

Coroner's Inquests into the London Bombings of 7 July 2005  
Pre-Inquest Proceedings - 4 October 2010 - Morning session

1 Monday, 4 October 2010

2 (10.30 am)

3 LADY JUSTICE HALLETT: Yes, Mr Keith?

4 MR KEITH: Good morning, madam. I know you have a copy of  
5 Mr Smith's agenda setting out the number of issues that  
6 you directed be considered today.

7 There are a number of items on it. One of them of  
8 quite considerable significance. So may I deal with the  
9 less contentious ones first and start with the videos of  
10 scenes, CCTV and photographs.

11 The position is this: that we are intending to play  
12 in the opening next Monday and Tuesday a compilation of  
13 video recordings taken at various times during the  
14 7 and 8 July 2005 of the three carriages and the  
15 number 30 bus in order to set the scene for the evidence  
16 to come and to give some idea of the truly terrible  
17 conditions.

18 The videos have, of course, been very carefully  
19 edited to exclude sight of any particularly distressing  
20 scenes, of course including the deceased or body parts  
21 and in one or two places this has required pixillation.  
22 We also intend to play an edited compilation of the CCTV  
23 recordings of the movements of the four bombers in the  
24 days leading up to 7 July, some of which has not been  
25 seen in public before, and we intend to incorporate into

1 the core bundle photographs of the trains and the bus so  
2 as to assist the parties and the witnesses, and I'll  
3 return to the question of the core bundle in a moment.  
4 On account of the possible sensitivity of this  
5 material, Mr Suter wrote to the legal representatives  
6 for the interested persons on 27 September telling them  
7 that you were provisionally minded to use the selected  
8 material in court during the inquest hearing and asking  
9 them to take instructions as to whether there were any  
10 objections to the use of material in this way, and they  
11 were invited to make any views that they had known to  
12 you today.

13 Also, on account of the likely press interest, they  
14 were invited to express their views on whether such  
15 material should be released to the press via the public  
16 website so that the press, in addition to seeing the  
17 material in court, would have the opportunity to publish  
18 it, and Mr Smith wrote in similar terms to the  
19 unrepresented families.

20 The parents of one of the deceased have responded by  
21 saying in essence that they fully understand the need  
22 for CCTV and photographic evidence to be adduced in  
23 court, but are conscious that some of the families may,  
24 notwithstanding the careful editing, be distressed by  
25 the reliance upon such material in court.

1 They were firmly opposed, however, to the material  
2 being released to the press, lest this cause further  
3 harm and distress to the bereaved and, they made plain,  
4 others who might have been suffering from post-traumatic  
5 stress disorder.

6 Another parent, Liz Staffell, very kindly contacted  
7 Mr Suter on Friday to say that she had no objection to  
8 the use of the material in court and Mr Smith received  
9 a further communication late on Friday from John Mather,  
10 Shelley Mather's father, saying that he had some mild  
11 concerns about replication of the material through the  
12 press.

13 May I make three short points before inviting you to  
14 discover whether there are any views on this topic?

15 Firstly, I emphasise that the material has been very  
16 carefully selected and repeatedly examined to ensure  
17 that none of the deceased are shown, so in this way the  
18 material that we propose to adduce, either in the  
19 opening or in evidence, differs little in substance from  
20 pictures that have been publicly and very widely  
21 distributed before in relation to the number 30 bus.

22 It's different, of course, in relation to the carriages.

23 We do believe that the material will assist the  
24 witnesses and assist in the understanding of the events  
25 on 7 July and, accordingly, we would respectfully

1 suggest that there is a strong argument in favour of the  
2 introduction of that material into the evidence.  
3 The second point concerns the onward provision of  
4 such material to the press. This is a more difficult  
5 issue. There is a good argument that, as a matter of  
6 law, the press have no entitlement either to inspect or  
7 to be provided with copies of exhibits. The  
8 well-established principle of open justice arises from  
9 the general importance afforded to the public and the  
10 press to observe and follow judicial proceedings and, of  
11 course, in relation to the press to provide a fair and  
12 accurate report, contemporaneously.  
13 But that is a different matter, of course, from an  
14 entitlement to have copies of exhibits to which  
15 reference is made in public, and there is some authority  
16 against an extension of the principle of open justice to  
17 the provision and copying and supply of exhibits, a case  
18 concerning a judgment of Lord Justice Lawton in the  
19 Court of Appeal in 1975.  
20 There is authority, I should say, in relation to the  
21 provision of skeleton arguments to the press, but of  
22 course, there is a plain and easy argument that those  
23 sorts of documents are meant to stand in the way of oral  
24 argument and, therefore, there is correspondingly  
25 a stronger argument in favour of their provision to the

1 press.

2 The third point concerns the intentions in the  
3 provisional views that you have expressed already. You  
4 have expressed your opinion and your intention that the  
5 proceedings should be as open as possible and it's  
6 certainly in the public interest that myths and rumours  
7 are dispelled and the publication of exhibits may assist  
8 in that process.

9 May I respectfully put before you this proposal:

10 that you generally make it known today that exhibits  
11 upon which I intend to rely in my opening and exhibits  
12 which will be played or produced in the first part of  
13 the evidence in the next two weeks, such as the CCTV,  
14 photographs of the carriages and the video material, be  
15 put on the public website, subject to any argument of  
16 course that you hear today, but that in future,  
17 thereafter, if there are any specific exhibits or  
18 specific documents or specific material in relation to  
19 which the press would wish to make applications for that  
20 material to be, not merely the subject of reference in  
21 court, but provided on the public website, that subject  
22 to you raising this matter next week, which will then  
23 give them notice of your intentions, they can come and  
24 argue in favour of publication, if they wish to, and you  
25 could rule on any disputed areas.

1 But all that, of course, is subject to the arguments  
2 that you may hear today from the interested parties.  
3 For completeness, let me say that we also intend to  
4 play in the opening extracts of the calls to and from  
5 the network control centre, London Underground, and we  
6 have informed Transport for London of that, but we don't  
7 consider that any sensitivities arise in relation to  
8 that material, and may I also emphasise, as I've said  
9 before, there is absolutely no intention to put body  
10 maps or material of that type on the public website.  
11 Indeed, the interested parties at present will only have  
12 access to those body maps that concern the deceased with  
13 whom they are concerned. There has been no general  
14 disclosure, even on Lextranet.  
15 Madam, that's all I intended to say in relation to  
16 the use and publication of exhibits. Is that  
17 a convenient place to pause?  
18 LADY JUSTICE HALLETT: Thank you. Does any legal  
19 representative for any of the families, first of all,  
20 want to address me on the question of publication on the  
21 public website of the material to which Mr Keith has  
22 referred?  
23 MR COLTART: No, thank you.  
24 MR SAUNDERS: Nothing thank you, madam.  
25 LADY JUSTICE HALLETT: Do we have present any unrepresented

1 family who wishes to make any representations or,  
2 indeed, an unrepresented survivor?

3 Right. Does any organisation wish to make any  
4 representations? Mr Hill?

5 MR HILL: Madam, just briefly, we for Metropolitan Police  
6 support what Mr Keith has said, and in the hope that it  
7 is helpful, I will just make one or two observations.

8 One, if I come to it straightaway as a practical  
9 observation, it's not a complaint, and that is plainly  
10 we do not know ourselves -- and nor do any of the other  
11 interested persons -- precisely which parts of the CCTV  
12 footage are to be played. We understand it not so much  
13 during opening, but during the very early phases of  
14 evidence, as early perhaps as 13 October.

15 There is a practical consideration that flows from  
16 that, which is that CCTV footage, by its very nature,  
17 tends to show unconnected members of the public as well  
18 as those on whom these proceedings are focused, and  
19 there is a concern on our part as to the protection of  
20 the identity of unconnected members of the public. It's  
21 a concern which can be met by pixillation, but  
22 pixillation, as you will be aware, is a costly and  
23 time-consuming process, and we would simply wish to put  
24 down a note of concern as to how much of that CCTV  
25 footage is going to be played and whether your team and

1 you will be satisfied in advance that there's been  
2 proper protection of unconnected members of the public.

3 LADY JUSTICE HALLETT: You're not suggesting that  
4 pixillation is required for Mr Keith to play it. You're  
5 suggesting pixillation is required for it to go on the  
6 public website?

7 MR HILL: Yes. Can I say that we have absolutely no  
8 objection to the use of all of this material in these  
9 proceedings, absolutely no objection for it to be used  
10 on the ring-fenced Lextranet site. It is public,  
11 uncontrolled, dissemination, beyond any ability of you,  
12 madam, or this court, to control later use.

13 That does give us some practical concern in that  
14 respect, and that leads to the second observation, which  
15 is one more of principle than practice, and that is that  
16 those engaged in investigations into terrorist  
17 activities recognise that there is a sad but true fact  
18 of life which is that material, often distressing,  
19 showing the moments of immediate impact of events such  
20 as those of 7 July, is converted and abused by others  
21 entirely beyond these proceedings, for want of a better  
22 phrase, as propaganda for their own purposes, and those  
23 of us with experience in terrorist investigations  
24 routinely come up on, if I can put it this way,  
25 non-mainstream, extremist websites of images, for

1 example of 9/11, to take an example away from this case,  
2 where those images, distressing as they are, are abused  
3 for some other purpose.

4 Now, how to get around that? It may be thought that  
5 it's extremely difficult. We know, and we recognise,  
6 having conducted the Operation Theseus criminal  
7 investigation, that there were a number of items,  
8 a number of images and parts of footage, that were used  
9 in the Theseus prosecutions in London, the two trials  
10 you know about, and were distributed to the press, and  
11 it may be thought that, insofar as that material is  
12 concerned, it is already generally publicly available,  
13 and repetition of that could not do any additional harm.

14 LADY JUSTICE HALLETT: The nature of the material that was  
15 released, presumably by the Metropolitan Police?

16 MR HILL: Was a certain amount of images of scenes; for  
17 example, to take the example Mr Keith gave, images of  
18 the number 30 bus.

19 LADY JUSTICE HALLETT: I would have thought an awful lot of  
20 press would have had their own photographs.

21 MR HILL: Quite.

22 LADY JUSTICE HALLETT: Is there nothing more, for example,  
23 of the carriages underground?

24 MR HILL: As far as I'm aware, no. The images that have now  
25 been prepared for these proceedings, for example showing

1 post-detonation photographs, underground, even with the  
2 pixillation or graphic representation of bodies, will  
3 not have been provided to the press during the Theseus  
4 trials.

5 LADY JUSTICE HALLETT: Actually, can we rewind? Mr Keith,  
6 whose material technically is this? The materials come  
7 from -- sorry to interrupt you, Mr Hill.

8 MR HILL: Not at all.

9 MR KEITH: All the material has come by way of your coroners  
10 officers working as part of Operation Ramus within the  
11 Metropolitan Police Service.

12 LADY JUSTICE HALLETT: So it would technically be  
13 Metropolitan Police Service material?

14 MR KEITH: It is, provided to you through your own coroner's  
15 officers.

16 LADY JUSTICE HALLETT: CCTV, does that go into  
17 London Transport or any other London Transport system?

18 MR KEITH: I don't know what the position is in relation to  
19 the ownership of the original CCTV material on the  
20 cameras, but certain CCTV material that you were  
21 provided with came similarly from the Metropolitan  
22 Police Service.

23 LADY JUSTICE HALLETT: Thank you. I just wanted to check  
24 that, Mr Hill, because we are talking technically  
25 I suspect, albeit not about your material, but material

1 that the Metropolitan Police has provided.

2 MR HILL: Yes, or, as we would say, material that the  
3 Metropolitan Police has seized as part of the previous  
4 criminal investigation.

5 We would take the view, if this assists, that having  
6 seized and collated that material, and acting, not as an  
7 interested person, but as coroner's officer, in fact  
8 that material is now in your hands and in the hands of  
9 your team, and we would not seek to raise, and we don't  
10 think it would be right to raise, any ownership concern  
11 over such material, certainly not once it has been aired  
12 within these proceedings.

13 So it's not an objection of principle. It's simply  
14 a concern and it may be that I should sit down, because  
15 clearly the answer to this concern lies in what Mr Keith  
16 actually proposes should be used in his opening which he  
17 knows and not I.

18 LADY JUSTICE HALLETT: Wait a minute, you have posed  
19 the question: how do we get round the fact that the  
20 material might be abused?

21 MR HILL: Yes.

22 LADY JUSTICE HALLETT: Is there an answer to that question?

23 MR HILL: The answer is, in large measure, as Mr Keith has  
24 said, once we're beyond the very early stages of  
25 evidence, he proposes -- and we entirely agree -- that

1 there should be in effect a protocol under which any  
2 member of the press who wishes access to material aired  
3 in these public proceedings --

4 LADY JUSTICE HALLETT: Sorry, would you pause?

5 MR HILL: Any material aired in these proceedings, and which  
6 therefore can be followed by members of the press,  
7 should be applied for under a protocol through your team  
8 if you are content, no difficulty. If not, you may  
9 invite representations and we would hope to assist.  
10 So the only question is whether that protocol should  
11 also cover material used in opening and evidence called  
12 during the very early stages.

13 Now, clearly we don't have the opening yet.

14 I repeat, I do not know precisely which images are  
15 envisaged and I entirely recognise that there will be an  
16 immediate interest on 11 October by members of the press  
17 to publicise, no doubt, that day. So we do see that,  
18 but very quickly we might get into troublesome waters.  
19 I suspect not in the opening itself, but, for example,  
20 one of the Metropolitan Police officers, whose name is  
21 Challenger, who currently is listed as, I think, the  
22 first witness on 13 October, will be called, as we  
23 understand it, to produce the CCTV compilation. That is  
24 where, on Day 1 of evidence, we potentially could come  
25 into the difficulty not so much of abuse by propaganda,

1 but of third party protection of innocent, unconnected  
2 members of the public who happen to appear on the CCTV  
3 footage.

4 LADY JUSTICE HALLETT: There are two aspects. There's  
5 a question of unconnected members of the public being  
6 seen. That's a matter I'm sure Mr Keith will help me on  
7 in a moment.

8 MR HILL: Yes.

9 LADY JUSTICE HALLETT: What's concerning me far more, the  
10 proposal at the moment was that the compilation of the  
11 videos of the carriages and the bus immediately after  
12 the four detonations, which is used by Mr Keith in  
13 opening, should go on to the public website.

14 MR HILL: Yes.

15 LADY JUSTICE HALLETT: Do I understand from what you're  
16 saying that, until you have seen that compilation, you  
17 cannot give a definitive answer as to whether you're  
18 content that it should?

19 MR HILL: That's right, although we would not raise an  
20 objection on the basis of any residual ownership over  
21 material.

22 LADY JUSTICE HALLETT: I appreciate that, but at the moment  
23 you want to know: do we think this material can be  
24 abused? I would have thought that's something you could  
25 have worked out by now because you must have some idea

1 as to what Mr Keith is going to show. So surely there  
2 are submissions you could make on whether or not that  
3 kind of material is subject to abuse?

4 MR HILL: Yes. The submission I would make is that we agree  
5 respectfully with those members of bereaved families who  
6 have taken the trouble to point out that there could be  
7 additional impact upon their families at the wider  
8 incidence of this material generally, and we would add  
9 to that, as soon as one goes into the realms of  
10 underground images, which by definition have not been  
11 seen in public before, it is reasonably foreseeable that  
12 those underground images will be used through the  
13 internet and reasonably foreseeable that they will crop  
14 up in the sort of news reports that one would  
15 responsibly expect of these proceedings, but also upon  
16 websites and in places where they would be used for  
17 cynical purposes.

18 LADY JUSTICE HALLETT: I noted your first comment was  
19 "I support Mr Keith".

20 MR HILL: Yes.

21 LADY JUSTICE HALLETT: So you don't support Mr Keith?

22 MR HILL: No, I don't wish it to be said or seen that I'm in  
23 any way undermining the submissions he's made. He sets  
24 out a protocol for a practical method of going through  
25 the evidential phase of these proceedings. He's

1 absolutely right to do so, and we say that is  
2 appropriate.

3 We do foresee, however, that, particularly where  
4 one's concerned with underground images, this court may  
5 wish to consider in a little more detail the  
6 appropriateness of general dissemination beyond the  
7 control of this court.

8 LADY JUSTICE HALLETT: So you want me to accept the protocol  
9 in general terms proposed, but you want me to adjourn my  
10 decision as to whether the CCTV compilation and whether  
11 the compilation of the carriages and the bus should go  
12 on to the public website until you've all had an  
13 opportunity to see it and to make further submissions.  
14 Is that what you're saying?

15 MR HILL: Yes, we submit that out of caution that would be  
16 appropriate, unless it is being said -- and I haven't  
17 heard it said -- that distribution to the press needs to  
18 be done before Mr Keith gets to his feet on Monday.

19 LADY JUSTICE HALLETT: Right, well before I -- do I return  
20 to you now, Mr Keith, or shall I see whether anybody  
21 else -- I don't know whether Mr Eadie has any submissions  
22 on the implications of abuse of the material.

23 MR EADY: We don't.

24 LADY JUSTICE HALLETT: Mr Keith?

25 MR KEITH: Madam, I think I should start by saying that the

1 question of CCTV and the compilation of the evidence  
2 from the carriages and the bus has been a matter that's  
3 been under consideration between myself personally and  
4 the Metropolitan Police now for three months and we've  
5 had a very large number of meetings to deal with the  
6 editing of the material, how it is to be presented, and  
7 with, in fact, the addition of markers of material to  
8 assist you and the interested persons when it comes to  
9 identifying the bombers, for example.

10 This is the first that I've heard that the  
11 Metropolitan Police has a concern that the dissemination  
12 of material through the public website could be abused  
13 by other people, and I note that much of the CCTV  
14 material was in fact played in public, of course, during  
15 the Operation Theseus trials, the Waheed Ali trials, of  
16 which there were two, and the Metropolitan Police itself  
17 provided a very substantial amount of material to the  
18 press directly by way of stills from that material and  
19 other photographs.

20 So I'm a little unsure --

21 LADY JUSTICE HALLETT: I think it is more the carriages that  
22 Mr Hill was referring to and abuse of material.

23 MR KEITH: The carriages were different, but even I'm bound  
24 to say the most cursory search of the internet reveals  
25 that a lot of the material concerning 7/7 -- whether it

1 is CCTV or stills and photographs -- is publicly  
2 available and is subject to comment and, in certain  
3 cases, to abuse in the way that the internet system can  
4 occasionally give rise to.

5 But I'm a little unsure as to where we go from here,  
6 because the question of CCTV and the compilation of the  
7 scene evidence is a matter that cannot really be  
8 adjourned realistically for very long, given that it's  
9 a matter that we will come to next week.

10 LADY JUSTICE HALLETT: When will Mr Hill himself be able to  
11 see the various compilations?

12 MR KEITH: It will all be on Lextranet in the next day or  
13 two, but all the material, as I say, has been available,  
14 because it's been examined repeatedly by ourselves and  
15 by the Metropolitan Police officers, for two to three  
16 months.

17 LADY JUSTICE HALLETT: Does anybody else have any  
18 submissions they wish to make in relation to this  
19 material? No?

20 Mr Hill, what I was wondering, as Mr Keith was  
21 speaking, what if I decide in principle to adopt  
22 Mr Keith's proposals, both in relation to the material  
23 used in his opening and, thereafter, to adopt the  
24 protocol subject to your making any further submissions  
25 once you have seen this material within the next day or

1 so?

2 MR HILL: Certainly, and we'll make any submissions in  
3 writing within however short a period you wish.

4 LADY JUSTICE HALLETT: Because, as long as the press have  
5 a decision -- well, by the time we would normally put  
6 this material on the website, which would be at the end  
7 of each day, as I understand it --

8 MR HILL: Yes.

9 LADY JUSTICE HALLETT: -- that would keep them aware of the  
10 position. You would be happy with that, or content with  
11 that?

12 MR HILL: Can I emphasise, there's no issue between us as to  
13 process. Mr Keith is right in the guise of coroner's  
14 officers, Metropolitan Police officers have been working  
15 very closely with the Inquest team and continue to do  
16 so. The only suggestion that is new and that gives rise  
17 to this modicum of concern is the letter of seven days  
18 ago, raising the suggestion of public website as opposed  
19 to Lextranet or general use in the proceedings.

20 LADY JUSTICE HALLETT: Very well. Well, my decision is that  
21 we -- sorry?

22 MS GALLAGHER: Excuse me for rising so late. Just out of an  
23 abundance of caution, we thought we would mention what  
24 concerned our families.

25 While we are content with the cause of action

1 proposed by Mr Keith, we certainly have no instructions  
2 to object to it. We just note the caveat that our  
3 clients, of course, have not yet seen the material.  
4 It's available on one CD. Arrangements are being made  
5 for it to be seen this week.

6 If it's now going on Lextranet, we can, of course,  
7 allow them to see it in that way. We think it unlikely  
8 that any objections will be raised, but we just thought  
9 it appropriate to note the caveat, given that our  
10 clients haven't yet seen the material in question.

11 LADY JUSTICE HALLETT: Right, my decision is that we will  
12 adopt the protocol suggested by Mr Keith and we will  
13 alert the media to that, if they're not present today,  
14 next Monday. In other words, I will hear submissions in  
15 relation to specific items of material they believe  
16 should be put on to the website if my Inquest team  
17 decide not to.

18 As far as the principle of the material used by  
19 Mr Keith in opening next week, unless I receive  
20 submissions to the contrary before this Friday by  
21 4.00 pm, my decision will be that the material that he  
22 uses in his opening will be published on the website.

23 However, if I do receive submissions, I shall, of  
24 course, revisit that decision.

25 Right, yes, Mr Keith, next question?

1 Submissions on the core bundle

2 MR KEITH: The core bundle, a little further down the  
3 agenda. We've prepared a core bundle which contains  
4 amended versions of the maps and plans from the back of  
5 the scene reports, photographs, a schedule of relevant  
6 telephone calls, and a timeline for each of the four  
7 bomb sites.

8 Copies of the core bundle will be placed on  
9 Lextranet in the next day or two. Mr Smith has kindly  
10 agreed to provide each legal team with a hard copy, and  
11 we hope also to get the hard copies out this week.  
12 You will appreciate, from what I've said already  
13 about the CCTV and the photographs being made available,  
14 that, of course, in accordance with your general  
15 direction, everything to which we intend to make  
16 reference will be provided to the interested parties in  
17 advance of next Monday.

18 I don't wish to invite a stream of proposed  
19 amendments -- I'm sure they would all be helpful -- but  
20 if there are any fundamental objections or errors which  
21 are spotted in the maps or the plans or the time lines,  
22 then I would be very pleased, of course, if we could be  
23 informed.

24 LADY JUSTICE HALLETT: Do you want a timescale for that?

25 MR KEITH: Madam, no, I'm sure that the parties won't

1 hesitate to contact us if they find some such error.

2 Submissions on courtroom IT

3 MR KEITH: Courtroom IT. The parties have been told, and  
4 I have been asked to remind them, that the courtroom  
5 will be made available on Thursday of this week between  
6 2.00 and 3.30 for them to familiarise themselves with  
7 the IT systems, and those that come along on Thursday  
8 will be given their log-on details for the remainder of  
9 this process.

10 Submissions on witnesses

11 MR KEITH: The third item concerns witnesses. We have  
12 a very large number of witnesses, to all of whom  
13 Mr Smith and his team are endeavouring to give a time  
14 slot. In addition, we are very concerned that we keep  
15 to this very demanding timetable.

16 We would therefore greatly appreciate it if each of  
17 the interested persons could indicate in writing by the  
18 close of play on Friday of each week in very broad terms  
19 the areas that he or she or it intends to raise with  
20 each of the witnesses for the following week so that we  
21 know roughly what is coming and how long the examination  
22 by the other parties is likely to last.

23 Insofar as the legally represented families are  
24 concerned, we would, of course, be content with a single  
25 document rather than one from each firm, because we

1 understand that one of the legal firms will be taking  
2 the primary role in relation to the examination of any  
3 given witness.

4 But if we detect, for example, in relation to  
5 a particular witness, that there will be a very lengthy  
6 examination and that takes us somewhat by surprise, then  
7 at least we will have a few days' notice to try to  
8 reschedule witnesses, if we deem it to be necessary.

9 LADY JUSTICE HALLETT: You want an indication in broad terms  
10 of the areas they intend to cover. Will that give you  
11 sufficient information?

12 MR KEITH: I hope so. I think it's a difficult path to  
13 divine because, if I ask for too many or too much  
14 detail, I may then be subsumed under a list of hundreds  
15 of questions which would not, of course, be very  
16 helpful.

17 So I am content if you are to leave it to the good  
18 judgment of the interested persons that they simply  
19 indicate the broad areas with which they intend to be  
20 concerned about with each witness, and if they say, for  
21 example "I intend to be many hours with a particular  
22 witness" then they could indicate that as well.

23 LADY JUSTICE HALLETT: So it's, in broad terms, the areas  
24 they intend to raise and a rough estimate --

25 MR KEITH: Of how long they think they'll be.

1 LADY JUSTICE HALLETT: -- of how long. Do you want me to  
2 see if there's any objection to that?

3 MR KEITH: Thank you.

4 LADY JUSTICE HALLETT: Does anybody have any objection to  
5 that? Very well, that is the course that we will adopt  
6 and see how we go.

7 Submissions on anonymity

8 MR KEITH: Madam, another matter which isn't, I regret to  
9 say, on your agenda, for which I apologise, is  
10 anonymity, because there are a number, in fact, of  
11 outstanding applications for anonymity. May I summarise  
12 the position?

13 A fireman who attended Tavistock Square is concerned  
14 at the risk of retribution if his identity is revealed  
15 by giving evidence. I will refer to him as Fireman F,  
16 if I may. He has made an application to you for  
17 anonymity, and three further witnesses have had  
18 applications made on their behalf by the  
19 Metropolitan Police service: Witnesses A, B and C. They  
20 have made further applications for screens and  
21 restrictions on the publication of their identity or  
22 images.

23 I hope I can deal with these fairly swiftly.

24 Witnesses B and C, firstly. These two witnesses are  
25 concerned with the evidential chain surrounding

1 Mohammed Sidique Khan's goodbye video which came into  
2 their possession through Hasina Patel. Your provisional  
3 view has been that the evidence of B and C is not, in  
4 fact, relevant and thus they are neither call nor read  
5 witnesses on the provisional background lists.  
6 The West Yorkshire Police and Metropolitan Police  
7 have kindly indicated that they agree with that approach  
8 and Hogan Lovells, the lead families' legal team for  
9 this subject, have indicated that they would wish B to  
10 be read or called, but I detect that really what they  
11 want to be done is to have the underlying video played.  
12 Since B and C are only concerned with background, in  
13 relation to which we have not yet begun to consider the  
14 final list, may I respectfully ask you to adjourn the  
15 anonymity applications for B and C until a decision has  
16 finally been made as to whether or not they will be  
17 relied upon by you at all because, if they are not, the  
18 applications for anonymity will fall away.  
19 Witness A. The Metropolitan Police Service are  
20 opposed to having Witness A called. The interested  
21 persons are unable to express a view because they've not  
22 yet been provided with a gist or open version of her  
23 statement because the position of the Met has been that  
24 Witness A has not consented to any part of her witness  
25 statement being released at all. Therefore, the only

1 information with which they have been provided is the  
2 short references in the background report for Tanweer,  
3 paragraphs 4, 7, 8.5, 8.20 and 8.27, which information  
4 was provided under the usual confidentiality  
5 undertaking.

6 Mr Patrick O'Connor has advanced written submissions  
7 to the effect that he would wish, on behalf of his  
8 clients, to oppose Witness A's anonymity application in  
9 due course. He suggests that the media are put on  
10 notice to the application so they can consider whether  
11 they wish to make representations. But again, there is  
12 no urgency for A. The chief concern is background, and  
13 I would wish Mr Hill, on behalf of his client, to  
14 consider providing in due course a more detailed gist of  
15 her evidence so that there can be a proper foundation to  
16 the argument for anonymity, if and when it transpires.  
17 Like the other witnesses, of course, you will need  
18 to make a ruling in due course as to whether or not you  
19 do intend to call her or to have her read, because,  
20 again, if she does not in fact form part of the  
21 evidence, then the applications for anonymity, screens  
22 and the like, will fall away.

23 May I, however, invite you to mention the subject of  
24 anonymity applications next Monday when the press are  
25 likely to be present, so that, again, if they wish to

1 avail themselves of the opportunity to make  
2 representations on this subject, then they can do so in  
3 due course when you come to consider them perhaps  
4 in November.

5 LADY JUSTICE HALLETT: Thank you. Does anybody have any  
6 observations in relation to that issue?

7 Thank you.

8 MR KEITH: Fireman F. Mr O'Connor has responded to  
9 Mr Smith's letter by indicating that his application for  
10 anonymity cannot be dealt with on paper which is what  
11 you had suggested through Mr Smith should be done, not  
12 least because he suggests that the application could not  
13 now succeed on the basis on which the witness has  
14 advanced it because of recent changes in the relevant  
15 jurisprudence, and he's also drawn to your attention the  
16 fact that the identity and the circumstances of that  
17 witness are well-known and he has currently provided us  
18 with copies of substantial press coverage concerning his  
19 identity.

20 In those circumstances, may I simply invite you to  
21 list his application in due course for the oral hearing  
22 on the same date as Witness A as and when Witness A  
23 comes to be considered and I will mention it again next  
24 week so that the press are alert to the fact that there  
25 are other applications for anonymity outstanding?

1 LADY JUSTICE HALLETT: Are you content, Mr O'Connor?

2 MS GALLAGHER: It's actually me. Mr O'Connor deals with  
3 preventability. I deal for my clients with all other  
4 issues. But I am certainly content with the outline  
5 provided by Mr Keith.

6 LADY JUSTICE HALLETT: Thank you.

7 Submissions on disclosure

8 MR KEITH: Madam, that brings me, if I may, to disclosure.  
9 I think everything else on the list has been covered one  
10 way or the other, other than any other matters.

11 Madam, disclosure is a most important area and it's  
12 one that I addressed you at length on in both the June  
13 and July hearings, when you will recall that  
14 I repeatedly emphasised the need for the interested  
15 persons to address their obligation in relation to  
16 disclosure speedily.

17 The majority of the interested persons have  
18 discharged their obligations and we've received a wealth  
19 of material from, amongst others,  
20 British Transport Police, London Ambulance Service, the  
21 Fire Brigade, TfL, and so on.

22 The Metropolitan Police is in a different position  
23 on account of the sheer scale of the documents that they  
24 process, but there, too, we have made much progress and  
25 we've put in place a system whereby we will have

1 schedules of likely relevant material disclosed to us.  
2 These schedules will amount, in fact, to some  
3 2,000 pages, so there will be a great deal of work still  
4 to be done. But we are content that the position in  
5 relation to disclosure is progressing as we would wish.  
6 Insofar as the Security Service is concerned,  
7 Mr Smith wrote to all the interested persons on  
8 28 September setting out progress so far, and I know you  
9 have a copy of the letter.  
10 We have made a number of visits to their  
11 headquarters. We've seen some, but not many, PII  
12 protected documents, and we've discussed at some length  
13 the ways and means by which the process might be  
14 facilitated.  
15 But of course the particular demands of public  
16 interest immunity, including identifying sources and the  
17 category of such PII claims have understandably meant  
18 that progress has not been as fast as we would have  
19 wished and, to a certain extent, it is disappointing,  
20 given Mr Smith's letter to them informing them of their  
21 obligations that was dated as long ago as 27 May, some  
22 four months ago.  
23 That said, it's important that I emphasise that it  
24 is a difficult process. The Security Service are not,  
25 as you would expect, the sole owners of the material

1 that they possess, and we understand that they have  
2 devoted a considerable amount of resources to this task,  
3 including naturally diverting officers away from other  
4 obligations and tasks to which they might otherwise have  
5 had regard.

6 We've been told, and we have no reason to doubt,  
7 that a substantial proportion of the material that we  
8 seek will be made available to us for inspection by  
9 mid-October, at which point we will need to address  
10 relevancy, because, of course, relevancy is ultimately  
11 a matter for you, and where PII protected material is  
12 considered to be relevant, how that issue is to be taken  
13 forward.

14 We've received a broad indication that there may be  
15 around eight lever arch files of material being made  
16 available to us in due course, but it's quite impossible  
17 to say for sure and we would not naturally wish to hold  
18 them to that.

19 Mr Smith, on your behalf, informed the  
20 Security Service and the police that Friday, 3 December  
21 must be considered as the date by which we must commence  
22 the process of disclosing all the material to the IPs so  
23 that they have sufficient time in which to prepare for  
24 the hearings in the new year, and of necessity that of  
25 course means that the inspection process must commence

1 before then because the timetable must accommodate the  
2 applications for public interest immunity, following  
3 your analysis of the relevancy of the particular  
4 material, open and closed submissions on PII before you,  
5 a ruling and possibly an appeal process before,  
6 mechanically, the material can be made available on  
7 Lextranet.

8 The Security Service, I understand, are unlikely to  
9 think that this is possible, even if some material is  
10 disclosed in October, and I fear that they are of the  
11 view that the date for final disclosure, that is to say  
12 the end process of all material that they consider to be  
13 relevant and with which you agree, will slip back  
14 to January, and you will no doubt wish to hear from  
15 Mr Eadie on this in a moment.

16 May I say that if the date, which is a challenging  
17 date, does slip back, it does not, I think, present  
18 necessarily an insuperable hurdle to us proceeding when  
19 we are due to in February on this issue, because, of  
20 course, preventability is likely to be dealt with last,  
21 but it will be very difficult indeed if (a) at least the  
22 early batches of material have not already been  
23 disclosed by December, that is to say we must commence  
24 the process as soon as possible, even if it cannot end  
25 by the date which we would have wished it to end by,

1 because then at least we will have some opportunity to  
2 assess in a rolling manner the material that is  
3 received, and (b) it would be extremely difficult indeed  
4 if there is an insistence by the Security Service on  
5 appealing every adverse decision, assuming there to be  
6 adverse decisions on PII.

7 The inquest timetable cannot be put back, for all  
8 sorts of good reasons. This is not an adversarial trial  
9 process in which one side or another may have a good  
10 claim for not being ready. There are too many other  
11 interests at stake, and I would welcome Mr Eadie's views  
12 on where we are with the onward disclosure of material  
13 to the inquest team.

14 Mr Patrick O'Connor has taken the opportunity of  
15 advancing some written submissions in addition in which  
16 he calls for the Secretary of State to give a firm  
17 commitment as to when she believes the process of  
18 disclosure material will be complete, but that I think  
19 will be swept up in the general debate today, and he's  
20 advanced some further observations on the presumed ease  
21 by which the Security Service should be able to collate  
22 the material relating to 7/7, on account of the  
23 presumption that he makes that the material must have  
24 been collated for the Intelligence and Security  
25 Committee process, and because the ISC reports

1 themselves refer to oral evidence.  
2 He's also made some comments on the disclosure of  
3 the Crevice material, which is likely to be less  
4 sensitive, and can I simply address that so as to put it  
5 to one side?  
6 We've obviously had our collective eye on the  
7 Crevice material for some time but, as Mr O'Connor  
8 himself knows only too well, that trial lasted  
9 from March 2006 to 30 April 2007 and it would simply not  
10 be proportionate, as well as extremely expensive, for  
11 the entire trial to be transcribed and made available in  
12 these proceedings, but the Met Police have with Mr Smith  
13 assessed which parts they think might be relevant and  
14 helpful and Mr Smith has obtained the necessary  
15 copyright licences at very considerable public expense  
16 for those relevant extracts, certain days in the  
17 transcript, to be made available, and happily I can say  
18 that some 57 transcripts, including the evidence of  
19 Akbar, Salahuddin Amin, Anthony Garcia and Omar Khyam,  
20 whom Mr O'Connor will readily recollect were the  
21 defendants in those proceedings, as well as the evidence  
22 of Mohammed Babar were uploaded on to Lextranet on  
23 Friday.  
24 A further very substantial number of transcripts  
25 from the Theseus trial -- that's to say the proceedings

1 concerning Waheed Ali and two others -- two others in  
2 relation to 7/7, I should say -- have also been made  
3 available and are about to be loaded on to Lextranet.  
4 We are also in the process of disclosing some of the  
5 audio and visual material. So we are alert to the  
6 question concerning Crevice. That process will continue  
7 and I do anticipate that, absent the material, which  
8 Mr Eadie will no doubt address you on in a moment in  
9 relation to the bulk of the Security Service material,  
10 material concerning Crevice insofar as that material was  
11 put into the public domain, will be well advanced and by  
12 the end of this month.

13 The final point I wish to make concerns two  
14 applications that we understand Mr Eadie may be making to  
15 you this morning. I don't want to trample upon his  
16 ground, and so, may I just say one or two short things  
17 by way of introduction?

18 Mr Eadie has given us a couple of days' notice very  
19 kindly of something that he wishes to raise today and it  
20 concerns whether or not in principle it is open to you,  
21 in completely closed conditions, to consider RIPA  
22 material and, secondly, whether or not you are entitled  
23 to sit in closed conditions together with your team to  
24 consider material that would otherwise be subject to the  
25 constraint of public interest immunity and which would

1 not otherwise be made available to any of the parties.  
2 I don't wish to comment on the legal merits of those  
3 propositions because, of course, they will be the  
4 subject of considerable, perhaps heated, debate in due  
5 course.

6 LADY JUSTICE HALLETT: I thought we'd aired any possible  
7 legal merits to an extent some five months ago when  
8 I could have sworn the submissions of the Secretary of  
9 State were that I couldn't consider RIPA material and  
10 I couldn't conduct closed hearings.

11 MR KEITH: Well, madam, that's quite right. You'll no doubt  
12 hear from Mr Eadie in a moment. It is firstly, let me  
13 say, unfortunate in the extreme that such a novel  
14 application should be introduced at this relatively late  
15 stage, and it's somewhat remarkable that arguments  
16 concerning the legality of the processes that the  
17 inquest procedure may adopt should be raised now when  
18 they were indeed canvassed before you by Mr Garnham  
19 in April.

20 They are of course principled arguments. The  
21 argument will necessarily revolve around whether or not,  
22 for example, rule 17 of the Coroners Rules may  
23 accommodate any process by which you could sit otherwise  
24 than in public or in certain limited circumstances in  
25 court where the public are excluded, but that doesn't of

1 course necessarily countenance the exclusion of the  
2 parties. That is a principled argument, and it could  
3 certainly have been heard before now.

4 As you've observed, secondly, the arguments are  
5 somewhat inconsistent with those raised by Mr Garnham,  
6 but again, I must respect the fact that Mr Eadie will no  
7 doubt present them in as coherent and persuasive a way  
8 as possible, but it's right that I observe that  
9 Mr Garnham's argument was predicated -- his argument  
10 that you could not proceed further with these inquests  
11 at all, was predicated on two assumptions: one, that on  
12 the assumption that the PII material claims were upheld,  
13 the material could not be put into the public domain;  
14 but, secondly, that neither you nor the families would  
15 ever agree to disclosure of such material to just you  
16 and your counsel, and indeed Mr Garnham on the  
17 transcript, 28 April of this year, expressly  
18 acknowledged that such a possibility would never be  
19 countenanced by you, nor the families, and he said "for  
20 obvious reasons" and he plainly had in mind rule 17 as  
21 well as the relevant principles on jurisprudence on open  
22 justice and natural justice.

23 Madam, I've mentioned that it is, it seems to us, in  
24 advance of hearing Mr Eadie, a principled argument.  
25 There is something to be said for resolving these

1 issues, to the extent that Mr Eadie asks you to resolve  
2 them, as soon as possible and, therefore, may I ask you,  
3 when you've heard from Mr Eadie, to direct that perhaps  
4 a little time be put aside next week, when we're not  
5 concerned with other rather more pressing issues, for  
6 you to give directions as to how you would wish the  
7 parties to respond to whatever Mr Eadie will put before  
8 us, and that you direct him today to put down his  
9 submissions in writing so that we have a good  
10 opportunity of considering them before we respond to  
11 your directions next week in writing?

12 Madam, I think that is all that I should say in  
13 relation to that matter in advance of hearing from him,  
14 but the general tenor of our position will, I hope, be  
15 clear.

16 LADY JUSTICE HALLETT: Mr O'Connor, I appreciate you and  
17 others may have submissions on this matter. Would it be  
18 best if we heard from Mr Eadie himself before I came to  
19 ask you what your submissions are, or would you rather  
20 deal with any aspect before him?

21 MR O'CONNOR: Madam, no, I think it's much better that we  
22 hear from Mr Eadie, thank you.

23 LADY JUSTICE HALLETT: Right, Mr Eadie, as you will recall,  
24 five months ago, I heard submissions on the two aspects  
25 that Mr Keith has alerted me that you may be arguing.

1 Is it right that you are now going to try to reopen  
2 those issues and do so in a way that appears to be  
3 inconsistent with the submissions of Mr Garnham?

4 MR EADY: My Lady, we are going to be inviting you to  
5 address and resolve the potential RIPA issue and also  
6 the PII issue.

7 As I understand it, the assumption which may yet  
8 come to pass once my Lady has ruled upon which  
9 Mr Garnham was addressing the issues of principle that  
10 he was addressing, was that you would not be able to  
11 receive RIPA material and there would be a serious  
12 problem with your going into closed on PII. I entirely  
13 acknowledge that.

14 However, having re-read your ruling of July, my  
15 understanding was that you were extremely concerned,  
16 certainly in relation to the closed part of that  
17 process, that that issue simply couldn't sensibly be  
18 addressed in the abstract, and it would need to be  
19 addressed once, and Mr Garnham hadn't yet had an  
20 opportunity at that stage to do so, Counsel for the  
21 Secretary of State had an opportunity to go through all  
22 the relevant material which I have now spent a long part  
23 of the summer doing.

24 We are where we are. My Lady has ruled as you have,  
25 and we are extremely concerned to try to make the

1 process work, if we possibly can do, and that does  
2 involve resolving, on the basis of the actual material  
3 that exists and in the light of the actual issues that  
4 are to be tried in relation to preventability, trying to  
5 see whether there are processes which can properly  
6 resolve the core tension that exists in a context such  
7 as this, and that core tension is obviously between, on  
8 the one hand, a trying to ensure, if at all possible,  
9 that the trier of fact -- namely, yourself in this  
10 context -- does not reach decisions on matters as  
11 important as whether or not the Security Service were  
12 involved in a causative sense in the 7/7 bombings,  
13 without having access to all the relevant material.  
14 So we have revisited those issues in the light of  
15 my Lady's ruling --

16 LADY JUSTICE HALLETT: Which was back many months ago,  
17 Mr Eadie. I apologise for interrupting you, but before  
18 we get into any kind of substance, could you please  
19 explain to me why -- it is now October, those whom you  
20 represent have known for many months what my decision  
21 was. They have also known for many months that I have  
22 given certain undertakings to the families of those who  
23 died, and indeed to the survivors, albeit they're not  
24 represented, that this process will be complete by next  
25 spring.

1 I have a budget, on a more practical and mundane  
2 level, which runs out next spring. Why is it that we  
3 are now, on October 4, considering revisiting issues  
4 that could have been dealt with months ago?

5 MR EADY: Well, my Lady, we will be reinventing the issues of  
6 PII -- I'll take it in stages. The RIPA point is  
7 a relatively short point of principle, probably two  
8 hours of argument, if that.

9 LADY JUSTICE HALLETT: If you're not satisfied with my  
10 decision, you would wish presumably to appeal it  
11 elsewhere. How long does that part of the process take?

12 MR EADY: My Lady, that, as you know, will be entirely  
13 dependent upon the urgency with which that appeal would  
14 need to be dealt with and whether a Court of Appeal  
15 could make time available, and the prior issue as to  
16 whether or not, if my Lady ruled against us, anyone who  
17 was adversely affected by that ruling, wished to appeal  
18 in all the circumstances recognising the sorts of issues  
19 that you've just raised.

20 In relation to PII, the reason we are now raising  
21 these matters as ripe for resolution is because, as  
22 I indicated, my Lady was very, very clear in July that  
23 Mr Garnham had not had a chance to review the relevant  
24 material, but those sorts of issues could only properly  
25 be determined in the light of specific material,

1 particular material.

2 So I have spent, as I've indicated, a large part of  
3 the summer trying to get myself into the position of  
4 being able to say we now have these items, these pieces  
5 of material, and it is now appropriate to have PII  
6 applications in relation to some of those, in order to  
7 see whether or not these sorts of issues actually needed  
8 to be addressed.

9 If the position had been that, with the best will in  
10 the world, the judgment was that all the material could  
11 in fact be gisted or could in fact be dealt with in some  
12 other way, then there would have been no need to trouble  
13 you.

14 LADY JUSTICE HALLETT: PII material, yes, of course, a judge  
15 deciding on what material should or shouldn't be  
16 disclosed, will have to look at the specific material.  
17 The principle of whether I am entitled, as a deputy  
18 assistant coroner, to conduct closed hearings could have  
19 been decided months ago.

20 MR EADY: My Lady, the difficulty with doing that is, as we  
21 had understood it, you were very reluctant to decide any  
22 issue of that kind in the absence of a specific example,  
23 because only then would you see whether it was necessary  
24 or not to go down that road.

25 LADY JUSTICE HALLETT: What about the legal principle which,

1 as I understand it, is one that, if I ruled against you,  
2 would be the principle that would have to be decided, it  
3 wouldn't be specific material, it would be the legal  
4 principle of whether I, as a coroner, can, consistent  
5 with my statutory duties, hold closed hearings. Why is  
6 that not an issue that couldn't have been resolved  
7 months ago?

8 MR EADY: Well, my Lady, the only answer I can give is that  
9 we have taken the view that it would be -- maybe  
10 misguidedly on the basis of the reading of my Lady's  
11 ruling in July -- that that issue was more properly  
12 dealt with as part of an actual PII application linked  
13 to actual material.

14 Of course, my Lady is right, the point of principle  
15 itself can be split out, but our understanding was that  
16 you wanted to deal with the PII basis and all PII  
17 applications, not in the abstract, but only if and when  
18 a decision had been made by someone immersed in the  
19 material, which Mr Garnham wasn't, that it would be  
20 necessary to make that claim and in the light of actual  
21 material.

22 LADY JUSTICE HALLETT: Mr Eadie, had anybody representing the  
23 Secretary of State suggested I might be asked to have  
24 closed hearings, I would have hived that off as a legal  
25 principle that I could consider.

1 On the contrary, Mr Garnham appeared to be arguing  
2 on behalf of the Secretary of State that I wouldn't ever  
3 envisage holding closed hearings. He seemed to be  
4 arguing to the contrary that they wouldn't be possible.  
5 MR EADY: My Lady, we are where we are. We are trying to  
6 make the process work so that we don't reach the stage  
7 where you have to take the view that a PII claim has  
8 properly been made in relation to relevant material, and  
9 relevant is obviously the premise on which PII proceeds.  
10 You don't have to get to the stage where you say,  
11 "Right, there is material, it is relevant to my  
12 decision, this is an extraordinarily important context,  
13 but I can't operate to receive that material because PII  
14 operates as an exclusionary rule".  
15 So we have revisited those issues of principle to  
16 see if there is some way in which you can receive that  
17 sort of material, the alternative being that,  
18 potentially, thoroughly important parts of the story,  
19 thoroughly important parts of the information and  
20 documentation which would explain how the  
21 Security Service were acting, what they were doing, what  
22 the context was, would simply have to be left out of  
23 account entirely in my Lady reaching her decision on  
24 issues of that importance, and that, for obvious  
25 reasons, seems to everyone concerned -- and I imagine it

1 is common ground with the families -- to be a thoroughly  
2 undesirable outcome, for obvious reasons.

3 LADY JUSTICE HALLETT: We all understand the argument,  
4 Mr Eadie. We have been through this back, earlier this  
5 year. What's obviously concerning me now is, how is  
6 this approach, which appears to me to be a new approach,  
7 going to impact upon the very strict timetable that  
8 I have set and that has involved everybody working  
9 enormously hard over the summer to keep to that  
10 timetable?

11 MR EADY: My Lady, can I say at the outset I'm going to come  
12 to timetable in a moment, but those who instruct me are  
13 also in that position. They have also been working  
14 extraordinarily hard over the summer.

15 LADY JUSTICE HALLETT: I understand that. I didn't exclude  
16 them.

17 MR EADY: My submission to you is that there is no reason  
18 why the resolution of these issues of principle should  
19 derail that timetable or materially prolong it. Indeed,  
20 on the contrary, one of the reasons for the course, the  
21 procedural course, which we respectfully propose, one of  
22 the reasons for that, which is to take example PII  
23 categories and deal with those, is to see whether the  
24 guidance that would flow from a ruling on those issues,  
25 in relation to actual, specific concrete material, could

1 be then used and deployed, as it were, to shorten the  
2 process, because we would then have a very clear idea  
3 about where you were coming from in relation to issues  
4 such as gisting, in relation to whether or not material  
5 could be disclosed pursuant to undertakings, and so on.  
6 So we are hopeful that if those issues of principle,  
7 linked as they will be to specific and concrete  
8 examples, are resolved, sooner rather than later, then  
9 that will have a beneficial effect on the timetable  
10 rather than a deleterious effect on the timetable.

11 LADY JUSTICE HALLETT: How would you envisage the timetable,  
12 then, Mr Eadie, to cater for these legal submissions?

13 MR EADY: My Lady, what we were going to propose was that --  
14 we've raised this with your team in advance, but what we  
15 were going to propose was that the RIPA material issue  
16 should be dealt with at the same time as example PII  
17 issues. I emphasise at the outset, for reasons which  
18 you will need no educating on, that I do not confirm or  
19 deny the existence -- explicitly don't confirm or deny  
20 the existence of RIPA material, but it is at least  
21 possible and perhaps unsurprising in a context such as  
22 this that there might be such material.

23 LADY JUSTICE HALLETT: Are you saying the RIPA material  
24 issue as a general principle as to whether or not, if  
25 there were any, I am entitled to receive it?

1 MR EADY: Yes, that is precisely what I mean.

2 LADY JUSTICE HALLETT: You mean the issue in principle  
3 rather than specific material, if there were any?

4 MR EADY: Exactly. So that obviously can't be linked to  
5 specific material, because no-one is allowed to know  
6 whether there is or is not such material. But there is  
7 a recent precedent of that rather strange statutory  
8 provision not standing in the way of a sensible argument  
9 of principle, there is an inquiry, a public inquiry,  
10 rather than an inquest, going into the shooting of a man  
11 called Azelle Rodney, and there is a preliminary issue  
12 of principle that is to be determined, I think on  
13 Wednesday and Thursday, raising these sorts of issues  
14 about RIPA in the public inquiry context, where the  
15 statutory provisions are rather different, but  
16 nevertheless raising them on the assumption that there  
17 is RIPA material.

18 So it is possible to, as it were, tee up a point of  
19 principle in which the families can participate and have  
20 their say.

21 I don't want to get into the detail of that  
22 argument, but just so everyone is aware of its rough  
23 nature, there are two essential issues that will arise  
24 under RIPA. The first of them is whether or not, if  
25 there is such material, it is covered by the section 17

1 preclusion. That, in essence, turns on the question  
2 whether or not inquest proceedings are legal proceedings  
3 for this purpose. They stand in section 17 in rather  
4 strange contradistinction to public inquiry proceedings.  
5 But nevertheless at the moment, I indicate, we take the  
6 view that the RIPA material, if it does exist, would be  
7 covered by that preclusion.  
8 So the question then is: is there an exception? The  
9 exceptions are set out in section 18, as I'm sure you  
10 will recall. Is there an exception which would permit  
11 you to receive that material and, again, in section 18  
12 there is a contrast drawn between inquest proceedings  
13 and public inquiry proceedings.  
14 In inquest proceedings, there is no provision in  
15 the -- in section 18 for Counsel to the Inquiry to  
16 receive the material as there expressly is in relation  
17 to 2005 Act Inquiries.  
18 Nevertheless, there is in section 18.7(b)  
19 a provision that allows a relevant judge, which is the  
20 concept used, to receive alone such material.  
21 LADY JUSTICE HALLETT: That's where you go to my status as  
22 a Lady Justice of appeal?  
23 MR EADY: Exactly so, that's 18.11. The question I suppose  
24 that would arise prior to that is whether or not you  
25 have -- assuming you are a relevant judge -- whether or

1 not you have power to receive that information for the  
2 purpose of taking it into account in your ultimate  
3 judgment.

4 LADY JUSTICE HALLETT: But your first hurdle is whether I am  
5 sitting here as a Lady Justice of appeal or whether I'm  
6 not, in fact, sitting as a deputy assistant coroner.  
7 That's what I would have to hear argument on.

8 MR EADY: The question at that stage would be whether or not  
9 section 18.11 is a status thing or a jurisdiction thing,  
10 but we can have that argument. But my Lady is right,  
11 that issue will arise and it seems to us to be at least  
12 properly arguable that section 18.11 would permit you to  
13 fall within the category of relevant judge, just as --  
14 I'm going to give other examples of similar situations,  
15 but we'll come to that argument.

16 LADY JUSTICE HALLETT: You would argue for those purposes  
17 I would be sitting as a Lady Justice of appeal, but if I  
18 ruled against you, you would then appeal me to the High  
19 Court?

20 MR EADY: No, you would be sitting as a deputy assistant  
21 coroner, but it's very hard to shake off the status of  
22 being a member of the Court of Appeal.

23 LADY JUSTICE HALLETT: But the appeal would be to a High  
24 Court judge.

25 MR EADY: The appeal would be to a High Court judge. It

1 would. Exactly so.

2 LADY JUSTICE HALLETT: Right.

3 MR EADY: There are situations in which others, you could go  
4 off and operate as the chair of a public inquiry, and  
5 the route would be the same. Judicial review to a High  
6 Court judge.

7 LADY JUSTICE HALLETT: I understand the --

8 MR EADY: With all the lese majeste that that involved.

9 LADY JUSTICE HALLETT: Right.

10 MR EADY: My Lady, you're right. That is going to be the  
11 stuff of an issue and argument, 18.11, what does that  
12 mean, what is the effect of it?

13 As far as closed material is concerned, my positive  
14 submission is that it is not and would not be  
15 appropriate to wait until the end of the process. Much  
16 work has already been done, and it is possible, we hope  
17 in very short order -- I haven't quite, I have to say,  
18 got my head round next week -- but possible, at least in  
19 very short order, to identify example categories or  
20 documents which will be the subject of a PII application  
21 and to deal with them as examples.

22 The judgment at present on our side is that this  
23 will be a live and a difficult issue because the  
24 judgment at present is that there is material which has  
25 two features: (a) it is assessed to be important to

1 a proper resolution of the preventability issue, which  
2 you have identified helpfully in the letters from your  
3 office, and which the Secretary of State would  
4 positively wish to rely upon and to rely upon in detail  
5 rather than simply by way of precis, and secondly, which  
6 it will be inappropriate to make public without risking  
7 precisely the sort of damage which I know all concerned  
8 will be very keen to avoid.

9 So there is such material. The advantages of an  
10 early process to flush out the issues in relation to  
11 concrete examples of material seem to us, with respect,  
12 to be manifold. Firstly, such an approach based on  
13 actual examples will be linked to actual documentation  
14 information, so it won't be a purely abstract process.  
15 Secondly, such examples -- and we will try to pick  
16 them deliberately for this purpose -- will raise some  
17 issues likely to be common to most such claims. So  
18 we're hoping there the scope for guidance will be  
19 considerable and, if that is so, it will provide  
20 considerable assistance in conducting what might  
21 otherwise be a very large and time-consuming exercise in  
22 dealing with the relevant documentation.

23 LADY JUSTICE HALLETT: When would you envisage -- you say  
24 you wouldn't want to wait until the end of the process.

25 MR EADY: We certainly wouldn't.

1 LADY JUSTICE HALLETT: When would you envisage my ruling on  
2 any aspects of this material?

3 MR EADY: I would hope we could identify examples of  
4 categories of material, certainly within the next couple  
5 of weeks we would get a comprehensive list of those, but  
6 we will of course be guided by your timetable. We're as  
7 concerned as everyone else to progress matters as fast  
8 as possible.

9 LADY JUSTICE HALLETT: If we have another -- if two more  
10 weeks elapse before I even rule, that's taking us  
11 towards the -- we're getting towards the end of October.  
12 If I ruled against you, and these were important points  
13 of principle that you wish to appeal to the highest  
14 possible level, albeit I may have some influence in  
15 getting appeals on in this building quite quickly,  
16 I don't have the same influence in Westminster, Mr Eadie.

17 MR EADY: My Lady, no. You will be aware that on the  
18 unhappy and, I'm sure, unlikely assumption that we get  
19 into that position, there are a number of things that  
20 will need to be thought about. I make no secret of  
21 this. Firstly, there will need to be consideration  
22 given to the possibility of judicial review, and the  
23 administrative court listing office, I know from recent  
24 experience, although they are extraordinarily busy, can  
25 and do regularly make slots for things that need to be

1 dealt with as a matter of great urgency.

2 LADY JUSTICE HALLETT: Master Venne has very kindly offered  
3 me every facility, including his own personal telephone  
4 number. So the Crown office isn't the problem.

5 MR EADY: It's the Court of Appeal.

6 LADY JUSTICE HALLETT: The Court of Appeal I suspect I might  
7 have some influence with. I'm thinking higher up might  
8 be the problem, if you wanted to go there, if I've ruled  
9 against you.

10 We're talking about, if we get to the end of -- just  
11 supposing I am able to rush through everything, any  
12 ruling I made, if it were adverse to you, would not be  
13 leaving this building before mid-November.

14 MR EADY: Probably early to mid-November, it is likely to be  
15 a realistic time.

16 LADY JUSTICE HALLETT: Well, I don't know what influence you  
17 have in the Supreme Court, Mr Eadie.

18 MR EADY: My Lady, it may not be terribly wise to get too  
19 far ahead of ourselves.

20 LADY JUSTICE HALLETT: I have to think about it.

21 MR EADY: We have to think of it as a possibility.

22 LADY JUSTICE HALLETT: That is why I am so concerned about  
23 the fact that these matters are only being raised now.  
24 This is an issue that fortunately my team have decided  
25 should be dealt with at the end of the process. So

1 we're not talking about hearing the evidence  
2 until February, which gives us some leeway. But if  
3 we're having to factor in to our timetable my team  
4 having to argue these points elsewhere, which obviously  
5 takes them away from their work preparing the inquest  
6 generally, and the same as far as the people who  
7 instruct you are concerned in your own endeavours, I am  
8 just really troubled that the timetable that I have set,  
9 the promises I have made to the families, are looking  
10 very shaky, and this all could have been resolved some  
11 time ago.

12 MR EADY: My Lady, I don't want to go back to where we  
13 started from. I have little to add to what I said at  
14 the outset on that.

15 LADY JUSTICE HALLETT: I appreciate I was repeating myself,  
16 I won't ask you to repeat yourself, Mr Eadie. As far as  
17 identifying this material issue, is there any way we can  
18 speed the process to earlier than two weeks? We have to  
19 get as far ahead as we can as soon as possible.

20 MR EADY: My Lady, I don't want to launch us down an  
21 unrealistic track. You will appreciate that what we  
22 need to do in order to get to the stage of producing  
23 sensible workable examples of that kind involves quite  
24 a lot of work. It doesn't just involve us identifying  
25 what we think would be suitable and sensible examples.

1 We will have to go through the process of preparing,  
2 producing, advising about and securing a PII certificate  
3 to tee that up.

4 That doesn't mean that we can't do bits of the  
5 process before that, identifying, for example,  
6 categories alerting your team early, but there is  
7 a process that will need to be gone through, which, from  
8 relatively bitter past experience, does take time.

9 LADY JUSTICE HALLETT: Is there any reason why the legal  
10 representatives could not prepare for me, in relatively  
11 short order, written submissions on the general legal  
12 principles involved?

13 MR EADY: No, none.

14 LADY JUSTICE HALLETT: Could that be done by close of play  
15 on Friday?

16 MR EADY: Yes, probably.

17 LADY JUSTICE HALLETT: So if I direct that any submissions  
18 on the legal principles involved in, if any RIPA  
19 material exists, my receiving it and the principle of my  
20 conducting closed hearings, you are content that  
21 I should direct that they will be with my legal team by  
22 5.00 pm on Friday?

23 MR EADY: That's fine.

24 LADY JUSTICE HALLETT: Then that leaves the identification  
25 of the material. How long is that going to take?

1 MR EADY: I think that might take a little longer, although  
2 a lot of work has been done, we will need to try to make  
3 sure the example's of telling one so they do actually  
4 achieve the purpose of the exercise. Perhaps another  
5 week for those and we would in the meantime put in  
6 train -- in parallel, we'd have to try to speed up the  
7 process of actually preparing and getting sign-off on  
8 PII certificates which is a --

9 LADY JUSTICE HALLETT: Mr Keith, if I said whatever the date  
10 the following Friday is for the identification of the  
11 specific material, provided you had the submissions on  
12 the legal principles, is that a timetable you think you  
13 can live with?

14 MR KEITH: Madam, yes. We will, of course, live with  
15 anything that you order, but may I be permitted to go  
16 back one step?

17 I'm slightly concerned by the linkage made by  
18 Mr Eadie with the general principle which is identified  
19 today, and the worked examples.  
20 We had understood the Security Service were  
21 proceeding with a great deal of time and resource to  
22 identifying the material that would likely to be  
23 relevant but which attracted public interest immunity.  
24 They've indicated, and we entirely accept, that that  
25 process, that is to say of arguing out public interest

1 immunity, would be hugely assisted by the production of  
2 material to you and your team by way of category, so  
3 that, rather than claiming public interest immunity in  
4 relation to each single document, which could run to  
5 many tens of thousands of documents, the  
6 Security Service would identify categories for which  
7 they would then make a PII claim. We would cross the  
8 bridge of whether or not a class claim is permitted post  
9 ex parte Wiley in public interest immunity at another  
10 date, but that would certainly speed up the process.  
11 The principled argument, which is raised today,  
12 seems to us very clearly to raise only a point of  
13 principle, because whether or not you rule that you can  
14 or may sit in closed has no necessary impact on the  
15 actual claim for public interest immunity for  
16 a particular document or, indeed, even a category of  
17 document. The only connection is that, if you were to  
18 accede to his arguments that you could sit in closed,  
19 the PII process would stop immediately, because there  
20 would be no need to pursue the process because it would  
21 all be given to you in closed anyway.  
22 That is the only argument for having the principled  
23 argument sooner rather than later, actually, because we  
24 would be concerned if an argument about this principled  
25 issue were to have any kind of deleterious effect on the

1 ongoing examination of the individual documents.  
2 But we have been assured, and we accept so far,  
3 there is a twin track in process. They are getting on  
4 with examining the documentation whilst instructing  
5 Mr Eadie to come and argue the principled point before  
6 you now.  
7 We would, therefore, much rather that, in accordance  
8 with your provisional direction that he indicated in  
9 writing his arguments on the principled issues that we  
10 then resolve those as soon as possible, perhaps in the  
11 next two or three weeks, because that is the issue which  
12 is most likely to be appealed. Specific judgments in  
13 relation to PII claims of individual documents are much  
14 less readily susceptible to appeal, and in principle --  
15 LADY JUSTICE HALLETT: Even if they were, we're talking  
16 possibly to one level rather than --  
17 MR KEITH: Precisely, and therein lies the distinction  
18 between the two issues that you have before you today  
19 which Mr Eadie has amalgamated.  
20 The issue before you, which was readily plain to  
21 Mr Garnham in April, was whether or not you can, in  
22 principle, accommodate closed material. The  
23 Security Service must have been aware of this issue  
24 because Mr Garnham argued that you could not in law  
25 resume the inquests, and he could only have argued that

1 if the Security Service had provisionally been of the  
2 view that you could not sit in closed, and that is the  
3 principled issue and it's been around, as you've said,  
4 for many, many months.

5 That is entirely separate from the issue that you  
6 identified in your judgment, but upon which Mr Eadie has  
7 sought to rely, which was whether or not, assuming that  
8 you could not sit in closed and there must be a degree  
9 of openness, there could ever be a proper examination of  
10 the Security Service's role in February and March 2004.  
11 Your answer to that question, which was reflected in  
12 your judgment, was that it was wrong to say that all  
13 material would necessarily be PII protected to the  
14 highest level and that a PII claim would be bound to  
15 succeed in respect of that material.

16 Your opinion was there will be grades of sensitivity  
17 and grades of relevancy and it is impossible to say now  
18 that there will be no questions that could be asked and  
19 no answers that cannot be given.

20 Those sorts of issues will continue to be posed  
21 during the course of the autumn, but they are quite  
22 separate from the principled issue of RIPA and whether  
23 or not you can in principle accommodate a closed  
24 material procedure.

25 So may we invite you to direct that we do address

1 this argument first and allow the PII process, the  
2 examination of material and categories of material, to  
3 continue unabated because that issue is one that will  
4 depend upon examination minutely of the material and is  
5 likely to take many, many weeks because there are many,  
6 many thousands of documents.

7 LADY JUSTICE HALLETT: Mr Eadie? I'm sorry, I interrupted  
8 you by going back to Mr Keith.

9 MR EADY: That's very helpful because Mr Keith is now on the  
10 same bandwagon that says we took an inconsistent  
11 position in April and why wasn't this raised months ago.  
12 So it is right to remind my Lady that on 17 June 2010 we  
13 wrote to the Inquest team and we asked them, as the  
14 first of the three questions:

15 "Is it considered that the coroner has power [power  
16 was emphasised] to receive security sensitive material  
17 on the basis described above, ie with provision being  
18 restricted to the coroner and her core team only, but  
19 not to the families? If not, it would be very helpful  
20 to have a brief explanation why not."

21 Two further questions were asked raising similar  
22 points of principle about the procedure to be followed.  
23 The answer that came back from the coroner's inquest the  
24 next day on 18 June -- I summarise, and you will no  
25 doubt wish to consider carefully the precise terms in

1 which that response was put -- but it said in summary  
2 we're not prepared to do that because those issues are  
3 fact-sensitive.

4 LADY JUSTICE HALLETT: I would appreciate it if issues I've  
5 raised were not described as a "bandwagon", Mr Eadie.

6 MR EADY: My Lady, I apologise for that, but you will  
7 appreciate there was serious criticism being handed out  
8 in open court of the processes and performance of this  
9 agency and I would invite my Lady to take into account  
10 that exchange of correspondence very shortly after  
11 my Lady's ruling in June 2010.

12 My Lady, the concern that we have, coming back to  
13 more practical matters, is that, if the issues are  
14 simply isolated as issues of principle, of course that  
15 is possible, but that will not actually achieve the  
16 extent of the benefits that would be achieved if we did  
17 proceed by way of example.

18 We are not suggesting, as Mr Keith has just  
19 suggested, that there should be a class claim being made  
20 for this documentation, and I apologise if there was  
21 confusion in that respect. We are taking examples of  
22 documents and we will argue the PII issues in relation  
23 to particular documents, particular items of  
24 information, but it equally clearly needs to be  
25 recognised that if the answer to PII on a single example

1 is X, that answer is likely to be the same in relation  
2 to other types of document within that category.  
3 My respectful submission is that unless one  
4 introduces some form of example, you simply won't get  
5 the benefits that this process is designed to achieve:  
6 namely, the guidance as to whether or not gisting can be  
7 given, whether or not particular types of material can  
8 or cannot be given, pursuant to undertakings from the  
9 family. Those sorts of issues won't be raised by the  
10 pure points of principle: one, RIPA; two, can you in  
11 principle receive closed material?

12 LADY JUSTICE HALLETT: It may be, Mr Eadie, that we're  
13 dancing on a pin here. If you accept you can provide me  
14 with your written legal submissions on the general  
15 principles by the end of this week, and if you are  
16 optimistic that you will have a worked example, or  
17 worked examples by the end of next week, it may well be  
18 that those worked examples are going to be available  
19 before we'll -- I'll have an opportunity to consider the  
20 matter in any event.

21 MR EADY: My Lady, I would seriously hope so and I would  
22 hope, if we did it that way, we would achieve the best  
23 of all worlds. I suspect Mr Keith's submissions were  
24 premised on a concern that we shouldn't end up delaying  
25 the process in order to create the examples.

1 LADY JUSTICE HALLETT: If I restrict my directions at the  
2 moment to you will provide for me by 5.00 pm on Friday  
3 your written submissions on the legal principles and  
4 I will then turn to the question of when other people  
5 reply on Monday, when they've had an opportunity to see  
6 how long they feel they need, and then we can also look  
7 at -- you'll be a week on, you'll be able to have  
8 a better idea of when you may or may not have your  
9 worked example, Mr Keith will have a better idea, as  
10 will other legal representatives, of whether they will  
11 be in a position to argue it. Does that seem to fit the  
12 bill?

13 MR EADY: My Lady, entirely sensible and we would entirely  
14 support that.

15 LADY JUSTICE HALLETT: Very well, that's what I direct in  
16 relation to those issues.

17 MR EADY: My Lady, can I deal very briefly with timetable  
18 and disclosure, not least because, again, some  
19 relatively derogatory remarks were made about the  
20 efforts that have been made so far by the Secretary of  
21 State and others to progress matters since your ruling  
22 in the summer and before that?

23 I emphasise at the outset again that we are well  
24 alive to the need to progress matters within a sharp  
25 timetable. I have emphasised to my team the importance

1 and the need, if possible, to conduct exercises in  
2 parallel, so we're well alive to the need to produce  
3 a statement or statements at the end of this process as  
4 close to the December deadline as one possibly can, if  
5 not in advance of it.

6 That process is being worked alongside the  
7 documentary search and the PII analysis that will  
8 necessarily follow, once relevant documents have been  
9 identified, and we don't accept, so far as that point is  
10 concerned, Mr Keith's suggestion that the moment and if  
11 you identified that it was possible to receive material  
12 in closed that would be the end of the work.

13 The reality is we have always recognised, and  
14 continue to recognise, that even if you had power to  
15 receive material in a closed process, it would still be  
16 necessary to go through the exercise of seeing whether,  
17 in relation to each particular item or category of  
18 information, more openness could be given. We're as  
19 alive as anyone to the need to do that, not least  
20 because in any closed process there is a price to be  
21 paid in terms of presentation.

22 The witness or witnesses whom we will be putting up  
23 on the preventability issue will inevitably have to say  
24 in relation to certain parts of it, if there is  
25 sensitive material, "I'm sorry, I can't answer that", in

1 open, and that is a very unfortunate position to be in.  
2 It creates a very strange impression. It makes it very  
3 difficult to follow the true merits of the defence that  
4 is ultimately to be advanced.  
5 So we are as alive as anyone to the need to do that,  
6 but all that work is being done in parallel.  
7 The second thing to be emphasised is that we are  
8 entirely wedded to the idea of a staggered or a staged  
9 approach. My Lady, you will have seen, I hope, the  
10 approach that has been adopted in relation to your team.  
11 Very significant amounts of information have been opened  
12 up to your team. There have been necessary redactions  
13 until certain points of principle have been sorted out,  
14 so far as that is concerned. That has involved some  
15 work, but a lot of work has been done to make sure, to  
16 try to make sure, that as much as possible can be opened  
17 up to them in advance of that PII publicity exercise  
18 then having to be done thereafter, and we entirely take  
19 the point made by my learned friend Mr O'Connor that it  
20 would be desirable, if possible, and if there was  
21 material in relation to which that checking had been  
22 done and there weren't sensitivities about it, then we  
23 would of course be content and we would be looking to  
24 produce that information on a staggered basis, not  
25 merely to your team but to the open team, so that, when

1 one got to the 3 December deadline, it wasn't a block  
2 and a rush with everything all coming out on that day,  
3 there had been a process leading up to that date, and  
4 I very much hope that that will soften what I'm about to  
5 say about the December deadline, because we do recognise  
6 there are lots of things that can and should be done to  
7 try to ameliorate that process.

8 But it is nevertheless to be recognised, we  
9 respectfully submit, that what needs to be done in  
10 relation to this information is a very onerous task  
11 indeed. It is a misconception that this PII process,  
12 this examination of sensitivity of information in  
13 documentation, is simply a question of pulling the  
14 documentation together and someone sitting down and  
15 running a highlighter through it. In fact, it is a very  
16 complicated, difficult and time-consuming exercise to do  
17 what needs to be done, and I emphasise what needs to be  
18 done because this is a context in which the exercise  
19 does need to be done properly. There are serious risks  
20 with allowing, because of rush, sensitive information to  
21 enter the public domain when it shouldn't do. It risks  
22 causing very, very serious damage to the exercise in  
23 which all concerned are involved: namely, the protection  
24 of the public.

25 In addition to that, and purely as a matter of

1 practicality, it is often necessary, in relation to  
2 a single document, to conduct a different sort of  
3 analysis in relation to different parts of it. So the  
4 same document might well have within it information  
5 which is sensitive, so far as the police are concerned,  
6 sensitive so far as one particular agency or another  
7 particular agency is concerned. So the first step that  
8 has to be done is that the information in question has  
9 to be sourced. That isn't a document-by-document  
10 exercise, that is an information-by-information  
11 exercise, and that of course can be done in an efficient  
12 way, all efforts are made to try to make it as efficient  
13 as possible. So there is a first cut being done of  
14 certain documents by the core team who are engaged in  
15 this process. But often they will need to go back to  
16 other people to work out whether or not a particular  
17 item of information is or is not sensitive.  
18 It is also a misconception -- and this ties in  
19 I think to one of the themes in Mr O'Connor's written  
20 submissions -- to suggest that "All relevant material  
21 really already exists in one place, so what's the  
22 bother? You've been through the ISC exercise, it must  
23 all be there, there must be an index, you just produce  
24 it".  
25 That, with respect, is not the position. The ISC

1 information was provided over a very prolonged period of  
2 months in a variety of different ways. Some documents  
3 went in as documents, when they were called for. Some  
4 information was summarised by way of evidence from  
5 witnesses, including the director general, and so on.  
6 So there is a variety of ways in which the ISC process  
7 was informed, and in any event that is a different  
8 exercise to the exercise that we are now engaged in, and  
9 I have considered it very important that the Service and  
10 Secretary of State go back and make absolutely sure by  
11 comprehensive searches that they have done the best they  
12 possibly can to make sure that all relevant material,  
13 irrespective of whether it was provided to the ISC or  
14 not is now made available, is collated, is found, in  
15 relation to those issues that are identified in the list  
16 of provisional issues.  
17 That is, as it were, only a thumbnail sketch, but it  
18 gives some indication of why it takes time, and the  
19 public are entitled to know why it takes time. It is  
20 for good reasons of ensuring -- seeking to do all that  
21 can be done to ensure that damaging information does not  
22 leak by accident into the public domain with all the  
23 damage that that would cause.  
24 Finally, it is to be recognised -- and I know it's  
25 a point that helpfully Mr Keith himself recognised in

1 the submissions -- but it does need to be recognised,  
2 that those who were involved and engaged in this process  
3 are finite. There are finite resources that can be  
4 devoted to it. There are, understandably, a mass of  
5 other demands on the time and the resources,  
6 particularly that the Service has available to it. This  
7 process has already taken people off front line  
8 protection of the public duties in order to try to make  
9 sure that all that can be done is being done to make  
10 sure that this timetable is followed, and that will  
11 continue to be the case.

12 I don't put that in by way of complaint, but it is  
13 to be noted that this isn't a context in which it would  
14 be possible or sensible to simply say, "Right, we can  
15 accelerate this process so that it now takes three weeks  
16 by devoting X number of resources to it, additional  
17 resources". They simply aren't available.

18 So my respectful submission is that we are already  
19 engaged in a thorough and difficult and complex and  
20 time-consuming exercise. We wanted to make sure that we  
21 had a realistic idea of timetable. I didn't want to be  
22 in the position where I was coming to you -- and I'm now  
23 doubly glad I'm not going to be in this position in two  
24 or three months' time -- and saying "You remember when  
25 you mentioned the 3 December date? Actually, it is now

1 1 December and we're not going to meet it". So I've  
2 asked them to prepare time lines with the team that is  
3 available and all the work that needs to be done on  
4 a realistic basis.

5 Our current assessment is that the 3 December  
6 deadline is not a realistic deadline for completion of  
7 the process. I emphasise, in saying that, that that  
8 does not mean we will not meet it. We are making every  
9 possible effort to meet it and we will continue to do  
10 so. It does not mean that everyone will be deprived of  
11 relevant material until that date for all the reasons  
12 I've gone through.

13 What it does mean is that, with the team that is  
14 available, we have tried at this stage realistically to  
15 estimate how long it is going to take to do that which  
16 needs to be done, and our best estimate at the moment is  
17 that that will take us into January, and I didn't want  
18 to leave that two months down the line so that it came  
19 as a nasty shock to everyone. I think it best, right  
20 and proper to raise that with you now. That is our  
21 current estimate.

22 LADY JUSTICE HALLETT: But as you say, the process is  
23 continuing as Mr Keith hoped would happen.

24 MR EADY: Yes.

25 LADY JUSTICE HALLETT: So it is a question of the flow of

1 material continues and it's only a question of when the  
2 last material arrives.

3 MR EADY: Precisely. So the critical date, I suspect, in  
4 practice, is likely to be the statement date because  
5 it's going to be very, very difficult, in fact  
6 impossible, to do the statement finally unless one has  
7 done an open/closed analysis, and that will depend  
8 ultimately on where one ends up with that process.

9 Of course, preparation can continue in the meantime,  
10 but I suspect that the critical thing is going to be the  
11 date of sign-off of the statement rather than the  
12 underlying documentary material, the bulk of which we  
13 very much hope will have been produced, certainly to  
14 your team, who I hope I should say will have, subject to  
15 the redaction points that we may need to be consider  
16 further later on as a matter of principle, but subject  
17 to those points, they will have, we hope, very nearly if  
18 not the totality of the information that's currently  
19 been searched for and pulled together, by mid-October.

20 So it is not the position that people have been  
21 sitting idly by. That enormous search exercise has  
22 occurred. They will have that material within two or  
23 three weeks from now, and the exercise will then need to  
24 be finished to work out what can and cannot be made  
25 public.

1 LADY JUSTICE HALLETT: Mr Eadie, to avoid any  
2 misunderstanding and for the avoidance of doubt, any  
3 comments I have made -- and I think any comments  
4 Mr Keith has made -- did not intend to detract from the  
5 hard work of officers of the Security Services or the  
6 complexity of the task they face.

7 MR EADY: I'm very grateful for that.

8 LADY JUSTICE HALLETT: Our comments were directed towards  
9 whether or not the legal issues could have been hived  
10 off and disposed of. That's what we were discussing.  
11 So I do hope that no individual officers or, indeed,  
12 group of officers within the Security Service will feel  
13 that I was in any way trying to underestimate the task  
14 that they face. I'm extremely grateful to them and,  
15 indeed, to every other agency and individual who I know  
16 have worked enormously hard throughout this summer to  
17 meet what I always knew would be a very testing  
18 timetable.

19 MR EADY: My Lady, I'm extremely grateful for those remarks  
20 and in relation to the matter we discussed at the  
21 outset, if apology is due to the inquest, and I'm sure  
22 it is and, if so, I'm entirely prepared to give it  
23 unreservedly, that is an apology that comes from the  
24 legal side of it rather than from those who are engaged  
25 in the process at the coalface.

1 My Lady, unless I can assist further, those are my  
2 submissions.

3 LADY JUSTICE HALLETT: Thank you, Mr Eadie. Mr Keith, I'll  
4 come to you, but Mr O'Connor may well have some  
5 comments.

6 Do you have any further submissions as to -- given  
7 that we have Mr Eadie's assurance that the process will  
8 be continuing, is there anything else you want to say at  
9 this stage about the timetable?

10 MR KEITH: No, that is entirely in accordance with the  
11 submissions I made earlier on and, indeed, I've also  
12 been at pains to comment upon the considerable amount of  
13 time and resources devoted to this by the  
14 Security Service and they have been very helpful in the  
15 meetings that we've had. But again subject to the legal  
16 issue raised this morning. I've nothing further to add.

17 LADY JUSTICE HALLETT: Mr O'Connor, is there anything  
18 further, without raising issues that perhaps have been  
19 dealt with already, that you need to say further today?

20 MR O'CONNOR: Madam, very little. We entirely agree with  
21 your counsel that the two issues raised today are purely  
22 issues of law, that can be stated actually in two  
23 sentences.

24 We are more than content, though, that under the  
25 timetable that you have indicated my learned friend

1 Mr Eadie and his clients will get the opportunity as they  
2 wish to provide examples which they feel will assist  
3 everyone, without causing a drift and delay which was  
4 the fear.

5 So we're grateful for your tight timetable, and  
6 indeed we will comply with any further timetable pretty  
7 quickly. We can of course start working on our response  
8 during the course of this week.

9 Madam, we then say nothing on the merits other than  
10 if I can in one sentence say that these are both very  
11 surprising arguments indeed. To our knowledge, they  
12 have never been advanced before a coroner's court  
13 before, and there's probably a very good reason for  
14 that, and it's the most obvious one.

15 Madam, we do not put into our words your instinctive  
16 response to the timing of this. You have spoken on  
17 behalf of the inquest, of course, you represent the  
18 inquest, and that's the most important thing, you  
19 represent the interests of justice, and you have also  
20 spoken on behalf of the interests of our clients  
21 eloquently, but we can say that this turn of events will  
22 undoubtedly cause them consternation.

23 We do submit that your previous rulings were most  
24 sensitive to the practical working out of public  
25 interest immunity issues in practice, but it is

1     disingenuous to interpret your rulings of having in any  
2     way left open these issues of law that are now being  
3     raised, and we also mention that the considerable delay  
4     that occurred before the final decision of the Secretary  
5     of State not to exercise the powers to facilitate  
6     a transfer of an inquest into a public inquiry must then  
7     have involved consideration of these very issues and, of  
8     course, that was several months ago.

9     Madam, that's all I say on the two legal issues. On  
10    the question of practical disclosure, may I just  
11    clarify, because it has been misunderstood, the  
12    practical proposals that we have made in writing on  
13    preventability disclosure.

14   The first point is that the product of the Crevice  
15   and Theseus trials, although we're grateful for the  
16   transcripts having been prepared and now appearing on  
17   Lextranet, we're not now here actually talking about  
18   those voluminous transcripts. We're talking about the  
19   product of the Crevice and Theseus investigations which  
20   was disclosed by way of exhibits and unused material to  
21   the defence in those trials.

22   Now, there are clear records of what that material  
23   was. It was obviously sifted for public interest  
24   immunity. It was found not to prejudice national  
25   security in any way.

1 Here are great tranches of material which have  
2 already gone through the process at the hands of my  
3 learned friend's clients, which can be disclosed very  
4 quickly.

5 LADY JUSTICE HALLETT: Is this more in Mr Hill's territory  
6 than Mr Eadie's?

7 MR O'CONNOR: Madam, why I say that is that certainly the  
8 Crevice trial, to my knowledge, if not also the Theseus  
9 trial, were the product of joint preparations between  
10 the Security Services and the Metropolitan Police and  
11 other police forces.

12 The Security Services were closely involved in these  
13 trials and undoubtedly would have been consulted on  
14 public interest immunity issues before disclosure was  
15 made.

16 They've already done that work. All that material  
17 is there, indexed, on the record, and unless by some  
18 extraordinary chance, since those trials, there have  
19 been developments, as it were, to reverse and increase  
20 the risk to national -- one would have thought the  
21 reverse, frankly, given the passage of time -- but  
22 unless wholly exceptionally there has been some  
23 development to change the picture, there are great  
24 wedges of material which can, with the most cursory  
25 re-examination by my learned friend's clients, be

1 disclosed immediately. Now, I hope that's understood.

2 So it's nothing to do with the transcripts of trial.

3 It's exhibited documentation.

4 LADY JUSTICE HALLETT: And completely separate from the ISC

5 points that you --

6 MR O'CONNOR: Exactly. Madam, secondly, there is the

7 question of the transcripts of the evidence presented to

8 the ISC, which is liberally cited in the footnote to the

9 second ISC report. We give the references in

10 paragraph 7 of our written submissions.

11 Now, there is a lot of material which would, of

12 course, need sifting before disclosure, no question

13 about that.

14 Nevertheless, it is an extremely valuable resource

15 which exists.

16 Now, I have in writing requested my learned friend

17 for the Secretary of State to confirm that those records

18 exist. They must exist, because ISC 2 cites from

19 a transcript of evidence given to the ISC in 2004.

20 So these records are prepared, they exist, and

21 they're kept.

22 Now, there is again a whole section of material

23 highly relevant prima facie to the issues we're going to

24 be considering. It's a prior run when the ISC

25 themselves say they rigorously tested the account of the

1 Security Service which should be available and should be  
2 made available to your team as soon as possible.  
3 Now, I haven't even got confirmation that they exist  
4 and I would suggest that, unless my learned friend gets  
5 up and suggests for some extraordinary reason they don't  
6 now exist, we can take it they do exist, and I'm not  
7 making any assumptions about what comes out of it to us  
8 in the end, because it will have to be sifted. But we  
9 urge, as a practical proposal, that is made available to  
10 your team as soon as possible.  
11 Madam, thirdly, again, my learned friend Mr Eadie  
12 misunderstands our proposal. We don't simplistically  
13 suggest that all the material collated for the ISC 2  
14 report exists in one place now. It probably doesn't.  
15 But there will be a record, either with my learned  
16 friend's clients or with the ISC, for the nine reasons  
17 that we set out in our paragraph 10, there will be  
18 a record of what material was be presented to the ISC,  
19 there has to be.  
20 Now, that record, by way of index and other records,  
21 is a very good starting point indeed for my learned  
22 friend's clients. They do not have to start from  
23 scratch. This is not a Sisyphean task.  
24 There are practical steps that can be taken to jump  
25 to rung 3 on the ladder. The material presented to the

1 ISC resulted from a 13-month process of enormous effort  
2 by those instructing my learned friend so they can go  
3 straight to that and start from that. By all means,  
4 admirably, check further to see if something was then  
5 overlooked, but granted what is in ISC 2, it does seem  
6 unlikely anything was overlooked, and they can start  
7 from that surely. They have a guide, they have  
8 a template for their efforts.

9 I haven't heard any reason why that can't be used by  
10 my learned friend. It is unfortunate, we seem to be  
11 bringing the horse to water and all it takes is for the  
12 goodwill indicated in the past of full cooperation with  
13 this inquest to manifest itself in some positive way and  
14 we regret to say that today's developments rather  
15 undermine the gestures, the verbal gestures, of full  
16 cooperation that were offered at previous hearings.

17 Madam, I do just have two further post-scripts.

18 My learned friend said many things, Mr Eadie, said  
19 many things, but we note, and it's a ground for optimism  
20 which we hope he intended, when he said that very nearly  
21 the totality of the material will be available by  
22 mid-October.

23 LADY JUSTICE HALLETT: To the Inquest team.

24 MR O'CONNOR: That's right. That is what we thought he  
25 meant, and if there's any misunderstanding about it,

1 then I'm sure he can clarify, but that is actually  
2 a very good sign indeed, and that actually gives even  
3 the Inquest team some six or seven weeks before the  
4 3 December deadline.

5 So it does -- if that is right, surely -- I'm just  
6 plucking a figure out of the air -- but there's every  
7 reason to think that 90 per cent of the job could well  
8 have been done by 3 December. That's the way we read  
9 that.

10 Madam finally, just picking up again -- we hope we  
11 haven't misheard -- but my learned friend Mr Eadie  
12 referred to the statement, this is the first we've heard  
13 of the statement, and making sense of it --

14 LADY JUSTICE HALLETT: Well, I suspect it's the statement or  
15 statements of witnesses. Mr Eadie can confirm who will,  
16 as it were, be drawing the material together and  
17 explaining the decisions taken.

18 MR O'CONNOR: Yes. Madam, I agree, but it was perhaps not  
19 insignificant that my learned friend referred to the  
20 singular and that the present plan perhaps on behalf of  
21 his clients is that one witness be put up, as it were,  
22 as spokesperson to explain everything. I must say, on  
23 previous history of Security Service witnesses and  
24 evidence, for instance in SIAC, that wouldn't be too  
25 surprising.

1 Madam, we invite you and your team to keep that  
2 under examination because whether any one witness could  
3 ever actually be in a position to answer all the likely  
4 questions that are going to arise on your behalf and on  
5 our behalf would seem to us to be highly unlikely.

6 LADY JUSTICE HALLETT: But how I receive the evidence is  
7 a matter for me and I'm sure that those who instruct  
8 Mr Eadie are very conscious that they want to make the  
9 best use of resources and try to ensure that the witness  
10 or witnesses cover the matters effectively.

11 MR O'CONNOR: I agree, but it might get very late, madam.  
12 All we're saying is if, after the end of the closed/open  
13 examination of what my learned friend was telling you  
14 about, then they prepare the one witness statement, then  
15 you get it and then we're probably, on previous  
16 experience, a week before the actual hearing of the  
17 issue, as with so many things with the Security Service,  
18 you end up with your hands tied, they know you have  
19 a deadline and it gets too late for to you say, "Well,  
20 hang on a second, we're actually going to need two or  
21 three other people to talk about this" and they say  
22 "It's too late".

23 I'm sorry if it looks as though we are examining  
24 every scintilla of what my learned friend says, but our  
25 experience, I'm afraid, justifies that.

1 LADY JUSTICE HALLETT: Well, you've put your marker down,  
2 Mr O'Connor.

3 Mr Keith, Mr O'Connor, apart from putting his  
4 markers down, has raised a matter, the Crevice material.

5 MR KEITH: Yes. Madam, the Crevice trial concerning in  
6 essence the trial of Omar Khyam in relation to the  
7 fertiliser bomb plot lasted for over a year. It would  
8 clearly be disproportionate, not in the public interest,  
9 as well as extremely expensive, to go through the  
10 disclosure exercise that was engaged in the criminal  
11 proceedings in Crevice, again for the purposes of these  
12 proceedings.

13 It is against the public interest, not least because  
14 it is not necessarily to be presumed that the issues  
15 that are raised in Crevice concerning the trial of those  
16 particular defendants and the obligations that then  
17 arose under the CPIA, are necessarily those that arise  
18 in these proceedings where you have formulated a list of  
19 provisional issues to be examined.

20 There were different issues in the Crevice trial and  
21 different considerations. If my learned friend, who of  
22 course was in the Crevice trial, is aware of particular  
23 areas which he believes are relevant to your  
24 proceedings, then the best course is for him to get in  
25 touch with your team and to indicate what areas he

1 thinks should be pursued and why. But it would be  
2 a nonsense for us to go back to the police and say  
3 "Please give us all of the disclosed material in the  
4 Crevice case", merely for us to transmit that material  
5 onwards to Mr O'Connor. The process must be much more  
6 clearly defined than that.

7 LADY JUSTICE HALLETT: I'll have to leave you to discuss  
8 that with Mr Keith, Mr O'Connor.

9 MR O'CONNOR: We agree and we've already offered to do that,  
10 actually, I offered to do it by email a few weeks ago.  
11 Indeed we raised this on 3 March of this year, so  
12 I will, from the exhibit list.

13 LADY JUSTICE HALLETT: If you can make sure you've discussed  
14 that, and with Mr Smith and with Mr Suter, before we  
15 leave today, I would be most grateful.

16 MR O'CONNOR: Certainly.

17 MR KEITH: Madam, the only other point I was going to make  
18 related to Mr O'Connor's submissions in relation to  
19 whether or not you should give directions that the  
20 Security Service disclose particular documents or  
21 particular information at this stage. Mr Eadie has  
22 plainly shown himself to be sufficiently capable of  
23 defending his own turf, put perhaps I could add this.  
24 It seems to us that it would not be helpful to make any  
25 such order at this stage for two reasons. Firstly, the

1 Security Service has, through Mr Eadie and through its  
2 own officers, indicated that it accepts the legal  
3 direction that you made in May to the effect that it  
4 remains under an obligation to disclose to you material  
5 that is relevant, and there is insufficient material to  
6 justify the conclusion that it would not faithfully  
7 discharge that obligation.

8 LADY JUSTICE HALLETT: I haven't noted an application to  
9 this effect, Mr Keith.

10 MR KEITH: Well, in the written submissions from Mr O'Connor  
11 he does invite the Security Service to disclose to you,  
12 but at this stage prematurely perhaps, the list of  
13 material which he says must have been provided to the  
14 ISC and also oral transcripts of the evidence that must  
15 have been disclosed.

16 LADY JUSTICE HALLETT: Yes, there are two different issues.  
17 In his oral submissions, Mr O'Connor did mention  
18 a transcript to the ISC. I was going to ask you about  
19 that.

20 MR KEITH: Well, madam, our principal position is, because  
21 there is nothing to suggest that the Security Service  
22 will not faithfully discharge the legal obligation upon  
23 it of making proper disclosure, that request should  
24 simply be considered in the round with all the other  
25 material that will be made available in due course, no

1 doubt by Mr Eadie's clients, but secondly, Mr Eadie has  
2 himself indicated that, rather than going back to what  
3 material might have been available to the ISC, his  
4 client is looking at the material de novo.

5 It seems to us far more appropriate that we simply  
6 wait to see what is forthcoming by the middle  
7 of October, which is not far away, and then, if we have  
8 any concerns about the extent of disclosure that's  
9 already been made to you and to your team, we will, of  
10 course, be in a ready position to deal with it then.

11 LADY JUSTICE HALLETT: It sounds, Mr O'Connor, as if again  
12 what you have said in your oral submissions and indeed  
13 in your written submissions, you've made your points,  
14 they're there, they're recorded, and if we have to  
15 return to them and you have to develop them further --  
16 let's hope we don't. I'm not sharing your pessimism,  
17 I am confident that, having heard Mr Eadie, I can expect  
18 the fullest cooperation from those who instruct him and  
19 those he represents, so let's see how we go.

20 MR O'CONNOR: Madam, I'm grateful. Would you just allow me  
21 to say, though, that we do specifically have our eye  
22 on those transcripts, and at some stage, hopefully it  
23 will become clear through my learned friend whether  
24 those transcripts are going to be provided to your team  
25 and, if and when it becomes clear that they're not going

1 to be provided to your team, we will make specific  
2 application and ask for an order.

3 LADY JUSTICE HALLETT: I follow. Right, Mr Keith, you have  
4 no more matters to raise?

5 MR KEITH: No thank you, madam. That concludes our agenda.

6 LADY JUSTICE HALLETT: Right. Mr Coltart? You've been  
7 entirely silent.

8 MR COLTART: No, thank you.

9 LADY JUSTICE HALLETT: Mr Saunders?

10 MR SAUNDERS: Nothing at all.

11 LADY JUSTICE HALLETT: I'm not going to go round everybody.  
12 Is there anybody else who has anything else they wish to  
13 raise today? Yes, Ms Gallagher?

14 MS GALLAGHER: Yes, madam, this was on notice to your team,  
15 so you should be aware of it. It relates to the reading  
16 of personal statements. I did take a note, shortly  
17 before you came into court, that there may be some room  
18 for leeway, which it wasn't thought there was any room  
19 for leeway. So I'm not sure if you wish me to address  
20 you. Should I address you briefly?

21 Submissions by MS GALLAGHER

22 LADY JUSTICE HALLETT: Yes, so that others know what you're  
23 talking about, if you would, please.

24 MS GALLAGHER: Certainly. The matter arises under any other  
25 business on the agenda and we did notify your team by

1 4.00 pm on Friday, as requested, that we wished it to be  
2 added.

3 LADY JUSTICE HALLETT: You did.

4 MS GALLAGHER: In essence the position is this: we  
5 understand from an email from Mr Smith dated  
6 9 September, the position now is that, if personal  
7 statements by bereaved families are to be read, they can  
8 be read only by Counsel to the Inquest. They can't be  
9 read by the families themselves, nor can they be read by  
10 the families' own legal representatives. Some of our  
11 client families, two in particular, are very concerned  
12 about this, and are concerned to check whether there's  
13 any room for manoeuvre in this regard because they would  
14 very much like to read the statement themselves.

15 It's two of our client families of six who have  
16 raised particular concerns, one of our client families  
17 has indicated that they are very content with the  
18 proposal that Counsel to the Inquest read the statement,  
19 they understand why that's happened and, of our other  
20 families, at least one certainly intended to read the  
21 statement themselves. We don't have firm instructions  
22 as to whether they wish us to pursue it today.

23 We have been instructed that the only alternative  
24 available is a family member giving sworn evidence in  
25 the standard question-and-answer-type format and, for

1 understandable reasons, that's not attractive to our  
2 clients for two principal reasons.  
3 Firstly, because they've chosen their words very  
4 carefully in the statement, often in consultation with  
5 other family members, although the statement comes in  
6 one family member's name, it in fact is a consultation  
7 process which has led to those words being selected, and  
8 secondly, because the process of giving any evidence  
9 about their relative is going to be deeply distressing,  
10 and they simply couldn't face giving evidence in that  
11 way and they're not confident that they'll do justice to  
12 the memory of their loved one.

13 The email from 9 September setting out the basis for  
14 concluding that there was no room for the statement  
15 either to be read by the bereaved family or indeed to be  
16 read by their legal representative is available. I can  
17 pass it forward, if that would be of assistance, and  
18 also I have a copy of rule 37 for you if that would be  
19 of assistance. (Handed)

20 LADY JUSTICE HALLETT: When I heard that this matter had  
21 been raised, Ms Gallagher, obviously the usual rule is  
22 that a statement that's going to be read is read by the  
23 legal representative calling the witness, and, as  
24 I understand it, one of the worries about not departing  
25 from that usual rule was that it would be so distressing

1 for the family or the member of the family who had to  
2 read out the statement that that would impact  
3 disproportionately on the proceedings and obviously  
4 cause enormous distress to the witness concerned, and it  
5 was really out of concern for the witness that I think  
6 my team took the stance that they did.

7 I have asked them this morning, when they raised it  
8 with me informally, to see whether or not we can't have  
9 some flexibility, because obviously the whole point of  
10 these proceedings is to ensure that those whom you  
11 represent and others represent feel that they've had  
12 a full and fair hearing.

13 So I think what I'll do, if I may, is leave it to  
14 you to continue to discuss with the Inquest team whether  
15 you are satisfied that the witnesses will be up to the  
16 task, if I were prepared to allow it, or whether maybe  
17 the middle ground might be their counsel reading them  
18 instead. I'd ask you to just think through the possible  
19 ramifications, because the last thing I want is to have  
20 a member of a bereaved family obviously going through  
21 such a distressing process.

22 MS GALLAGHER: Certainly.

23 LADY JUSTICE HALLETT: Could I leave it to you to see?  
24 Obviously, if you need a ruling, I'll give you a ruling.

25 MS GALLAGHER: Of course. The indication in your earlier

1 email was that there was a legal impediment to this  
2 being done on the basis of rule 37. I won't address you  
3 on it if it's not necessary.

4 LADY JUSTICE HALLETT: I'm not convinced. My first reading  
5 of rule 37 is that I'm not convinced there is a legal  
6 impediment, but it may well be something I will  
7 eventually have to hear argument on, so I won't go any  
8 further, but I would hope that we can have some  
9 flexibility.

10 MS GALLAGHER: I'm very grateful, madam. Just for  
11 confirmation, our position is that there isn't a legal  
12 impediment unless there's an objection. So rules 37.1  
13 and 37.6 clearly allow this to happen. If there's an  
14 objection, then rule 37.2 kicks in, and that's when you  
15 must be satisfied that the person isn't available to  
16 give evidence, but as far as we're aware, no interested  
17 persons actually object to this, so in the absence of  
18 objection, we think this is a course that can be taken,  
19 subject, of course, to the indication you've given, that  
20 we must ensure that it isn't too distressing for the  
21 families and that it doesn't disrupt the proceedings  
22 unduly. I'm very grateful.

23 There's just one final matter, I think it's probably  
24 appropriate for us to deal with this directly with  
25 Mr Smith rather than in open court, but there is one

1 practical issue regarding the mechanism by which clients  
2 may contact lawyers during the hearing, if an unexpected  
3 issue arises during evidence, so that's in a situation  
4 where client families are in the family room, their  
5 lawyers are in court, we have raised this informally  
6 with Mr Smith, it is something which may cause some  
7 practical problems in terms of possibly a witness having  
8 to be held over over lunchtime, or held over in the  
9 afternoon, when otherwise their evidence would be  
10 finished, but if you're content, we suggest that we deal  
11 with that through Mr Smith. If it's not resolved, we  
12 can raise it next week.

13 LADY JUSTICE HALLETT: We have a facility whereby we can  
14 I think send messages between the Inquest team and it  
15 may well be that Mr Smith can ensure that there's some  
16 kind of procedure whereby somebody who is over with the  
17 families in the family room can get a message to him  
18 immediately electronically.

19 MS GALLAGHER: We would be very grateful, and clearly, given  
20 that there's a tight timetable, it's plainly not  
21 suitable for us to have a delay before issues are raised  
22 and perhaps after a witness has finished. We can  
23 certainly explore that further with Mr Smith.

24 LADY JUSTICE HALLETT: Thank you.

25 MS GALLAGHER: Thank you.

1 LADY JUSTICE HALLETT: Right, does anybody else have any  
2 other matters they wish to raise? Does anybody who's  
3 unrepresented wish to raise any matters with me?  
4 Any other decisions required?  
5 Very well, thank you all very much, in which case  
6 I think we next meet, I think I say 10.30 on Monday,  
7 11 October.  
8 (12.30 pm)  
9 (The hearing adjourned until 10.30 am on Monday,  
10 11 October 2010)  
11  
12

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