by contrast, with its

21 simple conclusion, exonerating MI5, the material

22 detailed in it exposes profound criticisms of MI5 and

23 raises many more questions than answers, and we repeat,

24 as briefly as may be, the submission that those

25 criticisms may well arguably become very considerably

1 more powerful upon a proper analysis of the primary
2 material, which, of course, has not been produced.
3 We are certainly not going to take you, madam,
4 through the 34 pages of our skeleton which deconstruct
5 this report, and so I will merely pick out some
6 highlights, and if I could please take you to page 28 of
7 our submissions and point to the two areas we seek to
8 skim across, and it's really paragraph 5.42.2.
9 In our submission, this report contains material
10 indicative of six key failings which extend across all
11 the basic functions which can reasonably be expected of
12 an efficient Security Service and state.
13 First of all, a flawed assessment policy.
14 Secondly, flawed investigation of assessments in
15 this case.
16 Thirdly, flawed record-keeping.
17 Fourthly, flawed cooperation between agencies.
18 Fifthly, actually misleading the Intelligence and
19 Security Committee in its first report and thus the
20 British public for about three years.
21 And finally, as to the inadequacies of resource
22 availability and long-term planning.
23 Now, it's actually difficult to think of any basic
24 functions of an efficient Security Service which are not
25 covered by those potential and arguable criticisms.

1 Madam, over the page, the other area I wish briefly
2 to deal with, but it's covered in detail in writing, is
3 the structural shortcomings of the Intelligence and
4 Security Committee, its lack of independence, efficacy
5 and transparency.

6 Now, madam, turning across and literally flicking
7 through quite a few pages, we set out in detail why it's
8 so difficult to penetrate this report and, at page 31,
9 how incoherent is its structure and how it fails to give
10 a coherent and consistent sequence of events and,
11 indeed, to bring together the potential criticisms.

12 But can I take you, please, to page 34 and to where
13 we set out the five meetings which took place between
14 the 7/7 bombers and the Crevice plotters, who were, of
15 course, all arrested at the end of March 2004. So we
16 are talking about this very unusual opportunity of
17 15 months between these events and the 7/7 bombings,
18 during which the Security Services and the police had an
19 opportunity to follow up and detect and intervene and
20 prevent.

21 There were five meetings between the Crevice
22 plotters and the 7/7 bombers, of which at the time or
23 very shortly afterwards MI5 was aware of four meetings
24 between -- of course, they weren't then known as the 7/7
25 bombers, but meetings between Mohammed Sidique Khan and

1 Tanweer with those Crevice plotters, and the first was
2 on 2 February, page 34 of our submissions. You've
3 already heard this appropriately summarised, and this is
4 the occasion on which the car which had come from Leeds
5 was followed to Leeds and back to Leeds after the
6 meeting, so a round trip of 400 miles.

7 LADY JUSTICE HALLETT: Mr O'Connor, I'm sorry to interrupt
8 you, we have been through this with Mr Coltart.

9 MR O'CONNOR: Yes, I couldn't agree more.

10 LADY JUSTICE HALLETT: Thank you.

11 MR O'CONNOR: That's the first in the sequence. Then there
12 are the three developments of intelligence coming that
13 Khyam was engaged in an imminent bomb plot and the
14 arrival of Khawaja and the discovery of the fertiliser
15 stored by the Crevice plotters.

16 Now, the next meeting is very important and I would,
17 I hope I can add, some fresh information about the
18 significance of 21 February.

19 This is the occasion on which MI5 were not aware at
20 the time or shortly thereafter that Mohammed
21 Sidique Khan and Tanweer were present, but it's been
22 detected years later that they were.

23 This is the arrival of a Mr Khawaja from Canada for
24 two days.

25 Now, what you've not been told is really what was

1 known about Mr Khawaja at the time and shortly
2 thereafterwards, because he was arrested in Canada at
3 the same time as the Crevice plotters were arrested
4 here. So March 2004. He was caught absolutely
5 red-handed. Whether it was suspected or known
6 beforehand or not, as from the end of his arrest at the
7 end of March 2004, he had a factory for remote
8 detonation devices, and he had been emailing diagrams of
9 such devices to co-plotters. He, of course, was kept in
10 custody and put on trial, and ultimately was convicted
11 of a very serious bombing conspiracy.

12 Now, what that means is that from the moment of his
13 arrest and detection and the finding of his factory
14 facility, the authorities here must have been put on the
15 highest possible alert of the significance of any
16 meetings between him and persons in this country.

17 The idea that he is arriving for two days and he's
18 having entirely innocent contacts, or contacts that
19 couldn't be suspected of being highly significant, is
20 risible.

21 There is then, of course, almost a chapter out of
22 a bad novel about bombing plotters, because we have this
23 house in Crawley. We have a meeting of about eleven men
24 going on until midnight, Khawaja is there, it is
25 watched, although with some difficulties, by MI5.

1 Whilst the Intelligence and Security Committee represent
2 this as a farewell dinner for Khawaja in absolutely
3 neutral and social terms -- and indeed this was picked
4 up by Mr Crawley -- by Mr Coltart, forgive me -- madam,
5 it wasn't at all. This wasn't a meeting of the Crawley
6 Remote Control Toy Boat Society. It is a deeply
7 profoundly suspect meeting. What on earth is Khawaja
8 doing here at all? This is, of course, within weeks of
9 the arrests of the Crevice plotters, them being arrested
10 because that plot was coming to fruition, and with
11 information that Khyam was engaged on an imminent
12 bombing plot.

13 Now, remarkably, there was audio surveillance of
14 a vehicle at that time. I don't trace it through
15 because it's very complicated.

16 LADY JUSTICE HALLETT: Sorry, can I ask you again, how many
17 days was he here?

18 MR O'CONNOR: Two days.

19 LADY JUSTICE HALLETT: Just the two?

20 MR O'CONNOR: Yes, yes. Omar Khyam is observed meeting him
21 at the airport, Heathrow Airport, on 20 February and he
22 departs on the 22nd.

23 LADY JUSTICE HALLETT: So who comes up with the expression
24 "farewell dinner"? Is that the Committee or is that how
25 it was described by the intelligence?

1 MR O'CONNOR: We don't know. The Committee describe it as
2 a farewell dinner.

3 LADY JUSTICE HALLETT: Sorry to interrupt you, thank you.

4 MR O'CONNOR: Not at all.

5 One would have thought immediately after the arrests
6 and the detection of Khawaja at the end of March 2004
7 the highest priority would be given to checking through
8 the visual surveillance and checking the results, the
9 product of this audio surveillance. In fact, it took
10 four years for the authorities to get round accurately
11 to transcribe the audio surveillance product that they
12 had from Omar Khyam's car.

13 Now, it's been acknowledged rightly -- again by
14 Mr Coltart -- that there were difficulties in
15 transcribing that audio product, because some of it's in
16 Urdu, some of it is in accented English and no doubt
17 there was a rambling and disjointed conversation. But
18 the highest priority should have been given.

19 It is apparent that, from April 2004, the second
20 run-through by the authorities of that audio product,
21 northern accents, English northern accents, were
22 detected, and in light of the fact that visitors to the
23 Crevice plotters from Leeds had already been detected
24 once on that occasion and are about to be detected at
25 the further meetings we're about to go to, that was

1 not -- no connection seems to have been made, and so it
2 was left for years before it was accepted and
3 established that there were more than two people in that
4 car and that Mohammed Sidique Khan was almost certainly
5 one of those people, meeting Khawaja, a remote
6 detonation electronics expert.

7 The next meeting is on 28 February. Now, we come to
8 the second of the meetings that at the time MI5 knew
9 were taking place between the visitors from Yorkshire
10 and the Crevice plotters, and it's the same car. I'm
11 looking at the bottom of my page 35. The same
12 Honda Civic which had already been followed to Leeds.
13 On this occasion, they spent 15 hours with Khyam
14 from just before 9 o'clock in the morning until after
15 11.30 at night, and they go from south-eastern England
16 to Luton to meet Mohammed Qayum Khan "the leader of an
17 Al-Qaeda facilitation network" and spend six hours with
18 him.

19 LADY JUSTICE HALLETT: When was it known that he was leader
20 of an Al-Qaeda facilitation network?

21 MR O'CONNOR: That was always known because the --

22 LADY JUSTICE HALLETT: He was the original suspect?

23 MR O'CONNOR: Correct, madam. He was the reason for
24 Operation Crevice being set up, and it was Khyam coming
25 into the realm of Operation Crevice and then the

1 associates of Khyam which led to the Crevice bomb plot
2 being interceded.

3 LADY JUSTICE HALLETT: But would it be more accurate to say
4 "suspected leader"?

5 MR O'CONNOR: Oh, yes.

6 LADY JUSTICE HALLETT: It wasn't established.

7 MR O'CONNOR: I couldn't agree more. That is the way he was
8 categorised by MI5, and, madam, he was under varying
9 degrees of surveillance since 2003, because telephone
10 contacts between Mohammed Sidique Khan, our 7/7 bomber,
11 and Mohammed Qayum Khan were traced in 2003. Now, this
12 is very opaque because the Intelligence and Security
13 Committee seemed to say that although we can now say
14 that those were telephone contacts between Qayum Khan
15 and Mohammed Sidique Khan, it wasn't at the time -- he
16 wasn't at the time identified as being the person in
17 that telephone contact.

18 Now, why that connection wasn't made before, we
19 don't know. How it was done and why so late we don't
20 know. That's one of the many opaque areas of the
21 report.

22 But, madam, to go back to your first correction,
23 we've put this in italics, we are quoting from the
24 report. That is the way MI5 was treating him, as
25 a suspected leader of an Al-Qaeda facilitation network.

1 Here we have our 7/7 bombers coming down for the
2 second time from Leeds, 15 hours with Khyam and 6 hours
3 with that person, an 18- to 20-hour round trip from
4 Leeds.

5 Then we have the third and fourth meetings, very
6 closely connected in time, 21 March and 23 March, when
7 a different vehicle is used. On 21 March, actually as
8 at that date, the driver of the green Corsa is
9 unidentified and, again, they do the suspicious driving
10 round 40 minutes, no doubt to avoid surveillance,
11 swapping into the Corsa, meeting Khyam.

12 We are now within 6 days of the arrest of Khyam and
13 the Crevice plotters. But two days later, the same
14 vehicle, the green Corsa, is detected, so again within
15 two days they come -- three days, they come down twice
16 from Leeds to meet Khyam. The same green Corsa is being
17 used, and this time there is some audio surveillance
18 which we summarise there because some conversation seems
19 to be taking place in Khyam's car.

20 But, madam, what is extraordinary, over the page,
21 top of our page 37, is that this green Corsa car had on
22 it a name, Lombard Vehicle Management Limited, a car
23 hire and leasing business, with a phone number on the
24 side.

25 This is a vehicle which is practically saying:

1 please check me out. Without having to follow it,
2 without any difficulty at all, the Security Services,
3 all they would have to do is phone up Lombard Vehicle
4 Management, or go and get the Special Branch -- almost
5 certainly this is in Leeds -- get the local
6 Special Branch to go round, flash their badge and within
7 five minutes they know who's hired the car.
8 Is that what happened? No. This is all on
9 23 March 2004. It was on 27 January 2005, ten months
10 later that this is checked out, and lo and behold,
11 information which they could have found out so easily
12 in March 2004 is discovered. The person hiring the car
13 is Mr S Khan of 10 Thornhill Park Avenue, Dewsbury. The
14 same address as had come up when they checked the
15 ownership of the Honda Civic, though at first it was in
16 the name of his wife.
17 An absolutely remarkable delay of ten months, with
18 the simplest possible check being available to detect
19 and identify Mohammed Sidique Khan.
20 So we come to an end of these four meetings which,
21 at the time, or very shortly thereafter, the
22 Security Services knew took place between active Crevice
23 bomb plotters and the 7/7 bombers.
24 Now, madam, we come to the first of our specific
25 criticisms, flawed assessment policy, and Mr Coltart has

1 already -- I'm looking at our page 37. The essential
2 category that MI5 explained to the Committee is defined
3 as follows:

4 "An individual who is likely to be directly involved
5 in or have knowledge of plans for terrorist activity or
6 an individual who may have knowledge of terrorist
7 activity."

8 That's the definition. Then we see in the evidence
9 actually given to the Committee by the head of MI5,
10 Mr Evans, we see that definition being -- simply being
11 completely ignored, because that witness' evidence is to
12 the effect that, to get on the essentials list, you
13 needed to be doing something which suggested you were
14 involved in some form of life-threatening activity, and
15 it's not surprising that if the head of MI5 isn't aware
16 of and consistently following that definition of
17 assessing risk, that we see numerous examples, which we
18 list over the page, of people being categorised not as
19 "essential", but as "desirable" targets, ignoring that
20 definition.

21 So there is utter confusion in policy and practice
22 which is -- it appears from the report on a careful
23 reading that it is wholly unremarked by the Intelligence
24 and Security Committee.

25 Consistently with that we then see hidden away on

1 a careful reading of the report -- I'm looking at our
2 page 39 -- that since the 7/7 bombings, MI5 have
3 radically changed their approach to categorisation.
4 Now, this is unremarked by the ISC. They don't
5 explain, discuss, explain, why this change of policy
6 took place, why the policy was so narrow and different
7 before. They now -- it's hidden away in a footnote;
8 footnote 55 in the report we find a wholesale change of
9 policy in assessing risk from suspects.
10 Secondly, we also see a significant change of policy
11 in terms of looking at past relevant information, it
12 seems now MI5 has a legacy team when they get an
13 opportunity to reassess past relevant information.
14 Again, that is recorded, not commented upon or
15 explained by the ISC. It's precisely what it could be
16 said went wrong here, because -- may I just bring in
17 here the concession we make that, when listing the
18 pressures on the resources of MI5 in the 15 months
19 between March 2004 and July 2005, absolutely rightly the
20 Committee record something called Operation Rhyme.
21 Madam, you may remember somebody called Mr Barot, who
22 had a very striking face and whose plot was quite
23 remarkable in its danger.
24 That was -- Operation Rhyme was the emergency that
25 there was in detecting and interceding to prevent his

1 plot coming to fruition, and we concede that that was
2 a massive and overwhelming distraction from this, once
3 the Crevice plotters had been arrested.

4 But the Operation Rhyme suspects were arrested at
5 the beginning of August 2004 and, of course, massive
6 police resources have to go into preparing for the trial
7 and investigating all the computer product from arrests
8 and that kind of thing. But certainly, in terms of
9 surveillance, MI5 resources are released from that
10 pressure.

11 Now, there are other investigations, of course,
12 going on. But this is where, had there been a legacy
13 team assessing the information from the surroundings of
14 the Crevice plot, they still had from August 2004 to
15 7/7/05, some eleven months in order effectively to carry
16 out that job.

17 I move on to flawed investigation and assessments in
18 this particular case, and, madam, we list the phrases
19 that the ISC record, really again without comment.

20 Can I just pick out the fact that it appears from
21 paragraph 79 that after the Crevice arrests and looking
22 at this information, MI5's assessment was that there was
23 nothing to indicate that the persons detected meeting
24 with Khyam and the Crevice plotters were involved in
25 a plot to carry out terrorist attacks, and paragraph 84:

1 "Nothing at the time to suggest that those
2 unidentified two men [that is Mohammed Sidique Khan and
3 Tanweer] were more than small-time fraudsters who had
4 some minor contact with the Crevice plotters."
5 Those are unforgivable misassessments of the threat
6 posed by those two people.
7 Madam, page 41, we trace through the first clues of
8 Jihadist involvement by Mohammed Sidique Khan. There's
9 the 2001 training camp, when he was photographed but
10 apparently not identified. He is sighted and recorded
11 as -- in a very brief meeting with a known extremist
12 in April 2003. Then at the bottom of page 41, we have
13 these mobile phone contacts with Mohammed Qayum Khan,
14 the Luton-based --
15 LADY JUSTICE HALLETT: Sorry, the date again for the last
16 one, telephone calls? 2003?
17 MR O'CONNOR: 2003, yes.
18 LADY JUSTICE HALLETT: Do you remember when?
19 MR O'CONNOR: Across a couple of months. It's recorded at
20 paragraphs 54 and 55.
21 LADY JUSTICE HALLETT: Thank you.
22 Yes, they're in July and August 2003. Thank you.
23 MR O'CONNOR: But again, at the time, as I repeat, for some
24 reason, not actually identified as being Mohammed
25 Sidique Khan and we can't quite understand that.

1 In July 2003, there seems to be -- there is
2 a detected connection -- this is at the top of our
3 page 42, madam -- with somebody called "Siddique Khan"
4 with an address which is a known extremist bookshop in
5 the Leeds area, so again, West Yorkshire Special Branch
6 would have been following up on that.
7 So these are the clues before the contacts with the
8 Crevice plotters.
9 Madam, 42 to 43, we list the features of the
10 meetings with the Crevice plotters which would cause
11 anyone a high degree of suspicion. I don't repeat them
12 because they're apparent really from the way in which
13 I've already addressed you.
14 We then also list on pages 44 and 45 various checks
15 which were being made which were incompetently carried
16 out and, according to the ISC, typically did not find
17 anything significant.
18 It seems, unforgivably -- this is page 46 of
19 paragraph 5.103 -- that because of various different
20 spellings of the name Sidique, S-I-D-I-Q-U-E or
21 S-I-D-D-I-Q-U-E, or at various times S-I-D-D-E-Q-U-E,
22 according to the first ISC report, the
23 Metropolitan Police are recorded as saying that because
24 of these different spellings, the name Sidique Khan
25 might be an alias. Madam, that is absolutely

1 unforgivable, granted the fact that these names are
2 being, of course, transliterated into English and just
3 like, for instance, the name Mohammed can be spelt in
4 many different, closely-related ways.

5 The next criticism is flawed record-keeping and this
6 is the area in which the second ISC report is most
7 consistently critical of MI5 and, indeed, they record
8 that, even during the process of their preparing their
9 report, MI5 kept on coming up with more traces of
10 documents and more documents.

11 Perhaps one of the most embarrassing reflections of
12 that is again hidden away in a footnote. Madam, do you
13 have the second ISC report there? It's at E10.

14 LADY JUSTICE HALLETT: Thank you.

15 MR O'CONNOR: E10, madam, page 41, which is a presentation
16 of the other pressures on MI5 and its limited resources,
17 and there is a table there of the percentage of targets
18 who could be covered who were subject to intelligence
19 coverage.

20 This is a highly subjective presentation because so
21 many of the categories, like "less good" and
22 "significant gaps" and "inadequate" can't really be
23 accurately delineated. But when the ISC itself wanted
24 to interrogate this presentation from MI5, we see what
25 happened from footnote 46:

1 "The Committee has asked MI5 what happened to these
2 targets", desirable targets, that is, from footnote 46.
3 So the Committee has asked them what happened to those
4 people, but has been told the computer records holding
5 the information from which these figures were obtained
6 are no longer accessible following an update of MI5's IT
7 systems.

8 Madam, the extraordinary consequence which is
9 recorded from this page -- do you see, madam, that the
10 level of coverage "none" is allegedly -- there was
11 absolutely no coverage for 19 per cent of all targets
12 and footnote 47 records that unidentified males D and E
13 fell within this category, ie "none".

14 Now, of course the very phrase "unidentified males D
15 and E" is rather contentious because they had identified
16 them.

17 But it means, to put it in simple language, after
18 all those contacts with the Crevice plotters, and all
19 this basis for suspicion, Mohammed Sidique Khan and
20 Tanweer were put in the lowest 20 per cent of all
21 targets for intelligence and surveillance resources by
22 MI5.

23 That is the stark and really rather shocking
24 conclusion which comes from a careful reading --
25 including footnotes -- of this report.

1 LADY JUSTICE HALLETT: Mr O'Connor, to analyse these figures
2 I assume you would argue that somebody has to look at
3 the primary material again.

4 MR O'CONNOR: Yes.

5 LADY JUSTICE HALLETT: What happens if I decide that that's
6 right and that someone is going to have to be me and
7 Counsel to the Inquest? How do you say that can be
8 organised within the context of an inquest and the fact
9 that you're representing families who themselves want to
10 know what's led to this analysis?

11 MR O'CONNOR: Madam, we have some detailed submissions to
12 make on that. Having been very fairly alerted by the
13 arguments on behalf of the Secretary of State, we have
14 some careful submissions to make and, indeed, an
15 illustration from the Jean Charles de Menezes inquest as
16 to really how quite sensitive material was successfully
17 handled to a successful conclusion in that inquest.
18 May I deal with that towards the end when I do?

19 LADY JUSTICE HALLETT: Certainly.

20 MR O'CONNOR: We are alive to the question, it's certainly
21 a legitimate concern looking ahead. How can it be
22 managed?

23 LADY JUSTICE HALLETT: It's hard, for example, at first
24 blush, to analyse whether it was right to put Khan and
25 Tanweer in the bottom 20 per cent without knowing about

1 the others who were higher up the ladder, as it were.
2 MR O'CONNOR: I couldn't agree more. Certainly, this
3 presentation doesn't help us, because, madam, when we go
4 back to those essential desirable categories, UDM D and
5 E, which for some time they were called, were put in the
6 desirable category which isn't the bottom category.
7 Of course, the end result may not be so much
8 dictated by an analysis of this overview which happens
9 to be here. It's really more basic and personal to
10 individuals privy to this information within MI5. They
11 were quite simply misassessing in an unforgivable way
12 the significance of the information they had.
13 Now, once that misassessment has been made, the
14 outcome we see is this, and it may be the failing isn't
15 so much here in the allocation of resources, it's
16 misassessing, miscategorising, Mohammed Sidique Khan and
17 Tanweer in the first place.
18 If one accepts the misassessment, then they probably
19 maybe had the appropriate level of resources devoted to
20 them. But both will need to be investigated to some
21 degree.
22 Madam, the next and fourth criticism is flawed
23 cooperation between agencies. Again, a basic
24 requirement of an effective security state agency.
25 Here, we see recorded failings, we give the

1 references in our paragraph 5.110 -- failings in the
2 relationship between MI5 and West Yorkshire Police
3 Special Branch, and, madam, for you most particularly,
4 may we draw this second reference there to your
5 attention, paragraphs 204 to 205? Because the ISC, in
6 a rare criticism of MI5, indicate that things have
7 still, in this respect, not improved enough.
8 This is towards the end of the report.
9 Madam, a red light comes on there for your Rule 43
10 jurisdiction.
11 The public deserves something more and updated and
12 more effective than the ISC a year ago recording that,
13 by then, things are still not good enough and they give
14 examples:
15 "MI5 does not [that's in the present tense]
16 automatically receive notification if there is
17 information of interest on police Special Branch
18 databases, and there remain, even today, many different
19 IT systems that are not connected. There should be much
20 better connectivity and automation between
21 counter-terrorism and intelligence databases, especially
22 between police forces, MI5 and the regional
23 counter-terrorism organisations. This would allow the
24 connections that we have now been able to make over the
25 course of our 13-month investigation between the name

1 Sidique Khan and a number of counter-terrorism
2 operations to be flagged up automatically in the
3 future."
4 So there is something very much in the public
5 interest that this inquest could focus upon for the
6 future.
7 Madam, we then, over the following pages, list
8 examples of where cooperation failed, no response to an
9 enquiry from MI5, from West Yorkshire Police,
10 in February 2004. West Yorkshire Police passively
11 waiting for tasking and not taking any initiatives, and
12 a mystery lost fax which has been mentioned in the press
13 between MI5 and West Yorkshire Police, which isn't --
14 doesn't appear on the face of the ISC report. That's in
15 our paragraph 5.117 onwards.
16 Then criticism five of the six is misleading the
17 Intelligence and Security Committee.
18 There is a striking change between what MI5 told the
19 first ISC report and what has come out in the second ISC
20 report about whether Mohammed Sidique Khan and Tanweer
21 had been identified, and for this purpose, madam, may
22 I invite you -- because this is a serious allegation to
23 make, and the last time MI5 were accused of deception,
24 even though it came from the Master of the Rolls and the
25 Lord Chief Justice, the ceiling seemed to fall in as if

1 MI5 is incapable of deception. They aren't, and they
2 deceived the Intelligence and Security Committee.
3 The first report, madam, is E1.
4 LADY JUSTICE HALLETT: Page?
5 MR O'CONNOR: Page 43.
6 LADY JUSTICE HALLETT: I have it.
7 MR O'CONNOR: I'm very sorry, when I said "page", I meant
8 paragraph, sorry, paragraph 43.
9 There are three key quotes, paragraphs 43, 47 and
10 49.
11 43. So this is the first Intelligence Security
12 Committee report in May 2006. 43:
13 "We have been told in evidence that none of the
14 individuals involved in the 7 July group have been
15 identified; that is, named and listed as potential
16 terrorist threats prior to July. We have also been told
17 that there was no warning from intelligence for plans to
18 attack the transport network."
19 47:
20 "We asked the Security Service whether, having
21 looked back at the intelligence that existed, more
22 attention should have been paid to Sidique Khan and
23 Tanweer at the time or whether there were any clues
24 about their future intentions to conduct terrorist
25 attacks."

1 Then, madam, I invite you to read, but I don't read
2 out, the middle section.

3 LADY JUSTICE HALLETT: I have read it carefully before
4 coming into court.

5 MR O'CONNOR: I'm most grateful. Where it says:

6 "The Security Service did not seek to investigate or
7 identify them at the time, although we have been told it
8 would probably have been possible to do so."

9 Then paragraph 49 from the beginning:

10 "Further attempts were made to return to the men
11 involved in the meetings in '04 as resources became
12 available. Some of them were subsequently identified
13 and categorised as essential, desirable or other targets
14 and more intensive investigations were conducted. Only
15 limited additional attempts were made to identify the
16 men we now know to have been Sidique Khan and
17 Shehzad Tanweer and to find out more about their
18 activities. They were not categorised as investigative
19 targets because, on the basis of the available
20 intelligence, there was no reason to suggest they should
21 be investigated above other more pressing priorities."

22 The first point is that they were named and listed
23 as desirable targets, as has emerged from paragraph 87
24 of the second report. So to suggest they were not
25 categorised as investigative targets is a glaring

1 inconsistency with the fact that they were named and
2 listed as a desirable target, as has emerged from the
3 later report.

4 But, if we can now contrast those three passages
5 with what the ISC itself has said in its second report,
6 and they themselves express surprise at what they have
7 been told before. Paragraph 80:

8 "Even though Sidique Khan was not assessed to be
9 significant," this is page 26, paragraph 80 of the
10 second report, "it is nevertheless surprising, given the
11 amount of information MI5 and the police had on him,
12 that they said they had not identified Mohammed
13 Sidique Khan prior to 7/7. We questioned MI5 in detail
14 on this point."

15 So plainly, the ISC is there recording what plainly
16 they had understood at the time of their first report
17 from MI5 they had not identified Mohammed Sidique Khan.
18 There then turns out to be an extraordinarily
19 convoluted and bizarre explanation which is recorded in
20 this report over the next three paragraphs.

21 It's recorded without comment by the ISC and it
22 simply doesn't hold water, and I'm not going to read it
23 out, but it doesn't make sense and it reveals -- I'll
24 just begin paragraph 81 in summary, the ISC say:

25 "We have found that the confusion has arisen from

1 a difference in terminology. Most of us think of
2 identification in terms of name, address and date of
3 birth. However, MI5 use the term in a far more limited
4 way. For them, formally identifying someone involves
5 both who they are and what they are."
6 We then get a convoluted and unacceptable
7 explanation of how MI5 allegedly go about identifying
8 what and who people are, and we set out -- it's so
9 convoluted that picking it apart and exposing it is also
10 convoluted. We've set it out in writing over the next
11 three paragraphs.
12 Now, our submission is that, if this was confusion
13 in the first report, MI5 must have known from May 2006
14 that it was confusion. They must have seen drafts of
15 the first report before it was actually published. We
16 submit it's not confusion, but accepting at face value
17 it may have been confusion, MI5 will have known before
18 publication in May 2006 that this is -- what the ISC was
19 saying was wrong and needed further explanation, most
20 particularly explanation of the way in which MI5 use
21 perfectly ordinary English words.
22 But they didn't, and even on the confusion excuse,
23 MI5 left the ISC under this misunderstanding and, may
24 I add, therefore the British public, for three years
25 thinking they had not identified Mohammed Sidique Khan

1 before the 7/7 bombings.

2 Now, that is what -- even accepting the original
3 confusion, which we don't -- is so embarrassing to the
4 good faith of MI5, because they left the ISC and the
5 British public misled for three years when they could
6 and should have corrected it, if it was the result of
7 confusion.

8 Finally -- and, madam, if they have arguably
9 deliberately misled the ISC, that is deeply undermining
10 of the efficacy of both these reports, as soon as we've
11 penetrated good faith.

12 Finally, there's the resources argument, and here
13 the report contains some peeks behind the curtain of
14 secrecy, some references to overall budget, though, of
15 course, we never get any information about the budget of
16 the Security Services, that's one of those conventional
17 areas which no-one is allowed to go into in our society.
18 We get some numbers of MI5 officers -- 3,500
19 officers. We submit that is almost certainly not
20 entirely accurate.

21 What they are describing is 3,500 MI5 officers, as
22 if those are the entire resources of MI5.

23 In fact, MI5 have available a system which used to
24 be called "watchers", who probably are not actually MI5
25 officers and, therefore, are left out of account, and

1 they are probably not called watchers anymore, they're
2 probably called "ocular observation operatives" or
3 something very, very modern and politically correct.
4 So we can't even trust the statistics about numbers
5 of MI5 officers. Really, our -- in headline form, our
6 criticisms of resources is obviously at a planning and
7 allocation stage. The ISC only deals with MI5
8 resources, not the police and Special Branch. It is, of
9 course, not an answer to a criticism of the state's
10 failure to protect citizens of this country that limited
11 resources are given, because the whole argument could be
12 "Well, why were limited resources given and why weren't
13 more given and why weren't they better allocated?" We
14 do have this unusually long opportunity of 15 to 16
15 months during which the full resources of the state
16 could and should have been deployed to intercept and
17 prevent the 7/7 plotters.
18 We point to various very strange uses of language by
19 MI5 at the bottom of page 53 where they seem to play
20 with the terms "intelligence coverage" and "surveillance
21 coverage". In fact, really one has to -- it is quite
22 extraordinary how one has to deconstruct, almost like
23 a literary criticism exercise at a tutorial university,
24 how MI5 uses language, one has to watch out constantly
25 for the shifting categories.

1 So those are our six criticisms of content. May
2 I come to structural flaws of the Intelligence and
3 Security Committee, and first of all independence?
4 Madam, it may be worthwhile looking at the Act and
5 its schedule at B4 in the legislation. That's the
6 legislation bundle.
7 Section 10(1) of the 1994 Act sets out the basic
8 function of the Committee, which actually is not really
9 to examine questions such as these. It's really
10 a committee which has been adapted to examine these
11 questions, because its function in 10(1) is to examine
12 the expenditure, administration and policy of the
13 Security Services.
14 Now, no-one is remotely suggesting this report isn't
15 properly produced by the Committee. They are the only
16 people who could. But it's not its primary function.
17 Subsection (3):
18 "The members ... [are] appointed by the
19 Prime Minister after consultation with the leader of the
20 opposition ...
21 "Schedule 3 ... shall have effect with respect to
22 tenure ... and procedure ..."
23 Can I invite you, madam, to turn to schedule 3:
24 "Tenure of office."
25 Paragraph 1:

1 "Subject to the provisions of this paragraph,
2 a member of the Committee shall hold office for the
3 duration of the Parliament in which he is appointed."

4 That irretrievably links the membership of this
5 Committee to the executive of any one particular
6 government. There is no continuity of office across
7 elections and changes of government.

8 Subsection (2):

9 "A member of the Committee shall vacate office:

10 "(a) if he ceases to be a member of the House of
11 Commons;

12 "(b) if he ceases to be a member of the
13 House of Lords;

14 "(c) if he becomes a Minister of the Crown; or.

15 "(d) ..."

16 This is critical to independence:

17 "... if he is required to do so by the
18 Prime Minister on the appointment [of someone else]."

19 No provision for any procedure or reasons. All the
20 Prime Minister has to do is appoint someone else and off
21 the member goes.

22 Over the page madam, paragraph 2 of the schedule:

23 "The Committee may determine their own procedure."

24 It says that in fairness, although that is hugely
25 limited by other resource issues we're about to come to.

1 We then get a very lengthy and convoluted set of
2 procedures under paragraph 3 whereby information may or
3 may not be supplied to the Committee and, basically, the
4 Secretary of State can, in the end, prevent the
5 Committee seeing material, even if it asks for it.
6 So, madam, that deals with tenure, which is
7 a critical factor to independence, and the Act also
8 records that the reports are presented to Parliament by
9 the Prime Minister. So this is the only
10 Select Committee which doesn't report directly to
11 Parliament. That has changed since these reports, or
12 there's a proposal for it to change, but that was the
13 state of play as at the time.
14 Now, madam, the Committee did not, at the time of
15 these reports, have any Secretariat separate from that
16 of the Cabinet Office, and the Cabinet Office is the
17 heart of the executive in our current constitution. It
18 sat in the Cabinet Office and it had no independent
19 Secretariat.
20 Now, I'm looking at the bottom of our page 55. The
21 Governance of Britain Green Paper of July 2007 addressed
22 these various problems over the Intelligence and
23 Security Committee and change was proposed there.
24 I just go straight to 92 and 93. The government
25 proposed there to consult on bringing their procedures

1 more in line with that of other Select Committees, and
2 also, paragraph 93, interim changes for greater
3 transparency for the Committee having an option to meet
4 in public and, if necessary, in the Houses of
5 Parliament, for there to be proper debates about its
6 reports, and, last bullet point under paragraph 93, from
7 the Green Paper:

8 "Strengthening the Secretariat to the Committee,
9 including through the appointment of an independent
10 investigator, and making the Secretariat clearly
11 separate from the staff of the Cabinet Office."

12 So in the usual way of these things, we therefore
13 see -- although it's not been spelt out before -- that
14 the Committee did not have any independent investigator
15 of its own.

16 So we see from the latest annual report of the ISC,
17 from which we quote in our paragraph 5.151, that:

18 "The Committee has an independent Secretariat
19 currently hosted by the Cabinet Office."

20 So that's a change, if we understand it right.

21 Then:

22 "The Committee also has a panel of three
23 investigators."

24 Well, that's new and obviously too late for the
25 report which was prepared, in fact, through 2007 and

1 2008. The main body of the second ISC report, madam,
2 was sent to the Prime Minister in 2008 and the
3 publication was delayed for various reasons.
4 So the annual report of the ISC, the latest one, is
5 recording changes which have taken place since the state
6 of play for the Committee when it produced this second
7 report in this case. So it's new that there are three
8 investigators: a general one, a financial investigator
9 and a legal adviser.
10 Also, it appears from that same annual report --
11 paragraphs 8 to 13 -- that it should have a secure and
12 independent budget. So thus, in that indirect way, we
13 learn that the Committee has not had its own independent
14 budget. We don't know what that budget was/is, but it
15 didn't have an independent one before.
16 All these are heavily undermining of any effective
17 and structural independence of this Committee from the
18 executive.
19 May I take you to the classic authority on what
20 independence means? I admit, madam, that this is
21 independence for the purposes of Article 6 of the
22 European Convention, so the argument is by analogy, but
23 we submit it is not a bad one, the case of
24 *Findlay v United Kingdom*.
25 LADY JUSTICE HALLETT: I'm very familiar with *Findlay*,

1 Mr O'Connor.

2 MR O'CONNOR: I'm most grateful. Madam, you will remember
3 that was the role of the convener to a court martial.

4 We quote:

5 "Actual and apparent independence is one of the
6 tests and the manner of appointment, term of office and
7 the existence of guarantees against outside pressures
8 and whether the body presents an appearance of
9 independence."

10 Madam, I move to efficacy over the page, and that's
11 severely undermined by having no compulsory powers at
12 the time, investigative resource, and that resulted in
13 the Intelligence and Security Committee actually
14 admitting that for the purposes of their first report,
15 although there were surveillance photographs and quite
16 good ones of the meetings of -- certainly of one of the
17 meetings between the 7/7 bombers and the Crevice
18 plotters, the ISC didn't even ask to see those
19 photographs. They did for their second report, but for
20 their first they, as we quote from the chairman at
21 a press conference, took things on trust for the
22 purposes of their first report.

23 It is apparent -- we list this on our page 59
24 madam -- both from the first report and from the second
25 report that the Committee does not take oral evidence

1 from anyone other than the institutional heads of the
2 relevant agencies and really very, very senior officers
3 such as Deputy Chief Constable.

4 If I can take you most importantly to where this is
5 apparent from the second report, in the second report,
6 madam, annex C -- that's page 78 -- lists the sources of
7 evidence presented. Page 78 of the second ISC report.

8 Madam, you see at the top:

9 "In the course of this review, the Committee has
10 looked at all the evidence in great detail. We have
11 considered written and/or oral evidence and other
12 material from the following ..."

13 So that then leaves it ambiguous as to from whom
14 they have taken oral evidence, but we see GCHQ and other
15 officials, MI6, the head and other officials, MI5, the
16 head and -- the two Directors General and other
17 officials, and from the Metropolitan Police
18 Assistant Commissioners and from the West Yorkshire
19 Police, Chief Constable, other officers.

20 So it leaves it completely ambiguous as to from whom
21 they heard orally, but paragraph 298 seems to clarify
22 that ambiguity. Page 95, paragraph 298, in explaining
23 their general procedures:

24 "The members of the Committee are notified under the
25 Official Secrets Act, given access to highly classified

1 material. The Committee holds evidence sessions with
2 government ministers and senior officials; for example,
3 the head of MI5. It also considers written evidence
4 from the intelligence and security agencies and relevant
5 government departments."
6 Then this evidence may be drawn from, of course,
7 primary and contemporaneous material.
8 So it very much looks as though -- it may be
9 a resource issue; that they simply haven't got the
10 resources to do it -- that they do not hear oral
11 evidence from the officers doing the groundwork, making
12 the actual assessments which, as we've seen, are so
13 critical to the failings in the 15 months leading up to
14 7/7.
15 Whilst, therefore, many excuses and explanations are
16 presented in the second report, sometimes they don't
17 bother to record excuses, there's just the bland
18 recording of the fact that an assessment was made --
19 they can never have been tested.
20 We must say that we have already pointed out, madam,
21 in fairness, where the Security Committee has criticised
22 MI5, for instance, record-keeping and flawed cooperation
23 with West Yorkshire Police, but subject to that, we find
24 it very difficult to detect a single reference to this
25 Committee rejecting or even doubting any of the very

1 many excuses that are recorded in the report for the
2 various misassessments which had such fatal and tragic
3 consequences.

4 Madam, finally, our page 62, is lack of
5 transparency. The Governance of Britain Green Paper
6 accepts that the Committee itself is insufficiently
7 transparent to command public confidence. That's the
8 government really accepting this point.

9 There has been, of course, only the most passing
10 involvement by victims in the ISC's procedure. Madam,
11 we were present at the meeting. It was, as I've
12 explained, at the invitation of the then Home Secretary.
13 Lawyers were welcome. The members of the Committee
14 acted with the utmost courtesy and consideration on
15 a personal level, that has to be recorded, and it was
16 a constitutional first.

17 However, in terms of actual product and contributing
18 really to the efficacy of the ISC's efforts, it was
19 really limited to our providing those 6, 7, 8 pages of
20 questions which you've seen.

21 Now, madam, may I come to the public interest
22 argument upon which you have --

23 LADY JUSTICE HALLETT: Well, I've been asked to give the
24 stenographers a break, so if we just say I will return
25 at quarter to 12, and then how are we doing on timing,

1 Mr O'Connor?

2 MR O'CONNOR: Madam, I really have -- this is the last point
3 I'm making in terms of the ISC report.

4 LADY JUSTICE HALLETT: Then it's the aftermath.

5 MR O'CONNOR: Aftermath I've dealt with, madam. I did very
6 cursorily -- we have it in writing, and I summarised it
7 to you. Madam, it depends for you as to when you want
8 our survivor submissions to be made. If they are to
9 be --

10 LADY JUSTICE HALLETT: I think the list suggested that we
11 had the survivor submissions later.

12 MR O'CONNOR: I'm ready whenever.

13 LADY JUSTICE HALLETT: Very well, I'll return at quarter to.
14 (11.40 am)
15 (A short break)
16 (11.45 am)

17 LADY JUSTICE HALLETT: Mr O'Connor, I've just been handed
18 a piece of paper.

19 MR O'CONNOR: It's a document I will come to.
20 Unfortunately, it doesn't have a heading on. Madam,
21 this is the questionnaire. I'll come to it a little
22 later. But this is the questionnaire that
23 Sir Michael Wright, sitting as the Deputy Assistant
24 Coroner in the Jean Charles de Menezes inquest, gave to
25 the jury, together with written legal directions, and it

1 may be of general interest to you, madam, but may I come
2 to it in a second?

3 LADY JUSTICE HALLETT: Of course.

4 MR O'CONNOR: Because it impacts on this final issue upon
5 which you've invited submissions, which is a public
6 interest argument.

7 Really, although I fully anticipate that the
8 Secretary of State's counsel would not put it so starkly
9 at all, it will be put much more attractively, but this
10 submission really does bring into question whether our
11 inquest laws could ever be appropriate to investigate
12 major fatalities, no matter what the extent of the loss
13 of life, and no matter what the extent of arguable
14 failings by the Security Services. It's really an
15 argument bringing into question your whole jurisdiction
16 in this area.

17 Really, if I may just be allowed to set a context,
18 it was only very recently that the Security Services,
19 our Security Services, emerged from a complete twilight.
20 I mean, the Security Services Act 1989 and the
21 Intelligence Services Act 1994 were the first open
22 acknowledgements constitutionally that they existed.
23 Before then, we lived in a sort of dark age when,
24 although MI5 had existed, was set up in the aftermath of
25 the First World War, there was a pretence that they

1 didn't exist. They couldn't be discussed or
2 acknowledged in Parliament, et cetera.
3 As, admirably if rather belatedly, in a late
4 20th Century democracy the Security Services have
5 actually emerged so that they do actually exist and
6 their roles are defined by Parliament, so instruments of
7 the beginnings of accountability, such as the
8 Intelligence and Security Committee have been
9 established, and they seem to be developing and we all
10 seem to be growing up about it.
11 But the consequence of this, surely, in the
12 21st Century, in a mature democracy, is that there's no
13 sensitivity about this. The Security Services are
14 subject to the rule of law, as anyone else is, as any
15 other institution is, subject to those strictly
16 necessary limitations which are called for because their
17 role may be compromised by exposure.
18 But that's the priority. Secrecy isn't the
19 priority. Their own assessment of their convenience is
20 not the same thing as the public interest. They are
21 subject to the rule of law and, thus, a terrible
22 atrocity arguably preventible by them, but which
23 occurred with arguable failings by them, can be, in
24 principle, effectively investigated by our inquest
25 system.

1 Really, that is demonstrated, and the lack of
2 blanket confidentiality about these issues is
3 demonstrated by the second ISC report. It's a simple
4 proposition, really: if this degree of material
5 emanating from the Security Services can be presented
6 openly, as it has been, at secondhand, then what can
7 possibly be the public interest objection to exploring
8 and ventilating the first-hand material, in principle?
9 Now, there will obviously be limitations upon the
10 exploration of original material, but, madam, it's bread
11 and butter to the courts that we maximise open
12 consideration and we redact, where necessary, where
13 there is some sensitivity or some irrelevance, the
14 identity of a particular -- the real name of
15 a particular MI5 agent is simply deleted.
16 These are manageable and familiar things for our
17 courts now, and once the genie is out of the bottle,
18 once all this material, all this information, has been
19 published at secondhand, in principle, what can be the
20 difficulty over exploring the first-hand material?
21 My learned friend Mr Coltart has already referred
22 to, really, your double layer of assistance and the
23 double layer of protection that the Security Services
24 would have here.
25 First of all, the role of Counsel to the Inquest.

1 Secondly, if that is not 100 per cent satisfactory, the
2 potential role of Special Counsel.

3 Now, before moving to an illustration of how an
4 inquest has effectively dealt with highly sensitive
5 issues in the de Menezes case, may I deal with another
6 aspect of this amorphous public interest argument? That
7 is a resource and distraction argument, that our
8 Security Services are carrying out vital functions, and
9 it would be a significant distraction from them for them
10 to have to account publicly to you, madam, and to the
11 British public for their arguable failings.

12 Two answers to that. First of all, individuals who
13 actually were at the heart of these failings have not
14 yet had their time taken up and had their efforts
15 distracted by having to give evidence. It hasn't
16 happened yet. They didn't have to give oral evidence
17 before the Intelligence and Security Committee. This
18 will be the only, one and only, occasion in which they
19 would have to do so.

20 Secondly, the recovering of documentation, that's
21 already been done, it was done for the Intelligence and
22 Security Committee, it may be there would have to be, of
23 course, some more checking and digging.

24 So in the circumstances of this case, the
25 distraction argument utterly fails and, madam, may I now

1 come -- and we hope it's helpful -- by way of
2 illustration to what happened in the de Menezes inquest?
3 Highly sensitive issues were effectively
4 investigated there.

5 The facts are very familiar, but there had to be
6 exploration of the Metropolitan Police's policies and
7 practice, their operational responses to the threat
8 posed by suicide bombers, what their policies were, what
9 the training of the officers were and, indeed, there was
10 exploration of whether those policies were lawful and
11 what their origins were, which in fact were with foreign
12 Security Services.

13 Now, the following were the protections which
14 enabled confidentiality to be maintained, but for there
15 to be an effective inquest.

16 First of all, a High Court judge was appointed,
17 Sir Michael Wright, who, of course, was able, as perhaps
18 a coroner could not, to consider public interest
19 immunity applications by the relevant state agencies.

20 The coroner there granted full or partial public
21 interest immunity in relation to many documents. Some
22 were provided to legal teams on strict undertakings as
23 to confidentiality. For instance, copies couldn't be
24 made and they had to be kept secure.

25 Some documents were summarised under the supervision

1 of the judge sitting as coroner so that the summaries
2 could be shared with the families.

3 There were discussions in camera with all the
4 lawyers about the extent to which evidence could be
5 explored in public, and compromises were reached so that
6 there was effective exploration but confidentiality was
7 preserved.

8 Many witnesses gave evidence behind screens and
9 anonymously, so that the jury, lawyers -- and, of
10 course, the coroner -- could see the witness but the
11 public could not. These methods worked and they
12 culminated in the document we've handed to you, madam,
13 and the full verdict questionnaire given to the jury is
14 copied there, but -- and many of the questions are very
15 specific to that specific tragedy.

16 But, madam, if I ask you please to look at page 15,
17 the third page, you'll see questions (g) and (h). There
18 we see a clue as to some of the sensitive issues that
19 were explored about communication systems within the
20 Metropolitan Police.

21 Of course, this is just the end result of
22 a filtering of these many sensitive issues which were
23 gone into effectively.

24 So of course, there's a limited parallel between
25 that inquest and this one, but it points the way to

1 a practical resolution to the issues raised by Counsel
2 for the Secretary of State. They are genuine issues but
3 they cannot possibly undermine, in principle, the
4 efficacy of your jurisdiction, madam.

5 Those are our submissions.

6 LADY JUSTICE HALLETT: Could I just go back, Mr O'Connor, on
7 one matter? It's in relation to Khan, Tanweer, Hussain
8 and Lindsay.

9 The families were told that this week I would be
10 hearing submissions on whether to resume, if so, scope,
11 if so, whether there would be joinder.

12 Have you had the opportunity to give any further
13 thought to the effect on the families if I were merely
14 to adjourn any decision in relation to the four, because
15 they've been assured that they're going to be getting
16 a ruling quite soon after these hearings, and now,
17 without the benefit of any submissions, that raises the
18 possibility of adjourning generally the question of (a)
19 resumption of their inquests and (b) joinder.

20 Do you have anything further you want to add on that
21 question?

22 MR O'CONNOR: Madam, we had, and our clients had, no reason
23 to anticipate that you would be faced with this real
24 difficulty today, and they will readily appreciate and
25 have picked up that you do have a real difficulty

1 because of -- whether it's a communication problem or
2 non-cooperation or whatever, for some reason you have
3 been left without some really vital information, and
4 you, madam, have the very difficult task of recognising
5 that you sit as coroner in inquests over their deaths
6 too, and there are sensitivities there.

7 I am just speaking off the top of my head because
8 I can't practically, as it were, go round my clients or
9 communicate with those who are not here, but I would
10 venture to suggest that they will readily understand
11 that you are frustrated from reaching a conclusion on
12 how to resolve these dilemmas now through no fault of
13 your own and no fault of anyone present in this room,
14 and that, sitting as coroner, as a judicial function,
15 and balancing those conflicting interests, you may well
16 feel that you need to make some further efforts to find
17 out information from those parties and from their
18 lawyers.

19 So I do not suggest that that will be misunderstood
20 or that they are so, I would venture to suggest,
21 oversensitive that they can't see the necessity of
22 waiting in that respect for a while. We are a long way
23 from October. They would like to have some certainty
24 about the future, but they recognise maybe we're all
25 frustrated, it can't be reached immediately.

1 Is that a fair way of putting it?

2 LADY JUSTICE HALLETT: Thank you very much, Mr O'Connor,
3 very helpful.

4 Right, Mr Saunders, I think you're going next.

5 Submissions by MR SAUNDERS

6 MR SAUNDERS: Madam, can I say I disagree with Mr O'Connor
7 on that very last point, but may I come to it in order,
8 and I hope set out briefly -- I hope to be less than
9 15 minutes.

10 In dealing with the summary you asked for, all the
11 families that are set out in our submission at tab 13,
12 the ten families, all seek resumption.

13 As far as joinder is concerned, nine seek joinder of
14 the 52 and one family is very much neutral.

15 Scope, we seek, as has already been argued before
16 you, the wider Middleton type of inquest.

17 LADY JUSTICE HALLETT: Sorry, going back to joinder, nine
18 seek joinder of the 52 and exclusion of the four?

19 MR SAUNDERS: Yes.

20 LADY JUSTICE HALLETT: Thank you. Sorry, scope, Middleton,
21 yes?

22 MR SAUNDERS: Scope, Middleton.

23 Jury. Each would like to have a jury, understanding
24 as they do, the difference, depending on how you resolve
25 the question of resumption under 8(3)(d) or 8(4).

1 Finally, interested persons, you will have seen the
2 way we drafted, all clearly wish the survivors to be
3 witnesses.

4 Can I help you by taking you -- it's right at the
5 end of our submissions, madam, page 21.

6 LADY JUSTICE HALLETT: You're not the only counsel,
7 Mr Saunders, to use the expression "wish there to be no
8 diversion from the scope".

9 MR SAUNDERS: Yes.

10 LADY JUSTICE HALLETT: I didn't quite follow what that meant
11 when one would have thought the scope was likely to be
12 the same for survivors and bereaved families.

13 MR SAUNDERS: It may well be that it's an emphasis as to
14 what may follow afterwards for survivors and what the
15 position has been, I know not in terms; for example,
16 matters of compensation, because clearly those issues
17 have been already dealt with to a certain extent, and it
18 is the emphasis really on what happened to those who
19 lost their lives and I think some concern that some of
20 the families have is as to what the input of survivors
21 may have in all sorts of ways, not necessarily easy to
22 articulate.

23 LADY JUSTICE HALLETT: Thank you.

24 MR SAUNDERS: But it is the focus of the 52 as to how their
25 loved ones -- in fact, all of those families that are

1 here today, it's sons and daughters, because we have one
2 other family where it's, in fact, the husband whose wife
3 died.

4 So that's how we set it out there, and I wasn't
5 going to seek to suggest any further assistance we can
6 give. You see that there is a difference between the
7 ten families. Some support Mr O'Connor's submissions
8 that are to come. Some disagree with. So we simply set
9 out that is a feature in this case.

10 Madam, I will not either take you through the detail
11 of what we've said in our submissions, nor, I hope,
12 repeat that that has gone before.

13 On resumption, we'd respectfully submit that there
14 is sufficient cause that the delay that there has been
15 so far is immaterial, and you'll obviously have in mind
16 the inner west London Ex parte Dallaglio case where
17 there were a similar number of deaths, namely, 51, and
18 a significant delay there of five years as well because,
19 of course, of the significant criminal proceedings
20 against the Master of the Bow Bell and the fact that
21 there were two juries that could not reach verdicts and
22 obviously the appeal against the original coroner's
23 decision not to resume.

24 As far as joinder is concerned, madam, as I've
25 already explained, all are seeking joinder of the 52.

1 They obviously share the common bond, which is:
2 whichever bomber was responsible for the loss of their
3 loved one, they are all here and have lost someone
4 through no fault of their own. After nearly five years,
5 all now want answers to questions that are not
6 necessarily the same.

7 You have just asked Mr O'Connor -- and the
8 difficulty that you now face is that we have no ideas
9 what two of the four bombers -- because, of course,
10 in February before you it was only two that were
11 represented -- we have no idea what they seek either in
12 joinder or scope.

13 My submission is that you should reopen the inquests
14 of the 52. If any of those four bombers wish to seek
15 joinder, there is nothing to prevent them applying as
16 soon as is reasonable, and we can be invited to address
17 you on the position if it's relevant at that stage.

18 The reason I disagree with Mr O'Connor is none of
19 these families want any further delay, and it appears to
20 us that there needn't be such.

21 You can clearly find as a fact that, for the 52,
22 there is sufficient cause, and you can postpone any
23 decision you need to make in relation to the four
24 bombers.

25 LADY JUSTICE HALLETT: As I understood it, that's not

1 different from Mr O'Connor, Mr Saunders.

2 MR SAUNDERS: In that case, I withdraw my criticism implied
3 or otherwise.

4 LADY JUSTICE HALLETT: So you are agreed, then, that
5 I should proceed to make my decisions as far as the 52
6 are concerned, and the families whom you represent would
7 understand if I was forced to postpone a decision in
8 relation to the four?

9 MR SAUNDERS: I haven't gone through that with them, but I'm
10 sure, having spoken to them on a number of occasions
11 over the last week, that they will understand and
12 appreciate if you have those difficulties.

13 One of the factors that the families were very
14 appreciative of, may I say, from the last hearing, was
15 the views that you were expressing in terms of timing
16 and with our concerns as to the delay in receiving of
17 the site reports and the fact that you were looking for
18 matters to be dealt with in the autumn of this year.

19 So everybody left -- and I would be very surprised
20 if those representing the bombers didn't -- with those
21 views very much in mind, because you'd set a tight
22 timetable and you'd set it, may I respectfully suggest,
23 for very good reason so there wasn't further delay.

24 LADY JUSTICE HALLETT: If I did decide that I was forced to
25 postpone any decision about the four, it will not affect

1 any timetable.

2 MR SAUNDERS: Thank you. Can I then move next to the
3 question of scope? Much of which, may I say, has
4 already been dealt with by Mr Coltart, Mr Patterson and
5 then yesterday and again today by Mr O'Connor, and
6 I have been putting lines through a number of matters
7 that I was going to deal with.

8 Can I also explain, so that you know, madam, that
9 last week all the legal teams for the families met
10 together in order to discuss how we would approach
11 today's hearing and the factors and features that each
12 of us could most hopefully help you with?

13 May I also say that the families are appreciative of
14 the letter Mr Smith has written and the way in which he
15 has set out how matters should proceed, depending on
16 your decisions.

17 As I say, the submissions that we have set out have
18 been dealt with in terms of both the ISC report and just
19 one or two very brief matters, and I'm not going to take
20 you to the report.

21 The families appreciated all too readily the
22 differences that came between the first and the second.
23 For example, in the initial report the suggestion that
24 the train that the bombers had caught was the 7.40 when,
25 in fact, as you know, that was the train that was

1 cancelled and never ran that day.

2 Also, the features of the delay. They understand
3 why that second report had to be delayed nearly a year
4 due to cases that were ongoing.

5 The criticisms have been highlighted in some detail
6 this morning by Mr O'Connor and it won't assist you for
7 me to go through them.

8 May I just, for your benefit, give you one citation?

9 You were asked about the farewell meal. That, in fact,
10 is at paragraph 105 of the second report and is dealt
11 with at footnote 38.

12 LADY JUSTICE HALLETT: The reason I ask is it just seems
13 a curious description for a meeting that takes place two
14 days after somebody arrived. It wasn't as if the
15 visitor had been here for six months. I just wondered
16 who had come up with the description.

17 MR SAUNDERS: Something that I had seen, it's at, as I say,
18 105, which is a slightly curious section of this second
19 report. It's at page 32, madam, of the report.

20 You will see paragraph 105 in bold and then the
21 footnote at 38. It doesn't explain the detail, but of
22 course, it comes from the opposite page of 101, but
23 those are the references --

24 LADY JUSTICE HALLETT: Thank you.

25 MR SAUNDERS: -- and, of course, in the preliminary stages

1 of that second report where the Committee themselves
2 acknowledge they had to start afresh because of the fact
3 that some of the material had only just been discovered.
4 Again, that's at paragraph 41 at page 60.

5 LADY JUSTICE HALLETT: On that note, Mr Saunders, I take it
6 that everybody is aware, although nobody has referred to
7 it as yet, of the letter from the West Yorkshire Police?

8 MR SAUNDERS: I'm just about to get to it. I'm just about
9 to get to it.

10 You've heard reference to both the Honda, the
11 registration to Mohammed Sidique Khan's wife, the links
12 to the bookshop. One of the features, of course, when,
13 in the second report, there was reference to starting
14 afresh and matters just coming to the attention of the
15 Committee, last week -- it's at your tab 18B -- we
16 received a letter, dated, I think, 22 April. The force
17 solicitor, Ms Harvey, wrote to Mr Smith -- as I say,
18 that was forwarded to us immediately -- and set out that
19 in fact there were -- there was discovered now two sets
20 of fingerprints, not one, and it may be part of the
21 explanation, Mr O'Connor having mentioned this morning
22 the different spellings of Sidique Khan, they were held
23 under different spellings of his name, but both have and
24 carry the same date of birth, 20 October, and obviously
25 explains that when the Chief Constable,

1 Sir Norman Bettison, gave evidence before the Committee,
2 he was unaware, back in 2007, that what he in fact was
3 telling the Committee was incorrect.

4 What Ms Harvey goes on to explain to Mr Smith is,
5 once we have a full explanation, that will be made
6 available to him and to yourself.

7 LADY JUSTICE HALLETT: You say the significance of this is
8 not so much that the West Yorkshire Police had these
9 prints, but it is that it's only just come to light
10 because of this hearing?

11 MR SAUNDERS: Exactly. So if you are looking at delay, from
12 Dallaglio, can things change over the course of time,
13 this is a perfect example to see how material that
14 people may have thought was well-known in the early
15 stages has only just come out now, and clearly goes to
16 matters that you've already been addressed on this
17 morning: namely, the facility of the Security Service
18 and the relevant police force, to be able to communicate
19 effectively and efficiently with the material that they
20 obviously had at the time. But that's one example of
21 it.

22 Madam, you may also look to the question on the
23 Intelligence and Security Committee, as to whether or
24 not matters that they found were sensitive some two or
25 even three years ago would still be such now.

1 May I answer the question I think you posed to
2 Mr O'Connor about, if you were, or your Counsel to the
3 Inquest were provided with material that we in the
4 criminal courts see all so often, the families -- those
5 that I've been able to speak to -- believe that you, as
6 the coroner, will obviously not be restricted in the
7 enquiry you make, the answers that you would seek.
8 In fact, one of them expressed the view that if you
9 were to say to them that something was either not
10 relevant or so sensitive that it could not be rightly
11 put into the public domain, they would accept that.
12 LADY JUSTICE HALLETT: You said one family would.
13 MR SAUNDERS: It's only because I've only asked the one, and
14 it was, in fact -- I won't mention them so as to avoid
15 embarrassment -- but it was something that they first
16 mentioned with me, the fact that it was you that was
17 sitting, not -- I don't wish to upset any coroner -- but
18 it was the fact that you were sitting in your position
19 as, as it were, a deputy, but with your background, and
20 that that's what they now find reassuring rather than
21 the only people so far to have looked at this evidence
22 being politicians.
23 May I deal with a number of the issues for some of
24 the families? I hope to highlight specific examples and
25 concerns that they have and matters they hope can be

1 addressed should you decide to reopen the inquest.
2 The Jenkins family, when they saw the site report
3 regarding their daughter Emily, were concerned to note
4 that the place of her recovery was something quite
5 different to that that they had been led to believe
6 before.
7 So that, being an obvious matter that clearly comes
8 within the scope, would be dealt with.
9 You will note, I think, from the submissions that we
10 make, that Mrs Jenkins had received information from two
11 prominent ministers and was told that, as far as
12 Mohammed Sidique Khan was concerned, he was a clean
13 skin. Clearly they wish to know whether that was the
14 position because of what you've been addressed on this
15 morning as to what in fact was known about him in
16 particular, whether it was a mistake or whether it was
17 deliberate.
18 Again for your reference, in the second report it's
19 dealt with at paragraph 221, the suggestion that the
20 phrase had never come from MI5. So how two senior
21 ministers, one who was later to become Home Secretary,
22 would make a mistake such as that.
23 Of course, bearing in mind one of the issues that
24 will have to be decided, that of identification and
25 where the victim, in fact, died.

1 Mrs Webb's daughter, Laura, was at Edgware Road.
2 That site report shows an obvious conflict in the
3 accounts given between Mr Hucklesby, one of the
4 witnesses, and his attempt to resuscitate Laura,
5 compared with the evidence of Dr Wyn Evans, who attended
6 at the time and, later, the pathologist, Dr Hill.
7 Obviously Mrs Webb and her family are seeking to know
8 what the actual timing was, bearing in mind the
9 pathologist's findings.
10 The Reverend Julie Nicholson's daughter, again from
11 Edgware Road, Jenny, Jennifer, was, in fact, discovered
12 outside the carriage. One of the features again clearly
13 within the scope is how that actually occurred, because
14 she wishes to have as full a picture as possible as to
15 Jenny's last moments, and she wants to see the evidence,
16 because a witness on the day described seeing what she
17 believed must have been her daughter, but in fact is not
18 referred to in the summaries.
19 As a minister, she obviously is concerned as well to
20 know, as are many of the other families, about the
21 question of -- and it is her phrase -- the retrieval and
22 identification of Jenny. What was the immediate care
23 she and the other victims received?
24 She seeks to know whether undertakers were part of
25 the rapid response teams and, if not, why not.

1 Again, there is, in her case and that with others,
2 a significant delay in the notification of the family.
3 LADY JUSTICE HALLETT: Mr Saunders, I have an appreciation
4 of just how sensitive an area this is, and I don't wish
5 to cause any unnecessary distress, but at some stage --
6 whether you'd prefer to do it in writing, I don't
7 know -- but at some stage I'd like a little more help on
8 how these questions -- the significance of which
9 I understand for the families -- but how questions like
10 this really fit in to the context of an inquest, given
11 the statutory duty I would be under as a coroner.
12 MR SAUNDERS: Yes. Clearly, when one comes to notification,
13 if notification -- if the first notification is in one
14 case eleven days later, I accept that that can be
15 problematic.
16 May I -- I don't think I can do better than
17 considering how Mr Keith has put it, as it were trying
18 to bring together all the submissions that are being
19 made. I think it's at page 28 of his submissions,
20 madam. It's at tab 1 of I think bundle A.
21 LADY JUSTICE HALLETT: Sorry, page again?
22 MR SAUNDERS: Page 28.
23 LADY JUSTICE HALLETT: Thank you.
24 MR SAUNDERS: What he has done is at page 26. It starts
25 with the factual matters to be investigated, or that may

1 be investigated. It's, I think, the third, fourth.
2 Anyway, he comes to other aftermath issues, where he
3 sets out, for example, at the bottom of that paragraph,
4 issues such as alleged failings regarding the
5 Resilience Mortuary, conduct of the post-mortem
6 examinations, the alleged delays in identification of
7 the deceased, alleged failings in communication with the
8 families, a return of the property, and then his
9 footnote deals with where it's set out.
10 Then he comes on to deal with some of those matters
11 in the following paragraphs, in particular paragraph 83,
12 some of the issues, namely, the mortuary, the
13 Resilience Mortuary at the artillery ground:
14 "... might thought to be sufficiently proximate to
15 the deaths themselves to form the subject of proper
16 enquiry."
17 He, of course, says that the communications with the
18 family, especially those much later, may fall outside
19 it.
20 LADY JUSTICE HALLETT: This is what I would like more help
21 on, because, as you referred to earlier, I have set
22 a very strict timetable because I am determined that the
23 families should get as many answers as possible, if I do
24 resume, as soon as possible. The more we go into these
25 other issues, as important as they are to the families,

1 then the more my timetable is put at risk and,
2 therefore, I really would like some help as to the
3 extent to which these other issues are sufficiently
4 proximate, not just to the death of the person
5 concerned -- because that is a very -- that's
6 a different question from the duty I'm under
7 investigating the questions posed for me in the Act, and
8 that's what's troubling me at the moment.

9 I appreciate it seems as if Mr Keith has made
10 a concession about the Resilience Mortuary, but I still
11 need help on that subject.

12 MR SAUNDERS: I think the best we could say is that part of
13 the investigation of the inquest procedure is
14 identification.

15 LADY JUSTICE HALLETT: But we have -- now we have no doubt.
16 I appreciate the distress that the delay caused.
17 I can't imagine what it's like to wait that long to know
18 the horrible news, and then to get the worst news, but
19 we have no doubt about it now.

20 MR SAUNDERS: Well, it isn't as clear, simply from reading
21 the summaries that we've had, as to when identification
22 was --

23 LADY JUSTICE HALLETT: Or do you say that this fits in
24 perhaps in a Rule 43 report?

25 MR SAUNDERS: It clearly would fit in with that. May I say,

1 because I was going to come on to it, I've had the
2 opportunity of speaking to Mr Hill, who was, as you
3 know, lead counsel for the Metropolitan Police Service,
4 and you will recall, I'm sure, as the families did from
5 the last occasion, his volunteering of anything the
6 Service could do to assist.

7 One of the matters that I was going to suggest today
8 is what would be really helpful to the families is to
9 know why there was this delay.

10 Now, it may well be, if it comes outside the formal
11 scope under the Act and the Rules, that one way these
12 families could be helped is to have, as it were, some
13 detailed understanding of why the delay.

14 They had different ideas, but it would really assist
15 them to know why did it take, in one case, six days, in
16 another, twelve days, bearing in mind -- I was going to
17 come to the examples -- one of the deceased,
18 Fiona Stevenson, had her passport on her.

19 LADY JUSTICE HALLETT: Do we go back to the broad discretion
20 that, even if, on the strict reading of the Act and
21 a strict reading of the facts, these issues wouldn't
22 come within the scope, you would ask me to exercise
23 a broader discretion to try to give some answers to the
24 families?

25 MR SAUNDERS: Exactly. Whether or not that can be done

1 leading up to the inquest may well give sufficient
2 answers, depending on what the detail is.
3 One of the matters was: how did this
4 Identification Commission come about? It's an awful
5 phrase, but one can understand, one guesses. That's,
6 I think, part of the problem for the families. They are
7 guessing at why things happened in the way they did.
8 As I say, I'm very grateful to Mr Hill for
9 discussing it earlier, and I would invite you, even if
10 you felt that you didn't have the latitude in the
11 discretion Lord Justice Brown was talking about, to at
12 least endorse that, and I think it will happen and
13 I know from the families' point of view, that will
14 answer some of the questions. Whether they still have
15 further ones, it may be -- it can be dealt with in
16 a slightly different way. This can't be a public
17 inquiry, that's not what the families are now seeking to
18 turn it into, and the one thing, may I say, they don't
19 want to do is to delay either the proceedings, should
20 they reopen, nor delay when the inquest itself starts
21 and hope that they will already have some of those
22 answers, but we will turn our mind to that further.

23 LADY JUSTICE HALLETT: Your argument would be if we at least
24 investigate it over the next few months, it may be that
25 some of the families at least may have some of the

1 answers before we even got to the stage, if I do resume,
2 of resuming.

3 MR SAUNDERS: Exactly. Then I would seek your permission,
4 if I had to, to argue whether there would be certain
5 very narrow questions that you feel it would be proper
6 to exercise your discretion to allow, on a very limited
7 basis, the questions that I know the vast majority of
8 families have and would clearly assist them.

9 LADY JUSTICE HALLETT: I follow.

10 MR SAUNDERS: Thank you very much.

11 Can I then move on, because, in fact, having dealt
12 with it in that way, there were two others of the
13 families, and I was going to make specific reference to
14 them, because it also has to do with, may I say, not
15 just the delay in notification but how there was such
16 a deterioration with some of the bodies.

17 One of the families --

18 LADY JUSTICE HALLETT: Before you go on, Mr Saunders,
19 because not all the families, of course, will know the
20 subject you're about to go on to. I don't know if
21 everybody is alert to the subject you're about to deal
22 with, but it could be distressing for some if they
23 didn't realise that -- your lay clients may know, but
24 others don't. So if there are any members of the
25 families who don't want to hear this next subject,

1 please go.

2 Sorry to interrupt.

3 MR SAUNDERS: Madam, I'm very grateful for that. Can I say

4 I'm going to put it in the most general terms and I'm

5 not, either, going to mention the names of the families,

6 but there was deterioration. One family actually saw

7 their loved one before that occurred and, again, it is

8 a feature, whether it's because of the

9 Resilience Mortuary or what happened in those days

10 immediately before notification, and again, we hope that

11 that is a matter -- we're not sure who the authority is

12 that can best explain and answer the questions that the

13 families have, but again would invite, as Mr Hill has

14 helpfully acknowledged in respect of notification,

15 answers as to that matter as well.

16 But I don't intend to go into any more detail than

17 that, madam. I know you're aware of it, and I don't

18 seek to go into further detail.

19 LADY JUSTICE HALLETT: Could the usher now tell the young

20 lady who left that we're going on to another issue?

21 Thank you very much.

22 Carry on, Mr Saunders, I'm sure she'll catch up.

23 MR SAUNDERS: Thank you very much. Madam, can I say I am

24 reaching very much the end of my submissions as well.

25 There is a similar difficulty that you heard from

1 Mr Patterson yesterday. One of the families, their
2 daughter, Fiona Stevenson, who was the solicitor, there
3 was confusion, they having originally been told that her
4 death was immediate. Having now seen the summaries and
5 the site reports, it appears that a doctor who attended
6 her believed she was still alive, and various matters.
7 I appreciate that post-mortem was dealt with by
8 Mr Patterson, but errors in terms of her post-mortem as
9 well, which we will seek to investigate.

10 In her case, it is something that is not to do with
11 the internal examination, but what was found: namely,
12 the colour of eyes. That's not the only example we've
13 seen, which may seem minor, but for the families, you
14 can imagine, is upsetting, something they seek an
15 explanation about.

16 LADY JUSTICE HALLETT: You don't pursue the same
17 question mark as to whether there was -- why there were
18 non-invasive post-mortems, but there are other aspects
19 to the post-mortems?

20 MR SAUNDERS: There are other aspects of the post-mortems
21 that did in fact take place.

22 Finally, may I deal with Mr Lee Harris, who was
23 taken from Kings Cross/Russell Square to the
24 Royal London Hospital and was a patient there until
25 15 July. The decision taken by his parents was that his

1 life-support machine should then be turned off.
2 Obviously for him, and for that part of any reopened
3 inquest, they seek to know, the question you've already
4 been addressed about: namely, the support attending that
5 site, the medical aid available and whether, if there
6 had been early attendance of him -- you, I'm sure, will
7 have recalled this, madam, that he was one of those that
8 was sufficiently conscious to be able to give his name
9 to those who attended, and the delay in his being taken
10 to the hospital.

11 LADY JUSTICE HALLETT: On that subject, can I just ascertain
12 whether my understanding is correct? Yesterday, when
13 I heard submissions about the response of the emergency
14 services, as I understood it, the argument is that the
15 families would like to know whether or not, had the
16 emergency services responded quicker, their loved ones
17 might have been saved, or it might have made
18 a difference to their loved ones, whereas I think some
19 of the headlines in the newspapers suggested medic
20 failings, which wasn't the way I understood the
21 submissions were made. It was that there may or may not
22 have been failings on the part of the emergency services
23 to send people to the scene rather than failings of
24 medics at the scene. Is that right, as far as you're
25 concerned?

1 MR SAUNDERS: That's my understanding of what we heard
2 yesterday and that is the way in which I seek to put it
3 as well.

4 LADY JUSTICE HALLETT: Do I see general consensus?

5 MR PATTERSON: For the purposes of clarity, obviously we
6 have limited information at this stage, only what's in
7 the scene reports, but the questions that I have been
8 supplied with from the families relate to the time at
9 which the first people got to the victims and what was
10 done, such as, was there a triage process to prioritise
11 and what actual medical assistance they did receive? So
12 it will cover all those issues. It may be, once we see
13 the material, that some of those issues won't be live
14 issues, but at the moment, all we have is what's in the
15 reports.

16 LADY JUSTICE HALLETT: Thank you very much, Mr Patterson.

17 MR SAUNDERS: As I was on my feet, may I invite you, because
18 I don't for the reasons I'm going to show you now, seek
19 to name -- it's in relation to the Tavistock Square
20 file, I'm sorry, I don't have the right file-number on
21 mine.

22 LADY JUSTICE HALLETT: I have it.

23 MR SAUNDERS: I don't know whether, madam, you have
24 a numbered bundle, but it's chapter 13.

25 LADY JUSTICE HALLETT: No, I don't. I have page numbers.

1 MR SAUNDERS: I don't, I'm sorry. It's chapter 13.

2 LADY JUSTICE HALLETT: How close to -- there's a general
3 heading "response" at my page 153.

4 MR SAUNDERS: What happens is it goes after the deceased.
5 It then goes through the six deceased at that scene.

6 LADY JUSTICE HALLETT: Yes. You want one of those?

7 MR SAUNDERS: One of the deceased, yes.

8 LADY JUSTICE HALLETT: Can you say what number?

9 MR SAUNDERS: 13, it's chapter 13, left-hand side.

10 LADY JUSTICE HALLETT: No, we need to get this sorted. I'm
11 afraid I don't have it.

12 MR SAUNDERS: Can I hand up mine?

13 LADY JUSTICE HALLETT: Just show me the first page.

14 MR SAUNDERS: Can I hand up the page that's relevant? For
15 the record it's 13.2.4.

16 MR KEITH: It should be page 78, madam, in your bundle
17 I hope.

18 LADY JUSTICE HALLETT: Thank you.

19 MR SAUNDERS: It's in respect of what you've just asked
20 myself and Mr Patterson.

21 LADY JUSTICE HALLETT: Oh yes.

22 MR SAUNDERS: I don't know whether others know about that,
23 but I'm not seeking to raise it, which is why I hand it
24 to you, because it's the only example I've seen of
25 something of that nature.

1 LADY JUSTICE HALLETT: It was the only example I saw as well
2 as I went through.

3 This must be very confusing for all those who are
4 listening, Mr Saunders. What is the point of our going
5 into this? Is this something that ought to be aired in
6 public or -- what are you saying?

7 MR SAUNDERS: Can I say, for my part, at the moment,
8 I haven't seen the full statements in respect of this
9 matter, this particular deceased. Depending on what
10 happens when I see that, in particular with the
11 involvement of this person, then I may need to make
12 further submissions. Because of what's contained in
13 there, at the moment, I don't propose to name that
14 person unless you feel we should.

15 LADY JUSTICE HALLETT: We don't need to name anybody. I'm
16 just wondering whether it would help those listening if
17 they understood what the issue was. But if we don't
18 think we want to go down that path at this stage, then
19 we don't need to. I have the point in mind. I'm just
20 concerned that this is meant to be a public hearing and
21 we're talking obliquely, and it's a question of whether
22 this is something we ought to be, at least in general
23 terms, talking about or whether we should be moving on.
24 It's up to you.

25 MR SAUNDERS: I was going to move on, but it's simply --

1 because, if you hadn't mentioned the press reporting and
2 the suggestion, I wasn't even going to refer to that.
3 I simply mention it.

4 LADY JUSTICE HALLETT: Mr Keith, any thoughts?

5 MR KEITH: It's hard to know at this stage, madam, what
6 consequences flow from that issue, but plainly the
7 person concerned and the person that that person had
8 dealings with and examined, does concern Mr Saunders
9 because he represents the deceased individual.
10 But at this stage, it's impossible to say whether or
11 not the actions of the person that Mr Saunders just
12 referred to had, in fact, any consequences or whether or
13 not there were other aspects of that person's death that
14 contributed to the death at that time.

15 So I think the correct position, madam, is that we
16 should delay any further examination of the issue, or
17 any reference to it, until we have a better sight of the
18 underlying evidence and whether or not any consequences
19 flowed from it.

20 LADY JUSTICE HALLETT: Thank you, Mr Keith.

21 Mr Saunders, do you agree?

22 MR SAUNDERS: I agree.

23 LADY JUSTICE HALLETT: Very well. I apologise to those who
24 aren't following what we're talking about. That's all
25 I can do at this stage, but we'll pursue it and see

1 whether or not there is anything in the suggestion.

2 MR SAUNDERS: Thank you very much. Madam, may I then very
3 briefly conclude my submissions? I don't seek to add to
4 that, but I said it to you in writing, about a jury,
5 nor -- and we started, I think, with the question of
6 interested persons. We've already dealt with that in
7 the final section of our submissions in writing.
8 Madam, unless there's anything else I can assist
9 with?

10 LADY JUSTICE HALLETT: Thank you very much, Mr Saunders.
11 Ms Sheff?

12 Submissions by MS SHEFF

13 MS SHEFF: Thank you, madam.

14 Madam, on behalf of the solicitor's firm
15 Sonn Macmillan Walker, we represent four sets of
16 bereaved families and our submissions are set out in
17 volume A2 at tab 17.

18 LADY JUSTICE HALLETT: I have it, thank you.

19 MS SHEFF: Madam, can I say at the outset that I do not
20 dissent from the legal principles which have been
21 clearly and helpfully set out by my learned friends
22 whose submissions preceded mine, and I will merely,
23 therefore, be identifying the main arguments with which
24 we agree, and instead I will be drawing your attention
25 to the views of the families in a similar way to my

1 learned friend Mr Saunders, which we submit is one of
2 the powerful factors that you, madam, have to consider
3 in terms of the five questions that you pose.

4 Our summaries are as follows.

5 In respect of resumption, all of our clients,
6 without exception, strongly urge that the inquests be
7 resumed.

8 As regards joinder, if I can put it that way, of the
9 inquests in respect of the four bombers to that of the
10 52, our instructions differ and range from strongly
11 supporting joinder to strongly opposing it.

12 As regards scope, there is again unanimity. All of
13 our clients believe that the scope of the inquests, if
14 resumed, should be wide and all identify the following
15 features as particularly important: those of the
16 intelligence that was available to police and
17 Secret Services at the time and whether that
18 intelligence failed properly to be acted upon; retrieval
19 from the scene; and also aftermath, as set out by
20 Mr Saunders, and I will be identifying the issues which
21 particularly impact upon our clients.

22 As regards jury, again our instructions are split
23 and range between supporting summoning a jury and, in
24 effect, being indifferent as to whether a jury is
25 summoned.

1 Finally, as regards the designation of survivors as
2 properly interested persons, two of our four clients
3 oppose their designation, whereas the others either
4 support or are indifferent as to that.

5 May I deal firstly with resumption, and may I make
6 the point, madam, that, for the bereaved families, there
7 are still important questions to be answered which have
8 not been resolved by either the criminal proceedings,
9 that being Operation Theseus, or any of the enquiries
10 that had previously been set in train, set out by either
11 government bodies or otherwise.

12 An example of the strength of feeling can perhaps be
13 indicated by the family of Giles Hart, who say this:
14 "I feel strongly that the inquests should be resumed
15 and that it should have a wide scope exploring the issue
16 of whether this was reasonably preventible, whether the
17 bombings could have been prevented."

18 The scene reports have assisted in giving
19 information to the families, which was not previously --
20 they were not previously aware of those facts, save in
21 respect of one of our families, that being the Hyman
22 family, who lost their daughter, Miriam Hyman, on the
23 number 30 bus, and it's right to say that, so troubled
24 were they by the lack of information they were receiving
25 from the police, who told them, in effect, they had to

1 live with that lack of knowledge, that they sought out
2 a survivor, a member of the public, who had tended to
3 their daughter at the scene and asked questions of him
4 specifically as to what had occurred.

5 The scene report has been helpful for them in giving
6 them further information as to what occurred, but it has
7 raised as many, if not more, questions than it has
8 resolved.

9 These reports are admittedly, as stated by their
10 authors, contradictory in part and the hearing of oral
11 evidence on specific issues, it is hoped, could clarify
12 various matters for the family and bring some comfort to
13 them.

14 As, of course, madam, you will know, written
15 evidence is often elucidated when it is heard orally and
16 when questions are asked upon it, and that is very much
17 the process by which the families hope to achieve some
18 further information, which indeed will bring them
19 comfort.

20 For example, the family of Lee Baisden, who was
21 sadly killed at the Aldgate bombing, were not aware that
22 in fact Mr Baisden was standing directly next to the
23 bomber when the bomb went off, and this assisted them in
24 understanding why identification of the body was
25 difficult and why no personal possessions were ever

1 returned to them.

2 One might have hoped that that type of information
3 would have been made available to them at an earlier
4 stage, and it has taken the drafting of the scene
5 reports to bring that information to light. But again,
6 it assists them to understand certain things about the
7 bomb itself and, as one of the families has said, it may
8 seem a small crumb of comfort, but in fact, when you've
9 lost a loved one, any information about how they came to
10 lose their lives is valuable.

11 I can say specifically that it was, in fact, the
12 appendix to the scene report in the Aldgate bombing that
13 assisted the family of Lee Baisden to understand where
14 he was sited at the time the bomb went off.

15 We agree with submissions that have been made
16 concerning Article 2 and simply say this: they have not
17 been answered by previous inquiries. That is at the
18 heart of any investigation into the "how" aspect of the
19 cause of death.

20 We also pray in aid the Rule 43 requirement as to
21 resumption and the public interest which we say requires
22 resumption, in that intelligence failures, if any,
23 should be exposed and that any fears regarding, for
24 example, safety of the public transport system should be
25 allayed.

1 We are aware that there are people to this day who
2 are still frightened about travelling on the Tube
3 because of the bombings. If there were more information
4 about what intelligence was known previously, and how
5 these matters were dealt with specifically by the
6 transport authorities, then that aspect of the need for
7 resumption could be dealt with and those fears allayed.
8 As regards scope, as I've already mentioned,
9 Article 2, the investigative obligation we say is
10 triggered, and the procedural obligation to investigate
11 failure to protect lives, which we say leads to
12 a Middleton or enhanced hearing.

13 The Crevice investigation, and particularly the fact
14 that we have now become aware, as Mr Saunders has
15 already addressed you upon, madam, that two of the four
16 bombers had come to the notice of the police and one of
17 those bombers had his fingerprints stored by the West
18 Yorkshire Police is significant and does require further
19 investigation.

20 We say the ISC report is insufficient to discharge
21 the Article 2 obligation. Again, our clients are
22 concerned that the investigation was set up by
23 a government body and heard by a government body. This
24 does not, they say, qualify for an independent
25 investigation and hope that an inquest can achieve that.

1 Furthermore, no Sonn Macmillan Walker clients had
2 the opportunity to be consulted at all in respect of
3 that report or to pass on their concerns.
4 As regards aftermath, that is, of course,
5 a difficult issue, madam. You've already outlined your
6 own concerns regarding how that can be achieved,
7 accomplished, within the framework of an inquest without
8 delaying the hearing of vital evidence. Nonetheless,
9 I should say that this is an area which is particularly
10 distressing to all the clients that we have spoken to,
11 and we say that it should include the very significant
12 issue of the delayed identification of the bodies and
13 communication thereof to the families.
14 It is, we say, a matter of supreme importance to the
15 majority of the bereaved families and is closely linked
16 to the deaths themselves.
17 We rely upon the cases of Dallaglio and Takoushis
18 and the interpretation of the "how" in terms of the Act,
19 section 11, subsections (3) and (4), in that an
20 inquisition shall set out, so far as such particulars
21 allow, who the deceased was and how, when, where the
22 deceased came by his death.
23 Who the deceased was was in fact only established
24 formally by the Identification Commission in respect of
25 all of the victims, and that Identification Commission

1 met at different times.

2 In respect of, for example, Giles Hart, he was not
3 formally identified until 14 July, some whole week after
4 the bombing took place, and in respect of the family of
5 Miriam Hyman, they would point out that she was found
6 with her bag strapped to her, inside of which were
7 numerous identifying documents. Yet it took four
8 agonising days for the family to be notified.

9 They had particular difficulties because,
10 unfortunately, both Mr and Mrs Hyman are disabled and
11 elderly. They were not able to travel into London and
12 to visit the hospitals. Friends of Miriam Hyman very
13 kindly undertook that on their behalf, but were met with
14 a blanket, "We have no information".

15 We accept that the conduct of the hospitals as to
16 the release of information may perhaps stray a little
17 outside of the jurisdiction of the inquest.

18 Nonetheless, we readily accept the offer helpfully made
19 by Mr Hill on behalf of the MPS for further information
20 as to why these matters did take so long to come to
21 light and why no information could be offered at all
22 which might have assisted the families to at least know
23 that it was suspected that their daughter was one of the
24 fatalities.

25 We would perhaps encourage the MPS to consider the

1 approach taken by police services in other
2 jurisdictions, for example in Madrid, where there have
3 been mass suicide bombings or perhaps in the
4 United States, how are these matters dealt with and how
5 can the concerns of the families be allayed at the
6 earliest possible stage?
7 Madam, I note the time. I have very little more to
8 deal with, but I don't know whether madam you'd
9 prefer --
10 LADY JUSTICE HALLETT: Whichever you prefer, Ms Sheff.
11 Would you rather come back this afternoon or would you
12 rather complete? It's up to you.
13 MS SHEFF: Madam, perhaps I'll complete this afternoon, as
14 it may take between five and ten minutes.
15 LADY JUSTICE HALLETT: 2.05 pm, please.
16 (1.00 pm)
17 (The short adjournment)