

<p>1 Friday, 5 July 2019                  2 PRE-INQUEST REVIEW HEARING                  3 (10.30 am)                  4 (Proceedings delayed)                  5 (10.45 am)                  6 THE CORONER: Good morning everybody and welcome to                  7 the Old Bailey.                  8 My name is Sarah Munro. I am a judge here and, as                  9 I am sure you all know, now appointed as the coroner to                  10 conduct the inquests into the deaths of Anthony Walgate,                  11 who died in June 2014, aged 23; Gabriel Kovari, who died                  12 in August 2014, aged 22; Daniel Whitworth, who died                  13 in September 2014, aged 23; and Jack Taylor, who died                  14 in September 2015, aged 25.                  15 May I begin by introducing the legal teams.                  16 Mr Andrew O'Connor, who sits to my left, Queen's                  17 Counsel, is counsel to the inquests. He will in due                  18 course be assisted by a junior. The solicitors to the                  19 inquest are Messrs Fieldfisher, represented by Mr Oliver                  20 Carlyon and Ms Amy Nicholls, who sit in front of me                  21 here.                  22 The families of the deceased are today represented                  23 by Leslie Thomas, Queen's Counsel, Paul Clarke and Emma                  24 Favata, and they are instructed by Andrew Petherbridge                  25 of Hudgells solicitors. Mr Waumsley, the former partner</p> <p style="text-align: center;">Page 1</p>	<p>1 role of a coroner is to, and I quote, "ensure that the                  2 relevant facts are fully, fairly and fearlessly                  3 investigated". That is what I will do. You will                  4 understand that I have to operate within the law of                  5 England and Wales. However, within those bounds, you                  6 have my assurance that I will conduct full, fair and                  7 fearless inquests.                  8 I also undertake to ensure that the voices of you,                  9 the families and loved ones, are heard throughout the                  10 process. I recognise that you will all be feeling                  11 frustrated at the time it has taken to reach this point                  12 but I can assure you that following my appointment, and                  13 that of my legal team, work has been progressed as                  14 expeditiously as possible. You will appreciate that                  15 there is a very considerable amount of work to be done                  16 and I know that you, of all people, will want us to                  17 undertake that work thoroughly, and that we will do.                  18 Better the job is done properly and carefully than that                  19 it is rushed.                  20 Immediately following each of the deaths, inquests                  21 were opened and adjourned by the East London Coroner,                  22 Nadia Persaud, in the normal way. The inquest into the                  23 death of Anthony Walgate was transferred to Hull at the                  24 request of his family. I should add it has subsequently                  25 been transferred back to this jurisdiction. On 19 June</p> <p style="text-align: center;">Page 3</p>
<p>1 of Mr Daniel Whitworth, is represented by Mr Anton                  2 van Dellen. The Metropolitan Police Service is                  3 represented by Mr Peter Skelton, Queen's Counsel,                  4 assisted by Ms Natasha Barnes. The investigating                  5 officers are represented by Mr Patrick Gibbs, Queen's                  6 Counsel. Detective Sergeant Sweetman is represented by                  7 Mr Michael Shaw and, finally, for today's purposes the                  8 Independent Office for Police Conduct is represented by                  9 Mr Neil Moloney.                  10 May I begin by formally welcoming Mr Whitworth's                  11 former partner, Mr Waumsley, and Mr Taylor's parents and                  12 his two sisters.                  13 My priority this morning is to express my sincere                  14 condolences to the families, both present and absent,                  15 for the loss of your loved ones. Those condolences                  16 extend as I say to those of you who are here today but                  17 also to the families of Mr Walgate, Mr Kovari and                  18 Mr Whitworth, who though not present today will be very                  19 much a part of these inquests.                  20 May I emphasise at this early stage of my                  21 involvement that the families of the four young men who                  22 were tragically murdered by Stephen Port, including of                  23 course Mr Waumsley, will be at the very heart of these                  24 inquests.                  25 One of our most senior judges once said that the</p> <p style="text-align: center;">Page 2</p>	<p>1 of 2015 the inquests into the deaths of Gabriel Kovari                  2 and Daniel Whitworth were resumed before Ms Persaud. In                  3 both inquests she reached open conclusions. On                  4 15 October 2015, several weeks after the death of Jack                  5 Taylor, Stephen Port was arrested in connection with the                  6 deaths of all four men. He was charged and tried                  7 in November of 2016, following a trial here at the                  8 Old Bailey, he was convicted of murdering all four men.                  9 He was also found guilty of sexually assaulting a number                  10 of other young men. He was sentenced by the trial                  11 judge, Mr Justice Openshaw to life imprisonment with                  12 a whole life term.                  13 Following the conviction, Ms Persaud, the                  14 East London Coroner, applied to the divisional court for                  15 an order quashing the inquisitions in the inquests that                  16 she had conducted into the deaths of Mr Kovari and                  17 Mr Whitworth and for fresh inquests to be heard. She                  18 was supported in this application by the bereaved                  19 families. The order was granted at a hearing on                  20 28 November 2017. In his judgment, Lord Justice Holroyd                  21 noted the intention of all concerned that the fresh                  22 inquests into the deaths of Mr Kovari and Mr Whitworth                  23 should be held with the resumed inquests into the deaths                  24 of Mr Walgate and Mr Taylor. The four inquests were                  25 indeed joined and a pre-inquest review was conducted</p> <p style="text-align: center;">Page 4</p>

<p>1 in August last year by Dr Shirley Radcliffe,                  2 an assistant coroner in the East London jurisdiction.                  3 Dr Radcliffe made rulings and gave directions that have                  4 been referred to in the submissions prepared for today's                  5 hearing.                  6 One of the arguments made to Dr Radcliffe was that                  7 a judge ought to be appointed to conduct these inquests.                  8 Dr Radcliffe agreed and that is what led to my                  9 appointment.                  10 Finally, I note that concerns have previously been                  11 raised about the independence of the process. Those                  12 concerns can, I trust, be allayed by my appointment.                  13 Although I have been appointed as an assistant coroner                  14 within the East London area to enable me to conduct                  15 these inquests, I assure all involved that the                  16 mechanisms that have been put in place for conducting                  17 these inquests are entirely independent of the coronial                  18 area. I wish to make it clear that I have had no                  19 previous involvement with any of the East London                  20 coroners, I have not discussed these inquests with any                  21 of them, and I do not intend to do so.                  22 The plan for these inquests is that they will be                  23 held here at the Old Bailey, where you will all be                  24 afforded facilities and support throughout. The                  25 Metropolitan Police Service will not have any role as</p> <p style="text-align: center;">Page 5</p>	<p>1 can direct you to the appropriate tab.                  2 THE CORONER: Thank you.                  3 MR O'CONNOR: As you have mentioned, madam, we also have                  4 an agenda, which I hope everyone has. It is essentially                  5 the bullet headings in the submissions that I prepared.                  6 I propose that we should go through that agenda, taking                  7 each point in turn. For each of the points I will                  8 introduce the issue and then any others who wish to make                  9 submissions can do so before we move on to the next                  10 item. I hope that is the best way to approach matters.                  11 THE CORONER: Yes.                  12 MR O'CONNOR: Many of the points I think will not be                  13 contentious, or at least will not be very contentious.                  14 There is I know one issue that will take a bit of time,                  15 and that is whether you are entitled to investigate the                  16 conduct of the previous coroner, and it may be that we                  17 will take that out of order if you wish, but we will                  18 deal with all of the other points first and then come                  19 back to that.                  20 THE CORONER: Yes.                  21 MR O'CONNOR: Just two final points to mention. First of                  22 all, there is, as everyone knows, or at least everyone                  23 involved in these inquests knows, an IOPC report that                  24 has been prepared. It was mentioned at the last hearing                  25 before Dr Radcliffe. I think it was not quite finished</p> <p style="text-align: center;">Page 7</p>
<p>1 coroner's officer in these inquests and any further                  2 investigative work will be done by my team. I hope all                  3 of the above creates a backdrop of complete confidence                  4 in you with the process that will follow hereafter.                  5 I will now hand over to Mr O'Connor to go through                  6 the agenda for today's hearing.                  7 Housekeeping                  8 MR O'CONNOR: I am grateful, madam. I will start if I may                  9 with just a few housekeeping points.                  10 We have received written submission submissions from                  11 some of the parties here today for this hearing for                  12 which we are grateful and we know you have read.                  13 THE CORONER: Yes.                  14 MR O'CONNOR: There were also of course submissions filed                  15 for the hearing last year before Dr Radcliffe, which may                  16 be of use today, and I know you are familiar with those                  17 as well.                  18 THE CORONER: Yes.                  19 MR O'CONNOR: Those submissions and also other materials,                  20 including some authorities, are before you in a bundle                  21 that has been prepared for this hearing. I suspect that                  22 some of my learned friends may have some or all of those                  23 materials but what I hope they all have is the index to                  24 your bundle so that when they are addressing you, if                  25 they need to take you to any of those documents, they</p> <p style="text-align: center;">Page 6</p>	<p>1 at that stage. It was completed shortly after that                  2 hearing last August. As a result of some directions                  3 that Dr Radcliffe gave, the Metropolitan Police and                  4 I think subsequently the families and Mr Waumsley, have                  5 seen that report, not all at the same time but                  6 since August last year, in order to consider whether any                  7 redactions should be made to it. We have seen it and                  8 you have seen it. The slightly unfortunate position, at                  9 least as far as our process is concerned, although I                  10 don't necessarily criticise anyone, is that the only                  11 people centrally involved in these proceedings who have                  12 not seen that report are Mr Gibbs and his clients, that                  13 is the investigating officers. The report will be                  14 disclosed to them in due course and we will come on to                  15 discuss the mechanism for that, but I wanted to raise it                  16 at this stage just to make it clear that as a matter of                  17 fairness to them we will not be able to refer to the                  18 detail of the report during this hearing. That doesn't                  19 matter greatly, I would suggest, mainly because the full                  20 disclosure process, which will start with that report                  21 but which will of course go much wider, is commencing                  22 now, and by the time we have our next hearing we will                  23 all be able to address you, both on the contents of the                  24 report but also on a far greater number of documents                  25 than that.</p> <p style="text-align: center;">Page 8</p>

<p>1 The final point, madam, by way of preliminaries, is                  2 simply to note that several of the issues on the agenda                  3 were, as you know, dealt with by Dr Radcliffe at the                  4 last hearing. You have seen the transcript of that                  5 hearing. You know what was said to her and what she                  6 said. We would submit, and I don't think there is any                  7 dispute about this, that the sensible approach for you                  8 to take is essentially to approach these matters afresh                  9 and make your own decisions on these procedural matters.                  10 THE CORONER: That is what I am going to do.                  11 MR O'CONNOR: With that said, turning to the first item on                  12 the agenda, which is that of interested persons, this is                  13 one of those issues that Dr Radcliffe addressed last                  14 summer but we suggest as I say that you start again, as                  15 it were. I have identified in my written submissions,                  16 I have made a few submissions about who it is that might                  17 be entitled to interested person status. The bereaved                  18 families are clearly entitled to interested person                  19 status. I don't need to take you to it but it is                  20 section 47 of the Act which identifies a number of                  21 categories of individuals who are entitled to this                  22 status. It would assist, this is something we mentioned                  23 in our submissions, it is not essential that it is done                  24 today but as a matter of formality it would assist if we                  25 could be provided with the names of those members of the</p> <p style="text-align: center;">Page 9</p>	<p>1 clear, they will be provided with disclosure of the IOPC                  2 report and also the documents underlying it, which is                  3 what they will need in order to make submissions as to                  4 whether or not they wish to be designated.                  5 Madam, I do have some further submissions to make                  6 under this topic but perhaps if I sit down at this point                  7 and just invite you to hear submissions from any of the                  8 other advocates who wish to make submissions simply                  9 about what I have said so far.                  10 THE CORONER: Yes, thank you.                  11 Mr Thomas, as far as the bereaved families are                  12 concerned, can you provide the names today?                  13 MR THOMAS: No but I will do, my Lady. What I will do is we                  14 will provide to the solicitors to the Inquiry a list of                  15 all the family members who we represent. There are                  16 quite a number of them, as you can imagine.                  17 THE CORONER: Of course, yes.                  18 MR THOMAS: That is the first thing I want to say in                  19 relation to what Mr O'Connor addressed you on. The                  20 second thing --                  21 THE CORONER: Can you give me a timescale by which you can                  22 do that?                  23 MR THOMAS: We can do that -- looking for my solicitor --                  24 seven days?                  25 THE CORONER: Thank you very much. Yes.</p> <p style="text-align: center;">Page 11</p>
<p>1 bereaved families who wish to have interested person                  2 status, simply so that Mr Carlyon and those                  3 administering the inquests knows who it is who have                  4 asked for and been given status.                  5 Very much in the same category we would submit,                  6 Mr Waumsley is also entitled to interested person                  7 status. The Commissioner of the Metropolitan Police is                  8 also, we submit, entitled to interested person status,                  9 as is the IOPC, under a separate heading of section 47                  10 of the Act.                  11 Madam, there is an issue relating to the                  12 investigating officers and it concerns the point I made                  13 earlier. They may, some or all of them may be entitled                  14 to interested person status. The difficulty that                  15 Mr Gibbs is in, and indeed his clients are in, is that                  16 they have not, as I have said, yet had an opportunity to                  17 look at the IOPC report. In some supplementary                  18 submissions that I hope everyone has seen, madam, I have                  19 suggested that the right course as far as those                  20 individuals is concerned, would be to defer the question                  21 of whether or not they may or may not be entitled to be                  22 designated until the next hearing, which we anticipate                  23 may well take place in November. As I have said, by                  24 which time they would be in a position to make                  25 submissions on that topic. In the meantime, to be</p> <p style="text-align: center;">Page 10</p>	<p>1 MR THOMAS: The second thing I wanted to address you on,                  2 just very briefly and touch upon, just in relation to                  3 the interested person status of some of the                  4 investigating officers. I don't disagree with anything                  5 that has been said and I understand the difficult                  6 situation Mr Gibbs is in, bearing in mind the fact that                  7 he and his clients have not had an opportunity to see                  8 the IOPC report. I will say this, and in effect it is                  9 just a marker I am laying down, the one thing that                  10 concerns me is, and I know that Mr Gibbs is aware of it,                  11 but the one thing that concerns me is the potential for                  12 conflict between that group of people being represented                  13 by the same legal team. The last thing that we want to                  14 happen is get close to inquest and for one of the IPs to                  15 make an application to you, to say they want, you know,                  16 an adjournment or they want time to seek separate                  17 representation because of potential conflicts. So I am                  18 just flagging that up.                  19 THE CORONER: Mr Gibbs will be fully fair of that situation                  20 and clearly in very good time for the November hearing                  21 the situation will have been clarified but I have noted                  22 what you said.                  23 MR THOMAS: Thank you.                  24 THE CORONER: Does anyone else have any submissions to make                  25 as far as the suggested identification? Yes.</p> <p style="text-align: center;">Page 12</p>

<p>1 MR GIBBS: May I just echo and endorse the submissions in                  2 writing of my learned friend Mr O'Connor at his                  3 paragraph 3.                  4 THE CORONER: Yes. The supplementary submissions you mean?                  5 MR GIBBS: I do.                  6 THE CORONER: Thank you very much.                  7 I will invite Mr Carlyon to draw up an order in                  8 those terms in due course.                  9 MR O'CONNOR: Madam, I don't see anyone else standing up.                  10 THE CORONER: No.                  11 MR O'CONNOR: The final point I wanted to make about                  12 interested person status concerns the position of                  13 Mr Stephen Port.                  14 THE CORONER: Yes.                  15 MR O'CONNOR: For these purposes I will ask you to turn in                  16 the bundle, it is tab 18, to the Act, just so I can take                  17 you to section 47 which you will find at tab 18, which                  18 is where it is said these categories of people who are                  19 entitled to interested person status at an inquest are                  20 set out. If one casts one's eye down to section 472(f),                  21 one sees that:                  22 "A person who may by any act or omission have caused                  23 or contributed to the death of the deceased."                  24 And we can stop there, close quote, is entitled as                  25 a matter of law to interested person status as</p> <p style="text-align: center;">Page 13</p>	<p>1 As I say, madam, we don't know whether those issues                  2 will arise at the moment or not but if they do, they                  3 will clearly need to be considered with care and you may                  4 wish to hear submissions on them from interested                  5 persons. As no more than preliminary observations at                  6 this stage, I submit, first of all, if Mr Port does wish                  7 to exercise his interested person status, it does not                  8 follow that he needs to attend inquest hearings in                  9 person, video-link arrangements can be made and I would                  10 submit that that, if it can be made to work, is clearly                  11 the way it ought to work.                  12 Second, and similarly, any proper questions that                  13 Mr Port wishes to put to witnesses, and the right to put                  14 questions to witnesses, is one of the rights enjoyed by                  15 interested persons, any such questions need not be asked                  16 by him, they can be communicated to me and I can ask                  17 them. Thirdly, just to make clear my submission, the                  18 fact that an individual has interested person status                  19 does not mean that he must give evidence or even that he                  20 is entitled to give evidence. Given his conviction                  21 after a lengthy trial, and the facts established by the                  22 jury at that trial, my submission is it is difficult to                  23 see why it would be necessary or appropriate to call                  24 Mr Port to give evidence at the inquest.                  25 As I say, madam, the first thing that needs to be</p> <p style="text-align: center;">Page 15</p>
<p>1 an inquest.                  2 Madam, I raise this, and I read out that                  3 subparagraph just to make it clear this is not a matter                  4 that you can decide whether you wish to have Mr Port as                  5 an interested person or not in this inquest. The fact                  6 is, under the Act, he is plainly someone, as he has been                  7 convicted of murdering these four men, he is plainly                  8 someone who falls into that category and therefore he                  9 entitled as of right if he wishes to exercise it, to                  10 interested person status in these proceedings. We are                  11 fully alive to the concern that the families,                  12 Mr Waumsley, and it may well be many others, feel about                  13 this fact but fact it is, there is nothing we can do                  14 about his entitlement to interested person status. What                  15 we don't know at the moment is whether Mr Port will wish                  16 to exercise that status and Mr Carlyon will be writing                  17 to him asking him to make it clear one way or the other                  18 whether he wishes to exercise that status.                  19 If he does wish to exercise that status, then                  20 practical issues will arise as to how to accommodate                  21 this in a way that is proportionate in terms of                  22 resources, our resources, and also the prison regime to                  23 which he is subject. Those factors on one hand, but                  24 also as I say, sensitive to the other parties involved                  25 in the inquest, in particular the bereaved families.</p> <p style="text-align: center;">Page 14</p>	<p>1 established is whether or not Mr Port wishes to exercise                  2 his rights as an interested person. That is something                  3 that we will endeavour to find out and of course                  4 communicate with IPs once the position has been                  5 established.                  6 THE CORONER: Yes.                  7 MR O'CONNOR: That is all I wish to say --                  8 THE CORONER: Does anybody else wish to say anything about                  9 the question of Stephen Port or anything else                  10 Mr O'Connor said on that topic? Yes.                  11 DR VAN DELLEN: My Lady, you will be very aware that from                  12 communications I may have had with those instructing my                  13 learned friend, counsel to the inquests, that my client                  14 has very grave concerns about the participation of                  15 Mr Port in these proceedings and the potential for                  16 disruption and upset to the families and particularly my                  17 client. To echo my learned friend Mr Gibbs' words,                  18 I echo what my learned friend Mr O'Connor said in his                  19 submissions about managing this.                  20 THE CORONER: Yes.                  21 DR VAN DELLEN: What I would say in addition, madam is that                  22 you have a very broad discretion to manage evidence in                  23 an inquest and I would respectfully submit that this is                  24 a paradigm example of when a discretion, judicial                  25 discretion, as to questioning and evidence can be</p> <p style="text-align: center;">Page 16</p>

<p>1 exercised and the word essentially is "proportionate",                  2 in a proportionate way. Given that a jury essentially                  3 has disbelieved Mr Port, I would struggle to think of                  4 anything he could helpfully add, apart from disruption                  5 and upset. But unless I can assist any further on the                  6 issue --                  7 THE CORONER: Clearly I take on board what you have said,                  8 very much so, but that is a premature submission to be                  9 making at this stage. We don't yet know whether he even                  10 wants to take up the entitlement which he has by law.                  11 DR VAN DELLEN: Absolutely.                  12 THE CORONER: If he does, then we can take the kind of                  13 precautions that Mr O'Connor has outlined.                  14 DR VAN DELLEN: Yes and I am very grateful to those                  15 instructing my learned friend Mr O'Connor to the thought                  16 they have given to this and the care with which they are                  17 considering this issue. I would not wish it to be                  18 thought that we are in any way laying the difficulty of                  19 this issue at their door. We are very grateful for the                  20 thought they are giving to this.                  21 THE CORONER: Thank you.                  22 MR O'CONNOR: The next item on the agenda is that of                  23 Article 2, which I imagine we can take fairly shortly.                  24 The question of whether Article 2 is engaged, as it is                  25 usually put at an inquest, often leads to lengthy legal</p> <p style="text-align: center;">Page 17</p>	<p>1 that point.                  2 THE CORONER: Yes. Thank you very much. I will simply                  3 order that these will be Article 2 inquests at this                  4 stage.                  5 MR O'CONNOR: Madam, I don't think anyone wants to add to                  6 that, so I will move on to the next item, which is that                  7 of scope.                  8 Madam, this is the issue which includes the question                  9 of whether you can investigate the conduct of the                  10 previous coroner. I will come back to that at the very                  11 end, if I may, but what I can deal with now is some more                  12 general submissions that I made about the scope of the                  13 inquests.                  14 Notwithstanding as I have said the fact that not                  15 everyone involved has seen the IOPC reports, so this is                  16 not the moment to have detailed submissions but I will                  17 simply summarise the general submissions that I made in                  18 my written document.                  19 First, madam, we submit that the main focus of these                  20 inquests should be the adequacy of the police                  21 investigation into Mr Port. And I have referred --                  22 I will not read it out you -- but I have referred to                  23 observations made both by Mr Justice Openshaw in his                  24 sentencing remarks, after Mr Port's trial, and also Lord                  25 Justice Holroyd, in the divisional court proceedings,</p> <p style="text-align: center;">Page 19</p>
<p>1 argument at this stage. I am happy to say that is not                  2 the position here. In summary, madam, as you know, what                  3 we mean by an Article 2 inquest is an inquest that is,                  4 part of which the function of which is to discharge                  5 an investigative duty arising under Article 2 of the                  6 European Convention on Human Rights, in circumstances                  7 where it is arguable that the circumstances of the death                  8 include some form of failing on the part of a state                  9 organisation. There is a consensus among all the                  10 parties before you that at least for the time being,                  11 these inquests should proceed as Article 2 inquests, so                  12 we don't need to argue about whether as it were that                  13 threshold has been reached. One of the consequences of                  14 an inquest being an Article 2 inquest, and probably the                  15 most important, is that it allows for wider conclusions                  16 to be drawn. And with that in mind, my friend Mr Thomas                  17 in his written submissions for last year's hearing                  18 before Dr Radcliffe suggested that once the evidence has                  19 been heard, that would be the moment where we could                  20 reconsider the question of whether Article 2 is engaged                  21 in all or some of the inquests, and may well be that in                  22 the end you take the view that it is engaged in some but                  23 not all of the inquests. But as I say, that is very far                  24 ahead and I think there is agreement that there is                  25 nothing more to be done about Article 2 until we reach</p> <p style="text-align: center;">Page 18</p>	<p>1 both of which anticipated at least that that would be                  2 the case.                  3 The second point, which in a sense follows from the                  4 first, is that in our submission it is unlikely to be                  5 necessary to call extensive evidence relating to the                  6 means or the detailed circumstances of the four deaths.                  7 Mr Port's conviction is itself evidence of the means of                  8 death and as a matter of law, under the 2009 Act, the                  9 determination that is reached at the end of these                  10 inquests may not be inconsistent with that conviction.                  11 As to the broader factual circumstances of each of                  12 the deaths, substantial evidence on these matters was                  13 heard at the criminal trial, and whilst it would clearly                  14 be necessary for you to hear some of this evidence at                  15 the inquests, I submit that there will be strong                  16 arguments in terms of proportionality in favour of                  17 adducing that evidence in summary form, rather than                  18 simply recalling all of the factual witnesses who gave                  19 evidence at the criminal trial.                  20 It may be either now or in due course the families                  21 or any other interested person for that matter wishes to                  22 invite you to focus on particular factual issues and of                  23 course they are entitled to do that. The submission                  24 I make is simply at the general level that you will be                  25 able to summarise much of that evidence when we get to</p> <p style="text-align: center;">Page 20</p>

<p>1 the substantive hearings in the inquest.                  2 The last point, a general point, is as to the, what                  3 I described as the temporal scope of the investigation.                  4 What I mean by that is the time period that you will be                  5 looking at. The starting point will be evidence of the                  6 police involvement with and knowledge of Stephen Port                  7 prior to the death of Anthony Walgate. You will be                  8 looking at what if anything the police knew about this                  9 Mr Port prior to the death of the first of the young men                  10 with whom we are concerned. It will then be necessary,                  11 following the chronology, for you to examine the way in                  12 which the police responded to each of the four deaths                  13 and of course the response to the earlier deaths will be                  14 relevant because it will inform your investigation of                  15 whether steps should have been taken before the later                  16 deaths. We submit that even the response to the last of                  17 the four deaths, that of Jack Taylor, should be within                  18 the scope of the inquests, both because evidence as to                  19 how the police responded to Mr Taylor's death is likely                  20 to inform your understanding of how they responded to                  21 the earlier deaths, and also because such evidence may                  22 be relevant to any report on future deaths that you                  23 might make. That was a point made in Mr Thomas's                  24 submissions last year.                  25 Madam, as I say, I will return to what we have</p> <p style="text-align: center;">Page 21</p>	<p>1 you make disclosure to interested persons. I have                  2 already mentioned the IOPC report itself, which will be                  3 the starting point. There is a body of documentation                  4 that we have that is referred to in the IOPC report. We                  5 anticipate that almost all, more likely all of that                  6 material will be relevant and so that is the next step,                  7 and we anticipate that being disclosed, we hope fairly                  8 shortly, but of course there will be far more material                  9 that we will be looking for, considering and disclosing                  10 in the coming months.                  11 Madam, I have referred in my submissions to the                  12 question of an undertaking. It is, we submit, common                  13 practice and also appropriate for you to request and in                  14 fact require individuals receiving disclosure to provide                  15 you with an undertaking, in essence promising you that                  16 they will not use the material for documents that they                  17 receive for any purposes other than these inquest                  18 proceedings. There has been some dispute about whether                  19 that undertaking was appropriate but I am glad to say                  20 I think everyone is now agreed they are happy to provide                  21 the undertaking. A draft has been circulated by                  22 Mr Carlyon and I invite you to make an order that those                  23 who wish to have access to disclosed documents should                  24 provide the undertaking to Mr Carlyon. I am not going                  25 to go into detail about the undertaking, as I say,</p> <p style="text-align: center;">Page 23</p>
<p>1 described as the coroner issue at the end when we have                  2 dealt with the other matters but that is all I want to                  3 say on scope at this stage. I look around --                  4 THE CORONER: Mr Thomas.                  5 MR THOMAS: Not much to add to that, save this. Obviously,                  6 madam, can we just reserve our position to add to scope                  7 if need be depending on disclosure, because we have not                  8 had all --                  9 THE CORONER: Of course. We are not finalising scope. As                  10 you understand Mr O'Connor is just putting forward some                  11 general suggestions as to the parameters but we will be                  12 able to resolve it in November.                  13 MR THOMAS: Apart from that I am in agreement with what                  14 Mr O'Connor says.                  15 THE CORONER: Thank you very much indeed.                  16 Anybody else? Thank you.                  17 MR O'CONNOR: Madam, the next item is disclosure. I will                  18 not say very much about this, it is a big exercise but                  19 not a very exciting one, perhaps.                  20 Mr Carlyon and his team are already engaged in                  21 obtaining materials. Of course in an inquest, the way                  22 disclosure works is you, the coroner and your team,                  23 obtain the materials from other parties and wherever you                  24 seek to obtain such material from, you and your team                  25 then consider the relevance of the materials and then</p> <p style="text-align: center;">Page 22</p>	<p>1 because it is all now agreed, but perhaps I will make                  2 one final point clear, which is that the promise that                  3 the undertaking includes only to use materials for these                  4 proceedings is not necessarily the end of the matter.                  5 If in due course anyone who has received documents from                  6 you wants to use those documents in other proceedings --                  7 we know that there are civil proceedings that have been                  8 commenced, although as I understand it stayed for the                  9 duration of these inquests, so that is one obvious                  10 example -- it is always open to those individuals to                  11 come back to you at the end of these proceedings and ask                  12 you to vary the undertaking to allow them to use those                  13 materials in those proceedings. That, to take one                  14 example, and I know you have seen a ruling in the                  15 Hillsborough inquests, that is precisely what happened                  16 in the Hillsborough inquests, doing it that way allows                  17 you at the end of these proceedings to make a properly                  18 informed decision as to whether it is the right thing to                  19 do. It also of course allows those who might be                  20 affected, for example the people who provided the                  21 documents in the first place, to make submissions about                  22 it if they wish to. I will not say any more about that                  23 at this stage, madam, because as I understand it                  24 everyone is happy to provide those undertakings at this                  25 stage.</p> <p style="text-align: center;">Page 24</p>

<p>1 THE CORONER: Yes. Is that right?                  2 DR VAN DELLEN: My Lady, I would not go as far as to say                  3 happy. There is some slight puzzlement as to why the                  4 wording in the ruling from the Hillsborough inquests has                  5 not been adopted for number 3. Suffice to say, I mean,                  6 without disclosing the correspondence with the IOPC, the                  7 horse has semi-bolted in the terms of contemplated                  8 proceedings, and my learned friend has referred to civil                  9 proceedings, but my client is very keen that the inquest                  10 comes on as quickly as possible and is taking                  11 a pragmatic view but for it to be characterised as happy                  12 is perhaps overstating the matter.                  13 THE CORONER: All right.                  14 DR VAN DELLEN: But suffice to say --                  15 THE CORONER: You are prepared to give the undertakings.                  16 DR VAN DELLEN: Yes, I am grateful.                  17 THE CORONER: I will order that disclosure will be made                  18 provided those to whom disclosure is intended to be made                  19 have given the undertaking in the form set out.                  20 MR O'CONNOR: Just finally on this topic, madam, Mr Carlyon                  21 has reminded me I may have been a little bit                  22 overoptimistic when I said that the document underlying                  23 the IOPC report, would be, I can't remember the exact                  24 words I used, but disclosed soon.                  25 THE CORONER: Fairly shortly, I think.</p> <p style="text-align: center;">Page 25</p>	<p>1 standards. The expert report will stand as                  2 an independent assessment which we submit will assist                  3 you, and we will come to the question of jury, of course                  4 if there is a jury then too, in determining questions of                  5 possible police failings.                  6 It is obvious, madam, that it bears repeating that                  7 that expert assessment will itself of course be tested                  8 during your hearings.                  9 In order to avoid delay, it is anticipated that the                  10 expert will be selected and instructed in the next few                  11 months and certainly prior to the next hearing, but                  12 I will make it clear that it is intended that interested                  13 persons will have an opportunity in correspondence both                  14 to comment on the choice of an expert and also to make                  15 observations on the issues that the expert is asked to                  16 address.                  17 That is all I was proposing to say on the question                  18 of witnesses.                  19 MR THOMAS: Madam, just one point in relation to the                  20 policing expert. In terms of the letter of instruction                  21 that goes out to that expert, can I just clarify, is it                  22 envisaged that the interested persons will get                  23 an opportunity to have a look at and feed into that                  24 letter of instruction?                  25 THE CORONER: Do you want to answer that?</p> <p style="text-align: center;">Page 27</p>
<p>1 MR O'CONNOR: There are 6,000 pages of documentation, so                  2 simply in the way of things and the need to consider                  3 redaction and so on, it may be a little bit longer than                  4 I suggested a few minutes ago. But they are a priority.                  5 THE CORONER: A decision has yet to be made as to the form                  6 in which disclosure is going to be made as well, there                  7 may be electronic management of the documentation.                  8 MR O'CONNOR: Madam, that is being looked into at the                  9 moment, we hope that will be the case and it should make                  10 the disclosure process easier if it happens.                  11 Moving on to witnesses, again this is in a sense                  12 even more remote, given we have put off the question of                  13 scope until the hearing later on this year. One point                  14 I will mention is that my submissions referred to the                  15 question of a policing expert, and in fact the position                  16 now is you wish a policing expert to be instructed.                  17 THE CORONER: It is.                  18 MR O'CONNOR: This again was something I think that was                  19 raised in Mr Thomas's submissions last year. Can I                  20 simply say then it is intended to instruct a policing                  21 expert. The policing expert will be asked to outline                  22 the relevant policies and practices that were current                  23 within the Metropolitan Police during the period 2014 to                  24 2015 and to compare the investigative steps that were                  25 taken in respect of the four deaths against those</p> <p style="text-align: center;">Page 26</p>	<p>1 MR O'CONNOR: Madam, we will certainly provide the                  2 interested persons with the issues that we will ask the                  3 expert to address. Experience in other cases has                  4 suggested that providing the entire letter can lead to                  5 lengthy and on one view disproportionate debate about                  6 the precise terms of instruction and so on. So that is                  7 why I said what I said. Certainly it seems to us what                  8 the interested persons really need to focus on is what                  9 issues the expert is asked to address, whether there are                  10 further issues that he or she should consider and                  11 whether the ones that are there are appropriately                  12 phrased.                  13 THE CORONER: Yes.                  14 MR O'CONNOR: So that is what we intend to circulate to the                  15 interested persons.                  16 THE CORONER: All right.                  17 MR THOMAS: It is not unusual for interested persons to                  18 assist with the letter of instructions to an expert.                  19 I understand what my learned friend says, that he wants                  20 to avoid long and detailed and complicated arguments in                  21 relation to the drafting by committee. I get that. At                  22 this stage I am not going to say anything further. What                  23 we will do is we will make sure that our -- the points                  24 that we would like the expert to address to be well                  25 amplified.</p> <p style="text-align: center;">Page 28</p>

<p>1 THE CORONER: That is very helpful. Thank you. That is                  2 obviously the way forward it seems to me. For the                  3 initial request to be the expert to be set out as                  4 Mr O'Connor suggests, circulated to all the parties and                  5 then they can add any or suggest any additions which can                  6 then be considered. Thank you.                  7 MR O'CONNOR: Madam, the next item on the agenda is that of                  8 jury. You will recall that was one of the issues                  9 Dr Radcliffe heard submissions on last summer. I will                  10 say at the outset, madam, that my written submissions                  11 for this hearing invited you to make a ruling now to the                  12 effect that you would sit with a jury at the substantive                  13 hearings. Mr Gibbs has made the point in his                  14 submissions that that puts him in some difficulties,                  15 because in light of his -- the fact that he has not seen                  16 the report, he cannot address you on the substantive                  17 issues, but also there is case law indicating that in                  18 fact you shouldn't make a final decision on jury until                  19 scope has been determined.                  20 We see the force in that and therefore we don't                  21 invite you at this stage to make a final decision on the                  22 question of jury.                  23 Having said that, madam, the question of jury is                  24 clearly an important one. I hope it is of some                  25 assistance at least that we have set out our position in</p> <p style="text-align: center;">Page 29</p>	<p>1 least Jack Taylor's death, that condition is satisfied.                  2 So, if we are right about that, if that is satisfied,                  3 you would have no choice, you would have to summon                  4 a jury, but just moving on to subsection (3), we see                  5 that subsection (3) states:                  6 "An inquest into a death may be held with a jury if                  7 the coroner thinks that there is sufficient reason for                  8 doing so."                  9 So that provides you with a discretion. Where the                  10 mandatory categories are not met, you nonetheless have                  11 a discretion to sit with a jury and it is clear that it                  12 is a broad discretion and the submission we have made is                  13 the fact that even if the mandatory condition is not                  14 met, in other words you do not consider you have reason                  15 to suspect that the death resulted from the omission of                  16 a police officer, we would plainly be in territory that                  17 was close to that condition, and that is one of the                  18 factors that the case law suggests you should take into                  19 account in exercising your discretion.                  20 Secondly, certainly as at last August, the families,                  21 Mr Thomas' clients, indicated that they wished these                  22 inquests to be heard with a jury. That is a further                  23 factor that you should take into account, if we get to                  24 the stage of you considering your discretion under                  25 section 7(3).</p> <p style="text-align: center;">Page 31</p>
<p>1 writing and may I simply take you through that. For                  2 these purposes it may assist again if I can ask you to                  3 go to the Act. It is tab 17 in your bundle and it is                  4 section 7 of the Act which deals with the question of                  5 a jury at an inquest, and you will see that under                  6 section 7(1), the starting position is that, the                  7 presumption, if you like, is that there is not to be                  8 a jury. So an inquest into a death "Must be held                  9 without a jury unless section 2(3) applies", so one then                  10 looks to sections 2 and 3 and you see that section 2                  11 commences:                  12 "An inquest into a death must be held with a jury if                  13 the coroner has reason to suspect ..."                  14 And so on.                  15 There are then set out a number of criteria which in                  16 effect create a mandatory requirement for you to have                  17 a jury and, looking at section 7(2)(b), we see that one                  18 of those requirements or situations where you were                  19 required to have a jury is a death where the death                  20 resulted from an act or omission of a police officer.                  21 I should say that the full test is, "If you have reason                  22 to suspect that the death resulted from the act or                  23 omission of a police officer".                  24 Our first submission which we made in writing is                  25 that it is at least arguable that on the facts of at</p> <p style="text-align: center;">Page 30</p>	<p>1 Madam, I am not going to say any more on this                  2 subject now, as I said I do not invite you to make                  3 a final ruling but I hope it is helpful that we simply                  4 as it were set out the framework of a decision which we                  5 will be inviting you to make at the next hearing                  6 in November.                  7 THE CORONER: Yes, thank you very much.                  8 Mr Thomas.                  9 MR THOMAS: Again, very briefly. Can I endorse everything                  10 Mr O'Connor has said. Our position is we are in total                  11 agreement with everything he set out. We don't think,                  12 once you come to make the decision, you will have                  13 a choice -- I say respectfully -- because of                  14 section 7(2) but even if I was wrong on that, and as                  15 Mr O'Connor has indicated, your broad discretion under                  16 section 7(3), and taking into account the wishes of the                  17 interested persons, can I just draw to your attention                  18 one case that you just might want to make a note of. It                  19 is a case called Fullick.                  20 THE CORONER: Fullick.                  21 MR THOMAS: Madam, when we get round to it, I just ask you                  22 to have a look at the case of Fullick.                  23 THE CORONER: Thank you very much. Does anybody else want                  24 to say anything on this topic?                  25 MR O'CONNOR: Madam, I am going to take the last two items</p> <p style="text-align: center;">Page 32</p>

<p>1 together because they are short. The sequencing of 2 inquests, arose as an issue before we had been brought 3 up to speed on the disciplinary proceedings, there is 4 sometimes an issue in cases like this as to whether the 5 inquests should await the completion of disciplinary 6 proceedings and we thought that that might be a factor 7 here. We now understand that the disciplinary process 8 has in fact finished, so there is no sequencing issue 9 for you to be concerned about.</p> <p>10 As far as the final item on the agenda, before we 11 come back to the matter of law that we parked earlier, 12 I have mentioned a couple of times already, madam, that 13 we suggest there will clearly be a need for a further 14 pre-inquest review. We have mentioned the fact that you 15 will need to hear submissions on scope, witnesses and 16 jury, as we have just heard. No date has been set for 17 that hearing but in light of the need for substantial 18 progress to be made with the disclosure exercise before 19 we reach it, and of course not just for us to disclose 20 material to interested persons but for them to have 21 an opportunity actually to read it and to prepare 22 submissions, take instructions on it, we anticipate that 23 the hearing may well take place in November. Perhaps 24 I should also make it clear that we are not suggesting 25 that we will not be in touch with interested persons</p> <p style="text-align: center;">Page 33</p>	<p>1 Finally on practical matters, madam, we do 2 understand, and you have mentioned this yourself, we do 3 understand the desire on the part of all interested 4 persons, and particularly no doubt the families and 5 Mr Waumsley, to know when the substantive hearings are 6 likely to take place. The difficulty on our part is 7 that the uncertainties over the scale of the disclosure 8 exercise and many other practical contingencies simply 9 mean that it is impossible to set a firm date at this 10 stage. This is another of the matters on which we will 11 provide interested person with an update as soon as it 12 is available, and certainly before the hearing 13 in November, if that is when it happens. But to be 14 fair, we should say, and this has already been 15 communicated to interested persons in my submissions but 16 at present we don't think there is any real prospect of 17 the hearings commencing before Christmas, but we do hope 18 they will take place as early as possible in 2020.</p> <p>19 Madam, that was all I wanted to say on those last 20 two points. If anyone wants to address you on those 21 matters, I suggest they do so now and then I will come 22 back to the legal issue.</p> <p>23 MR GIBBS: Just very briefly, on the subject of the 24 disciplinary process, just so we have the right wording, 25 whether the disciplinary process is actually finished in</p> <p style="text-align: center;">Page 35</p>
<p>1 between now and November.</p> <p>2 THE CORONER: No.</p> <p>3 MR O'CONNOR: There have been one or two instances during 4 the course of this morning where it is clear that 5 Mr Carlyon will be corresponding about expert reports, 6 about various things in the meantime.</p> <p>7 The proposal as you have said is that both the next 8 pre-inquest hearing and indeed the substantive hearings 9 should take place here.</p> <p>10 THE CORONER: Yes.</p> <p>11 MR O'CONNOR: And as far as we can understand it no one 12 objects to that course.</p> <p>13 A further practical point, madam, is that 14 Mr Carlyon, amongst all the other things he is doing, is 15 in the process of sitting up a website for these 16 proceedings and that will be set up in due course and 17 when it is set up there will be a range of interesting 18 and important information to be found on it, including 19 transcripts of hearings, including the transcript of 20 today.</p> <p>21 Finally --</p> <p>22 THE CORONER: No doubt Mr Carlyon will notify all the 23 relevant parties when it is set up.</p> <p>24 MR O'CONNOR: So they don't have to Google it every morning 25 just to see if it is there.</p> <p style="text-align: center;">Page 34</p>	<p>1 each of the officers' cases I am not entirely certain, 2 but none of the officers faces a misconduct hearing or 3 a misconduct hearing and any performance or management 4 action will in due course either has been or soon will 5 be delivered to each.</p> <p>6 THE CORONER: Thank you very much for that clarification.</p> <p>7 MR O'CONNOR: Madam, I think then that does just leave the 8 point of law which has arisen.</p> <p>9 THE CORONER: Yes.</p> <p>10 Submissions by MR O'CONNOR (re Coroner issue)</p> <p>11 MR O'CONNOR: I have called it in passing the coroner issue. 12 We know what we mean but to be clear, perhaps -- I am 13 going to make some submissions on this issue which will 14 follow the course of my written submissions, my recent 15 written submissions that I prepared, starting at 16 paragraph 26. But to start by identifying what the 17 issue is. I suggest it is there in the second half of 18 paragraph 26 of my written submissions, and the question 19 is whether it would be permissible for the scope of 20 these inquests to include the conduct of Ms Persaud in 21 conducting the first inquest into the deaths of 22 Mr Kovari and Mr Whitworth.</p> <p>23 THE CORONER: Just pausing there for a moment. Mr Thomas 24 suggests that it is phrased slightly differently in his 25 paragraph 2, and perhaps you could incorporate that</p> <p style="text-align: center;">Page 36</p>

<p>1 within your submissions.                  2 MR O'CONNOR: I will come back to that, madam. I had got                  3 that in mind.                  4 THE CORONER: Yes.                  5 MR O'CONNOR: I don't want to be over technical about this                  6 but my submission is that the question, it is                  7 a hard-edged matter of law, the question is whether you                  8 have the power under the common law to investigate those                  9 matters. There are a number of subsidiary points                  10 I would make just about the issue. The first is that on                  11 the facts, of course, the issue in fact only arises in                  12 Mr Taylor's inquest, since it is only his death to which                  13 any failings, if failings there were, in the Kovari or                  14 Whitworth first inquests could be said to relate.                  15 The argument is there was something about the way in                  16 which Ms Persaud conducted those two inquests which, as                  17 it were, forms the circumstances of Mr Taylor's death.                  18 So the point only arises in Mr Taylor's inquest.                  19 I simply say that as a way of understanding what the                  20 true nature of this point is.                  21 One asks, moving on, the question: what is it? What                  22 is the conduct that is as it were in play? We will come                  23 to legal classification in a moment but simply what are                  24 we talking about. A helpful place to go for that is                  25 Mr Thomas' submissions at paragraph 5, where it is made</p> <p style="text-align: center;">Page 37</p>	<p>1 that you can investigate, in the way in which Ms Persaud                  2 conducted the inquest because as we know, and as you                  3 said in opening, those inquests have been quashed, so                  4 there is nothing left to look at.                  5 My submission is that is not a sound submission. It                  6 proves too much. What the divisional court quashed was                  7 the determination, the conclusions that Ms Persaud                  8 reached. I think the technical language under                  9 section 13 is the inquisition, which is the form at the                  10 conclusion of the inquest. That is what was quashed.                  11 The issue before you is not about the conclusions that                  12 Ms Persaud reached but rather the points I have shown                  13 you at paragraph 5 of my learned friend's submission,                  14 those factual matters about whether Ms Persaud called                  15 the right witnesses, asked the right questions and so on                  16 and those are clearly still extant. They have not                  17 somehow inaudible as a result of the divisional court's                  18 order. The issue is whether you can investigate them                  19 with a view to making findings about Ms Persaud's                  20 conduct.                  21 So that, firstly, madam, is what I say about what                  22 the issue is, can you or can you not investigate these                  23 matters as part of this inquest, and in particular as                  24 part of Mr Taylor's inquest?                  25 Moving on in the submissions. It is important,</p> <p style="text-align: center;">Page 39</p>
<p>1 clear that, starting to read four lines down: the areas                  2 in which there is reason to suspect insufficiency of                  3 investigation, include insufficiency of evidence                  4 gathering as to the possibility of Mr Whitworth's body                  5 being moved, the suicide note being genuine, the                  6 movements of Mr Whitworth in the days leading up to his                  7 death and also again where the whether the bodies had                  8 been moved.                  9 Those are the type, the sort of granular factual                  10 points that are in play here. What is said is that                  11 Ms Persaud did not get to the bottom or fully explore                  12 those issues that arose in the context of Mr Whitworth                  13 and Mr Kovari's inquests that she conducted.                  14 Although it is slightly to anticipate a submission                  15 I will make in due course, essentially, as we say, what                  16 this boils down to is a complaint that evidence relating                  17 to those matters was not called at the inquests into                  18 Mr Whitworth and Mr Kovari's deaths. And the witnesses,                  19 to the extent that the witnesses were called and                  20 a police officer was called, they were not pressed about                  21 these matters.                  22 Madam, just finally, on what the issue is, you                  23 mentioned paragraph 4 of Mr Thomas' submissions, as                  24 I read paragraph 4, the point that is made there is that                  25 in fact there is not anything to investigate, anything</p> <p style="text-align: center;">Page 38</p>	<p>1 I submit, that the next staging post is the acceptance                  2 of everyone who is participating in this debate that                  3 judicial acts of a coroner, and in this case Ms Persaud,                  4 cannot be the subject of an inquest such as this. It                  5 would not be lawful for you as a coroner to investigate                  6 the judicial acts of Ms Persaud in conducting the Kovari                  7 and Whitworth inquests the first time round. I have set                  8 out at paragraphs 29 to 32, some case law which supports                  9 that proposition but I am not going to take you through                  10 it, because as I say, as I understand at least, everyone                  11 agrees that is the starting point. You will recall,                  12 madam, I also referred to the decision of Dame Linda                  13 Dobbs in an inquest where a similar, but not precisely                  14 the same issue arose, as to whether that inquest could                  15 investigate the act of a High Court judge in making                  16 a child protection order, and she held that was not                  17 possible and she did so on the basis of the principles                  18 which underline this first stage of the argument, which                  19 is that judicial acts of a court cannot be investigated                  20 by a coroner, or for that matter any other court, other                  21 than a Court of Appeal. Clearly the order that was made                  22 by the High Court judge in that case was a judicial                  23 order. So that is where the argument in that case                  24 ended. But in these proceedings, there is a further                  25 issue pursued, because what my learned friend is saying</p> <p style="text-align: center;">Page 40</p>

<p>1 is we accept that you cannot look at the judicial acts                  2 of Ms Persaud, but actually, that is not what we are                  3 asking. We say, as my learned friend has put it, that                  4 there is something separate that Ms Persaud was doing,                  5 which we define as her investigative function. And that                  6 is not protected by these principles which prevent you                  7 from looking at judicial acts, this is something                  8 separate and this is something which my learned friends                  9 say you can, and if you can you should, investigate.                  10 So that is the issue, in fact the narrow issue that                  11 you have to determine. My short response to that                  12 submission that my learned friends make is that you                  13 cannot investigate those matters. In my submission it                  14 is a fallacy that coroners have discrete investigative                  15 and judicial functions.                  16 I will take you to some more detailed points in                  17 a moment but my overarching submission, and what                  18 I submit needs to be your starting point, is the                  19 understanding that the coroner's judicial function is,                  20 by its very nature, inquisitorial. It is easy in                  21 considering this issue to lapse into analysing it by                  22 reference to the types of court and the types of judges                  23 that we are perhaps all the more familiar with in                  24 England and Wales, and that is adversarial proceedings.                  25 In adversarial proceedings a judge has a very limited</p> <p style="text-align: center;">Page 41</p>	<p>1 difficult, and in my submission impossible, to tease                  2 apart their judicial and investigative work. In my                  3 submission it is all one and the same.                  4 I said I would move on to some slightly more                  5 detailed submissions and the first point I would like to                  6 make is by reference to the language of the 2009 Act.                  7 That is to be found, if I can ask you to go to tab 17 of                  8 the bundle. Madam, I know you are familiar with this                  9 but it is a point that bears repeating. We see here                  10 part 1, chapter 1, of the 2009 Act, and chapter 1 is                  11 entitled "Investigations into deaths", and it starts at                  12 section 1 with the coroner's duty to investigate certain                  13 deaths, and those are the categories of death that we                  14 are all familiar with, that the deceased died a violent                  15 or unnatural death, or the cause of death is unknown or                  16 the deceased died in custody, and so on. So those are                  17 the deaths which the coroner has a duty to investigate.                  18 Reading through the Act, the subsequent sections of                  19 the Act, we can see, first of all, in section 4, that                  20 a coroner may be entitled to bring an end to his                  21 investigation if he is satisfied from the results of the                  22 post mortem investigation, that the death no longer                  23 falls into one of those categories; but if not, reading                  24 on, we see in sections 6 and 7 that part of the                  25 investigation needs to be an inquest. Then we see the</p> <p style="text-align: center;">Page 43</p>
<p>1 role. Obviously it varies from one court to another but                  2 judges in the Crown Court for example, will have                  3 a narrow refereeing type function, judicial function; in                  4 civil courts then judges will have not only that                  5 function but a fact-finding function but the point is                  6 even so, all they are doing is addressing cases that are                  7 presented to them by the parties before them, and if                  8 one, as I would say, wrongly, approaches this argument                  9 with those adversarial contexts in mind, it is perhaps                  10 possible to imagine judicial functions on the one hand                  11 and investigative functions on the other, simply because                  12 the idea of an investigative function for a judge in                  13 adversarial proceedings is something so different from                  14 what we are used to them doing. But, with respect, in                  15 my submission that cannot be the starting point, because                  16 we are talking here about coroners who, as any coroner                  17 will tell you, have a very different type of                  18 jurisdiction. They are one of the very few examples in                  19 this country of inquisitorial judicial process. Indeed,                  20 my learned friends in their arguments refer to some case                  21 law which springs from adversarial process, defines what                  22 judges do in adversarial processes and that is dangerous                  23 in this context because, as I say, the starting point is                  24 that the judicial function that coroners discharge is                  25 an inquisitorial function, and that is why it is so</p> <p style="text-align: center;">Page 42</p>	<p>1 provisions relating to an inquest, including section 7,                  2 which I have already taken you to, about a jury.                  3 The point I make, madam, on this part of the statute                  4 is that what one sees here is an underlying duty to                  5 investigate under section 1, of which the inquest is                  6 only a part and no attempt in the statutory language to                  7 distinguish between something called the investigation                  8 and something called being a judge. In fact, quite the                  9 opposite. One much larger investigative task                  10 encapsulated in section 1, of which what one might think                  11 of as the judicial element of the inquest only being                  12 a subsidiary part. That obviously echoes what I have                  13 said earlier about the whole function and context of the                  14 coroner being inquisitorial.                  15 Moving on, madam, if I can ask you to turn to                  16 tab 16, this is just to make good a point I make in my                  17 submissions, these are, we see here the coroner's                  18 investigations regulations, which are made under the                  19 2009 Act, and if you turn to the second page, you see                  20 under regulation 7 that there is an omission, if you                  21 like:                  22 "The coroner may delegate administrative but not                  23 judicial functions to coroner's officers and other                  24 support staff."                  25 We say that is to be read as part of the whole</p> <p style="text-align: center;">Page 44</p>

<p>1 statutory scheme and the important point, as a matter of                  2 statutory construction, is that whereas the statutory                  3 scheme does distinguish here between judicial and                  4 administrative functions, there is no distinction at all                  5 within the statutory materials, no distinction between                  6 judicial and investigative. That is what my learned                  7 friends have to persuade you, that there is a proper                  8 clear distinction to be drawn. It is not there in the                  9 Act, it is not there in the regulations. In our                  10 submission the very fact that this distinction between                  11 judicial and administrative functions has been drawn in                  12 the regulations suggests that if there was a true                  13 distinction between the judicial and investigative                  14 functions, then that too would appear in the statutory                  15 materials. The fact that it doesn't shows, we say, that                  16 there is no distinction.</p> <p>17 I was also, madam, going to ask you to go then to                  18 tab 33, right at the back of the bundle. There is                  19 a passage here from Jervis which in fact relates to                  20 amongst other things that provision I have just taken                  21 you to. It is all about coroners delegating their                  22 functions. The particular passage I invite you to look                  23 at is paragraphs 2-142 through to 2-144. There is                  24 a discussion, I am not going to read it all out, but                  25 a discussion about the circumstances in which coroners</p> <p style="text-align: center;">Page 45</p>	<p>1 of the judicial function, but even on this, as I say,                  2 narrow approach Jervis is suggesting that even such,                  3 what one might describe as an investigative step, is                  4 indeed a judicial act when taken by a coroner.</p> <p>5 Moving on, madam, I come to the point I make at                  6 paragraph 33C of my written submissions, which is that                  7 if there is this distinction, if you are to accept that                  8 there is this distinction that my learned friends                  9 suggest between judicial and investigative functions, it                  10 needs to be clear and well understood because it marks                  11 the boundary between what you can and cannot                  12 investigate. But it is all very well throwing language                  13 around and talking about "Well this must be                  14 an investigation and that is obviously a judicial act",                  15 but actually when one gets down to trying to understand                  16 it in practice, the boundaries almost immediately merge.                  17 The example of deciding to order a post mortem                  18 investigation is one, but as I say here the decision to                  19 hold an inquest, also we say must be a judicial                  20 function. The decision of which witnesses to call, what                  21 questions to ask, whether to require a witness statement                  22 to be provided in advance, all of those surely are                  23 judicial functions.</p> <p>24 So it really, we say, is not obvious what that                  25 category of investigative conduct that my learned</p> <p style="text-align: center;">Page 47</p>
<p>1 can delegate administrative functions as per the                  2 regulation I just took you to. At the end of                  3 paragraph 2-142, the author of Jervis comments that this                  4 requires a distinction to be made between administrative                  5 and judicial functions, neither of which terms is                  6 defined for this purpose. There is then a quote from                  7 adversarial case law, and this is one of the points                  8 I was going to refer you to, a definition of judicial                  9 functions which is certainly a good starting point but                  10 which as the authors say was made for the purposes of                  11 judicial review. So it is not even in fact an attempt                  12 to define a coroner's judicial functions, it is                  13 an attempt to define judicial functions within the civil                  14 sphere. But even within that more narrow definition,                  15 you can see that, at paragraph 2-144, the authors of                  16 Jervis say that on this basis, there can be no doubt                  17 that for example a decision as to whether there should                  18 be a post mortem examination in a particular case is                  19 a judicial act because it affects the rights of the                  20 personal representatives and the next of kin of the                  21 deceased.</p> <p>22 Now, my learned friends can address you on that,                  23 madam, but reading their submissions one might have                  24 thought that they would describe having a post mortem                  25 examination as part of the investigation, and not part</p> <p style="text-align: center;">Page 46</p>	<p>1 friends rely on, consists of, and I repeat it is not                  2 enough for my learned friends imply to suggest one or                  3 two things they say must be investigative, they have to                  4 persuade you that the statutory scheme intends there to                  5 be these two quite separate functions and for there to                  6 be clarity as to which side of the fence any particular                  7 act falls, and we say they fall a long way short of                  8 that, and for those reasons we say this divide they                  9 suggest exists cannot be said to exist and therefore as                  10 a matter of law, not as a matter of discretion, as                  11 a matter of law, you cannot investigate the suggested                  12 failing on the part of Ms Persaud in the way in which                  13 she conducted those two inquests.</p> <p>14 Finally, just two other matters, first of all there                  15 has been some exchanges between my learned friends and                  16 myself on the way in which, if at all, Article 2 feeds                  17 into all this. In my submission the position there is                  18 quite straightforward. To be clear, I don't accept the                  19 matter has not been examined. I don't accept that                  20 Ms Persaud's -- the way in which she conducted the                  21 inquest amounts to an arguable breach of Article 2 but                  22 for the sake of argument, if one accepts that it did,                  23 and therefore one asks the question how is the                  24 investigative duty into those matters which then arises                  25 to be discharged, the answer to that is, for your</p> <p style="text-align: center;">Page 48</p>

<p>1 purposes the answer is however it is going to be                  2 discharged, it cannot be discharged by you. My learned                  3 friends have shown you some Strasbourg authority which                  4 shows that an Article 2 investigative duty can be                  5 triggered by judicial conduct or omissions in the                  6 domestic state. We don't take issue with that. That is                  7 certainly not the case. The question for you is whether                  8 you can discharge such a duty and we say that the                  9 existence of an Article 2 investigative duty is a duty                  10 on a state to investigate things. It doesn't give you                  11 as a coroner the power to investigate something which                  12 you otherwise don't have the power to do. That is the                  13 way we put the Article 2 matter. That is why we say, or                  14 I say in my submissions, that it actually doesn't                  15 assist. It doesn't take matters any further forward.                  16 Article 2 doesn't give you any powers that you don't                  17 otherwise have.</p> <p>18 The second and last point I wanted to make, and                  19 emphasise, is the point I have outlined at paragraph 36                  20 of my submissions, which is that it is certainly in my                  21 submission possible to overstate the importance of this                  22 issue for these inquests. I wouldn't want the families                  23 in particular to think that, as a result of these                  24 submissions that I am making, there is some great                  25 subject area that is going to be excluded from your</p> <p style="text-align: center;">Page 49</p>	<p>1 THE CORONER: Just pause for one moment. (Pause)                  2 Yes.                  3 MR THOMAS: Mr Clarke will develop these submissions on this                  4 narrow scope.                  5 Submissions by MR CLARKE                  6 MR CLARKE: Thank you, madam. May I begin first of all by                  7 indicating agreement with my learned friend on one                  8 particular issue, and it is an important one, which is                  9 the framing of the question, that is what should be                  10 addressed today, what rightly only can be addressed                  11 today, is the matter of what is legally permissible, the                  12 hard-edged question of law. It follows from this,                  13 madam, that it would be wrong to go into the specifics,                  14 the merits of whether or not there is sufficient                  15 indication of a particular failing of a particular type                  16 to justify it. Relatedly, and I am absolutely sure this                  17 was not my learned friend's intention, but I think it is                  18 worth saying at this stage that it is of some concern to                  19 the bereaved families that the relevance is                  20 circumscribed by reference to the notion that it could                  21 have impacted on only one death. This is an inquest                  22 that could be an inquest into one death and in any event                  23 to a particular bereaved family to perhaps seek to                  24 circumscribe the importance of an issue by saying that                  25 it refers only to one death is in my submission not</p> <p style="text-align: center;">Page 51</p>
<p>1 investigation. The inquests that Ms Persaud conducted                  2 into the deaths of Mr Kovari and Mr Whitworth happened.                  3 We will be hearing evidence about those inquests. The                  4 transcripts, no doubt, will be before you. Witnesses,                  5 in particular police officers who took part in those                  6 inquests, can and no doubt will be asked about what they                  7 said at those inquests, what they did before the                  8 inquests, and perhaps most importantly what they did or                  9 didn't do after the inquests. We know from the                  10 transcripts that Ms Persaud in one way or another                  11 suggested that certain investigative steps should be                  12 taken. She pointed to the fact that some things hadn't                  13 been done and the police officers will be asked to                  14 explain whether they then took those steps and if not,                  15 why they didn't. All of those matters will be open to                  16 you to investigate. The one thing that it follows from                  17 my submissions that you will not be entitled to do, is                  18 to investigate whether Ms Persaud herself in some way                  19 has failed and to be clear, that is not a matter in my                  20 submission that you can decide whether to investigate or                  21 not. On the law, it is something that you are simply                  22 not entitled to address.</p> <p>23 Madam, those are my submissions.                  24 THE CORONER: Thank you.                  25 MR THOMAS: Madam --</p> <p style="text-align: center;">Page 50</p>	<p>1 something that should be heard by the bereaved families,                  2 or indeed this court.                  3 In any event, we can leave that to one side because                  4 my learned friend does indicate it is a matter of law.                  5 Now, what I will say, if I may, madam, is dealing                  6 with it in four parts, the first develops the argument                  7 that the principle, and I will identify the principle in                  8 a moment, has no application. The second is a response                  9 to the submission made by my learned friend at                  10 paragraph 33A of his submissions which he has already                  11 referred to, it involves indicating exactly what it is                  12 that we have to indicate today to demonstrate the legal                  13 basis of. The third point is to respond to what is said                  14 at 33B, and last I will return to the issue of whether                  15 or not, in particular, there are relevant aspects of the                  16 coroner's function which are or are not judicial. Those                  17 are the four parts of what I will say next.                  18 First of all, coming back to this point about                  19 whether the principle has any application at all. Let                  20 me first define the principle again, and here I will                  21 repeat something which was in my learned friend's                  22 written submissions because there are a number of ways                  23 in which this is put across in the authority, it all                  24 means one thing, and the Jamieson phrasing is                  25 particularly clear, I would suggest, madam, and it is</p> <p style="text-align: center;">Page 52</p>

<p>1 set out in my learned friend's submissions at 2 paragraph 30A. It says this: 3 "Like those of any other judicial officer, a 4 coroner's decisions must be respected, unless and until 5 they are varied or overruled." 6 The question then is what is the effect of the 7 remedy that has been given in respect of these cases 8 under section 13 of the Coroners Act 1988. My learned 9 friend says the effect of that is just to quash the 10 inquisition, no more. Now what is the record of 11 inquest. That in my submission, with respect, madam, is 12 not right. There are a number of ways of seeing this. 13 Not only is it stated in what I think are fairly plain 14 terms in case law, which I will come to but more 15 importantly, let's think through the logical 16 consequences of this. The principle that we are talking 17 about here, is as has already been stated, the judicial 18 act remains valid unless or until it is varied or 19 overruled. In short, madam, if you could not examine 20 conduct of a previous coronial process, nor could you 21 conduct these inquests. 22 The effect, if there were an extant judicial act of 23 another coroner about the same death, would not just be 24 to preclude scope in respect of this investigation as to 25 the latter, it would, madam, render you functus officio,</p> <p style="text-align: center;">Page 53</p>	<p>1 Coroners Act 1988. If my learned friend were correct, 2 that passage of the judgment would necessarily be wrong 3 and vice versa. 4 In short, we cannot pick and choose. The effect of 5 an extant judicial act in respect of this death would 6 prevent this inquest and not just part of it. 7 So the effect of the remedy must be that there no 8 longer is a judicial act at all, and my learned friend 9 I think conceded that if what we were asking you to do 10 were in some way inconsistent with the previous record 11 of inquest, then clearly that had been quashed. So the 12 question is how wide is the remedy under section 13? 13 The answer is that it must necessarily allow you to 14 conduct this case. If that is so, then there is no 15 judicial act, there is nothing in the previous 16 proceedings that remains extant or having any effect. 17 My learned friend used the word vanished. I would 18 not go that far but certainly it doesn't have the effect 19 any longer that it would have if it were a judicial act 20 as set out in Jamieson. 21 Now, if I may, madam, I will move on to the next 22 point, unless there is anything I can assist you with on 23 that? 24 Going on then to respond to the points made by my 25 learned friend at paragraph 33A of the submissions.</p> <p style="text-align: center;">Page 55</p>
<p>1 that is the nature of the concept of the judicial act 2 and of the functus officio rule. If that is not in 3 principle terms clear enough, it is made absolutely 4 clear in the case of a judicial review <i>Susan Flower v</i> 5 <i>Her Majesty's Coroner for the County of Devon, Plymouth</i> 6 <i>&amp; Torbay</i>, with the Chief Constable of Devon and Cornwall 7 police and the IPCC as interested parties. Now I have 8 copies of this which I can hand up but the relevant 9 section is at paragraphs 15 to 18. I am not even sure 10 if it needs to be handed up because I can summarise the 11 points here. 12 As I say, the relevant section is paragraphs 15 to 13 18, but what that case says in short is this. Section 6 14 of the 2009 Act makes clear the inquest is part of the 15 investigation, without the completion of the inquest 16 an investigation would not be completed and would not 17 therefore be held for the purposes of section 13(1)(b), 18 and in this case as there had been no inquest the court 19 lacked jurisdiction to make the order sought. The old 20 investigation was still in being. The coroner could be 21 invited to resume it in light of the new evidence on 22 which the applicant was relying and any new decision in 23 that regard would be amenable to challenge by way of 24 judicial review. This case, the <i>Flower</i> case is 25 an application for remedy under section 13 of the</p> <p style="text-align: center;">Page 54</p>	<p>1 This is also a question of indicating exactly what the 2 issue is, what we have to prove to you. 3 Now, may I make it firstly clear before I move on, 4 that if you are with us on the point that I have already 5 made, everything else falls away. There is no question 6 about whether particular acts, particular types of 7 activity are or are not judicial acts in their nature, 8 in that sense. 9 My learned friend says that the significance of the 10 exception to in principle, that judicial acts cannot be 11 challenged or questioned, means that authority is 12 needed, effectively there is a high burden here because 13 we are seeking to persuade you that there should be 14 an exception to this principle. May I first make clear 15 that we are not making an argument there should be 16 an exception. First of all, for either or both of two 17 reasons -- first, as I have already set out there is no 18 extant judicial act, the principle simply doesn't apply 19 but in any event the question is whether particular 20 aspects of the coronial process entail judicial acts, 21 not whether there is an exception for this principle. 22 THE CORONER: Can could you say that again, sorry, the 23 question is whether? 24 MR CLARKE: The question is whether particular aspects of 25 the coronial process entail judicial acts at all. It is</p> <p style="text-align: center;">Page 56</p>

<p>1 not that we are seeking to justify some exception to                  2 a long standing constitutional principle, whether it is                  3 about the ongoing existence of an extant judicial act or                  4 whether it is about the question of whether a particular                  5 aspect of a coroner's role is judicial in nature,                  6 neither of those things involve seeking to persuade you                  7 that there should be an exception to the principle to                  8 vary its application.                  9 In any event, if I may, madam, the position of                  10 a coroner, as my learned friend has himself indicated,                  11 the role is inquisitorial and not adversarial, is itself                  12 a very significant exception to the nature of the                  13 judicial role in England and Wales. Caution and                  14 authority in my submission therefore is warranted in                  15 applying principles that might apply to other parts of                  16 the judiciary, it doesn't follow.                  17 Moving on to the question of the adequacy of a basis                  18 for any distinction between judicial and administrative                  19 acts in the 2009 Act. This is where I want to be clear                  20 about exactly what the question is here, madam, because                  21 it is vital to frame this issue as what is and what is                  22 not judicial without additional concern about whether                  23 a given act is administrative, investigative, anything                  24 else. The question is: is it judicial? That is it.                  25 In my submission reference to other categories,</p> <p style="text-align: center;">Page 57</p>	<p>1 the previous coronial process. Reference has already                  2 been made by way of example to the areas in which it                  3 might be said based on the limited disclosure we have to                  4 date as to whether there may have been things that were                  5 lacking, and as I indicated at the outset, and I think                  6 my learned friend would agree, in terms of the question                  7 for today, it is the straightforward, hard-edged legal                  8 question.                  9 THE CORONER: Yes, thank you.                  10 MR CLARKE: Moving on to that last issue, that point that in                  11 any event there are some relevant aspects of the                  12 coroner's role which are not judicial and therefore                  13 unaffected by this principle. First, madam, whilst this                  14 principle that is identified in Jamieson again, and it                  15 is the notion that an extant judicial act remains valid                  16 until properly overturned or quashed, while that                  17 principle is entrenched and broad, what is a judicial                  18 act is not so. Now, we considered setting out lengthy                  19 submissions about the many and various debates about                  20 what is and is not a judicial act in various contexts,                  21 but we would be on for days. The simple point, and one                  22 which is made well by Mr Justice Stadlen in a case                  23 called R(on the application of Amanda Howard) v The                  24 Official Receiver, is this, and this is paragraph 147 of                  25 that case:</p> <p style="text-align: center;">Page 59</p>
<p>1 whether it is administrative or investigative or                  2 otherwise, adds confusion and obscures the question.                  3 Leaving aside the question of whether there is in any                  4 event any longer a judicial act, which is the first                  5 argument I referred to, my learned friend has referred                  6 to the difficulty with our submission arising from the                  7 fact that this distinction is not in the Act. Now                  8 I have already dealt with the question of the                  9 distinction between two categories. That is not the                  10 question, the question is judicial or not and as simple                  11 as that. But in my submission it is just a matter of                  12 logic, the fact that those of the coroner acts which are                  13 judicial have a statutory footing surely cannot mean                  14 that the same statute must state in terms that those                  15 acts are judicial. If that were the position, that                  16 would be an unsustainable approach to statutory                  17 interpretation in this area. It cannot surely be said                  18 that wherever reference is made to something that                  19 a judge might do in any type of court proceedings in                  20 a statute, that what is required is to state which parts                  21 of that involve a judicial act for the purposes of the                  22 principle identified in Jamieson or not.                  23 THE CORONER: Can you just define what you mean by "it" in                  24 the question, is it judicial? Is what judicial?                  25 MR CLARKE: Whatever it is you might be looking into about</p> <p style="text-align: center;">Page 58</p>	<p>1 "What is meant by judicial acts, judicial capacity,                  2 judicial functions, may arise in a wide variety of                  3 factual and legal contexts. Not surprisingly, what is                  4 said in one context to be important or even conclusive,                  5 may not necessarily be important or a conclusive factor                  6 in another."                  7 Rather than going down the line of seeking to                  8 identify for example whether it requires determination                  9 of legal rights for an act to be judicial and that is                  10 one of the ways in which it might be identified for some                  11 purposes, the simple point is this is a context                  12 dependent question from top to bottom, and this is why                  13 we refer in our submissions to what is indicated -- what                  14 can be shown from what coroner's officers do and what                  15 the applicable regime in the coronial context says about                  16 them.                  17 Regulation 7 of the regulations, the coroner's                  18 investigations regulations says:                  19 "A coroner may delegate administrative but not                  20 judicial functions to the coroner's officers and other                  21 support staff."                  22 Now, evidence gathering is an example of what can be                  23 delegated and that is no doubt clear from all of our                  24 experience, but for avoidance of doubt it is among the                  25 things identified among the roles of coroner's officers</p> <p style="text-align: center;">Page 60</p>

<p>1 in a report by the Home Office from 2002, part of which                  2 remains published on the Coroner's Officers Association                  3 website as indicative of what their task is. And                  4 similarly the Coroner's Officers and Staff Association                  5 website says that on the role of coroner's staff, it                  6 varies greatly across England and Wales, but the report                  7 that I have just referred to defines the various tasks                  8 and roles performed by coroner's officers across the                  9 country as including forensic investigation, medical                  10 investigation, being an administrator, acting as family                  11 liaison, taking statements, gathering evidence, being                  12 a public relations manager and being a court usher; but                  13 among those it says a statement taker and evidence                  14 gatherer.</p> <p>15 If anything is clear from the case law about what is                  16 and is not a judicial act, it is that just because                  17 a person is judicial, doesn't mean all of their acts                  18 that are judicial. It follows therefore that just                  19 because a person is a coroner's officer doesn't mean all                  20 their activities are characterised in some completely                  21 separate category. The fact that reference is made in                  22 the regulations to delegation shows that it is in the                  23 nature of the activity whether or not something needs to                  24 be seen as judicial for the purposes of an inquest, and                  25 the fact that the activity of evidence gathering can be</p> <p style="text-align: center;">Page 61</p>	<p>1 function may be relevant in this particular case but it                  2 is perhaps relevant, as has just been pointed out to me,                  3 and I am grateful, which is that it is not the case that                  4 the families' concerns are restricted to what happened                  5 within the inquest hearing. It also includes the                  6 question of the process leading up to the inquest, the                  7 evidence gathering process, the preparatory function and                  8 how that was carried out.</p> <p>9 Unless I can assist you further, those are my                  10 submissions. I have not addressed the question of                  11 Article 2 and its relevance. If that would assist --</p> <p>12 THE CORONER: Before you do, by all means do if you want to                  13 but just going back to what it is -- could you just                  14 articulate orally what it is you are asking me to do as                  15 far as this concerns, do and/or say as far as this                  16 concerns.</p> <p>17 MR CLARKE: The question as it was framed by my learned                  18 friend, whether it would be permissible, and I will make                  19 sure I've got the correct phrasing here. Would it be                  20 permissible for the scope to these inquests to include                  21 the conduct of Ms Persaud in conducting the first                  22 inquest into the deaths of Gabriel Kovari and Daniel                  23 Whitworth. The question is, when it said permissible,                  24 it means is there a legal barrier to doing that, the                  25 merits of exactly what might be done on the evidence,</p> <p style="text-align: center;">Page 63</p>
<p>1 delegated makes as plain as plain can be that it is not                  2 a judicial act in any event.</p> <p>3 If it assists, the same thing is referred to by the                  4 divisional court, in the recent judicial review of                  5 R(on the application of Adath Yisroel Burial Society) v                  6 HM Senior Coroner for Inner North London, which makes                  7 the point I have just made, that it will be clear from                  8 the terms of regulation 7 of the regulations that the                  9 coroner may delegate administrative but not judicial                  10 functions. Accordingly, while the handling of enquiries                  11 may be delegated to coroner's officers. Some                  12 decisions -- it mentions there, ordering a PME -- are                  13 judicial decisions and are not to be delegated.</p> <p>14 All of this -- and those really are my submissions                  15 about what is or what can be gleaned from the specific                  16 context of the legal regime that applies to inquests                  17 about what is or is not judicial -- but to emphasise,                  18 madam, just to return to my first point, all of that                  19 falls away completely if there was no valid continuing                  20 judicial act now.</p> <p>21 May I just have a moment?                  22 THE CORONER: Of course.                  23 MR CLARKE: Thank you.</p> <p>24 I said it would not be the place or the time to go                  25 into the specifics of which parts of the coronial</p> <p style="text-align: center;">Page 62</p>	<p>1 I think in all of our submissions is for later. It is                  2 the question of whether, the principle which I have                  3 described by reference to the quote from Jamieson and                  4 also my learned friend's submissions, whether that                  5 precludes any such part of the scope of your                  6 investigation.</p> <p>7 THE CORONER: Yes. So then going back to your first point,                  8 which is really your primary point, isn't it, you say                  9 these inquests are over so there is no extant inquest.</p> <p>10 MR CLARKE: Yes.                  11 THE CORONER: If that were right, why does that entitle me                  12 as a coroner to include her conduct in the scope of                  13 these inquests?</p> <p>14 MR CLARKE: Because as is made plain by the way the                  15 principle is described in Jamieson, the reason for the                  16 preclusion is that unless and until a judicial act is                  17 quashed or returned, it cannot be questioned in a court                  18 which doesn't have the jurisdiction to do so. We all                  19 know there isn't an appeal to an inquest.</p> <p>20 Similarly the opportunity to judicially review                  21 an inquest comes and ends within three months after the                  22 inquest. This is a case which neither of those                  23 remedies, first of all, were pursued, but that is                  24 irrelevant. The point is we are in a position now where                  25 the remedy that has arisen is under section 13 of the</p> <p style="text-align: center;">Page 64</p>

<p>1 1988 Act, and the question is would that mean that what                  2 is going on in this inquest, if it were to question what                  3 was done in the previous one, was a procedurally corrupt                  4 appeal or judicial review in effect. And it is neither                  5 of those things. Precisely because of the effect of the                  6 section 13 remedy.</p> <p>7 It is important to be clear about what this                  8 principle is all about. I think for reasons that                  9 I would understand, in coronial practice, everyone knows                  10 generally that when you make submissions on scope in                  11 a pre-inquest review, that matters like bail decisions                  12 or the way that family proceedings were conducted or                  13 anything else are just not things that inquests involve                  14 themselves in. But the principal basis for that is not                  15 just collegiality among coroners and other judges or                  16 some general idea it is a bad thing to look into what                  17 might have happened a courtroom, it is because of                  18 maintaining the sanctity of the procedure, by which                  19 a judicial act, if it does remain valid, is to be                  20 underlined.</p> <p>21 THE CORONER: Yes, thank you.</p> <p>22 MR CLARKE: Madam, I don't know whether you would like me to                  23 address the issues around Article 2.</p> <p>24 THE CORONER: By all means, if you want to do so, please do.</p> <p>25 MR CLARKE: My learned friend has indicated that no issue is</p> <p style="text-align: center;">Page 65</p>	<p>1 suggestion from our side is that the interested person                  2 should be defined by reference to the office rather than                  3 the person.</p> <p>4 THE CORONER: Yes.</p> <p>5 MR CLARKE: I don't know if that makes any difference but it                  6 may be worth clarifying at this point in relation to any                  7 effect of Article 2.</p> <p>8 Madam, unless I can assist you further, those are my                  9 submissions.</p> <p>10 THE CORONER: Thank you very much.</p> <p>11 Yes.</p> <p>12 Submissions by DR VAN DELLEN</p> <p>13 DR VAN DELLEN: If I may, firstly endorse what my learned                  14 friend Mr Clarke on behalf of the other families has                  15 said.</p> <p>16 THE CORONER: Yes, just for the avoidance of doubt, do you                  17 agree with all his submissions?</p> <p>18 DR VAN DELLEN: Essentially, yes. And hopefully what I am                  19 saying is not going to be cutting across any of them but                  20 possibly clarifying a few matters.</p> <p>21 THE CORONER: Thank you.</p> <p>22 DR VAN DELLEN: I will not be particularly long. It really                  23 falls into five areas. Firstly, distinction between                  24 judicial and administrative acts. Secondly, the                  25 significance of regulation 7. Thirdly, the assistance</p> <p style="text-align: center;">Page 67</p>
<p>1 taken in relation to the case law cited to the role of                  2 investigating judges and how that may be analysed in the                  3 context of the investigative duty. I will not go back                  4 into that. There are questions, perhaps, around how                  5 Article 2 may or may not assist in different respects.</p> <p>6 Let me, if I may, say this. If the argument is that                  7 Article 2 doesn't assist in respect of what is happening                  8 in these proceedings, the premise that it cannot magic                  9 up a power that you don't otherwise have, as                  10 I understand it, is based -- it follows from all of this                  11 notion that there is not a power to investigate judicial                  12 acts. If that is the case, then that falls away and                  13 I will not deal with that. I am trying to bottom things                  14 out here but as I understand it there are no remaining                  15 issues around the question of whether Article 2 may or                  16 may not have that effect. In our submission there is                  17 nothing which distinguishes for the purposes of                  18 Article 2 for the judicial function other than this                  19 sacrosanct constitutional principle that protects                  20 judicial acts from being challenged anything other than                  21 through the proper procedure. If that is taken away,                  22 what we are talking about is the act of a public body as                  23 much as any other. For avoidance of doubt in relation                  24 to that question of public body, this is perhaps of                  25 marginal importance, as you will have seen, the</p> <p style="text-align: center;">Page 66</p>	<p>1 in Jervis as to this area. Fourthly, responding to my                  2 learned friend Mr O'Connor's submissions and then                  3 fifthly the nature of whether it is the coroner or the                  4 coroner's office which should be the correct interested                  5 person.</p> <p>6 So firstly, starting with the difference between                  7 judicial and administrative functions of a judicial                  8 office holder. One of the points made by my learned                  9 friend Mr O'Connor in his written submissions is that                  10 essentially there is no authority for this proposition                  11 in law.</p> <p>12 THE CORONER: No, but his distinction is between judicial                  13 and investigative, not judicial and administrative.</p> <p>14 DR VAN DELLEN: Yes. So this is the key point. The key                  15 point is that there is a distinction between the                  16 judicial and administrative functions of a judge.</p> <p>17 THE CORONER: Yes.</p> <p>18 DR VAN DELLEN: So it is not the case that everything that                  19 a judicial office holder does is cast over with a shield                  20 against any investigation into that. And essentially                  21 authority for that is the case of Blacker v The                  22 Solicitors Regulation Authority. That is in your                  23 bundle, madam, in tab 29 and, essentially, would it                  24 assist if I went through the background facts of that                  25 case?</p> <p style="text-align: center;">Page 68</p>

<p>1 THE CORONER: If the submission you are making is there is 2 a distinction between judicial and administrative, then 3 I don't think you need to. 4 DR VAN DELLEN: I am most grateful. There is some dicta in 5 that about the lack of clarity around what constitutes 6 a judicial act, so it is paragraphs 45, 46, 47 of the 7 Blacker judgment from Mr Justice William Davies. But 8 essentially the submission is that there is something 9 that can be administratively done by a judge that is 10 susceptible to investigation, oversight under the 11 Equality Act, discrimination and so on and so forth. 12 The key issue in Blacker was listing and you will have 13 seen what Mr Justice William Davies said there, saying 14 that listing is a judicial function. I lost that 15 argument and the Court of Appeal did not grant 16 permission for clarification as to the scope or the 17 extent of judicial functions, they declined that 18 opportunity. But suffice it to say that listing, 19 according to that case, is a judicial function. But 20 clearly there are going to be administrative functions 21 that are not judicial functions and can be looked at. 22 THE CORONER: Those are not the sort of things that you are 23 suggesting should be looked at in relation to this -- 24 DR VAN DELLEN: I will come on to that in due course because 25 those are precisely the things that I am suggesting or</p> <p style="text-align: center;">Page 69</p>	<p>1 investigative and the Act would say if it didn't. That 2 is summarising it. 3 DR VAN DELLEN: On a very narrow reading, we are looking at 4 what are administrative functions. 5 THE CORONER: Yes. 6 DR VAN DELLEN: And what falls within administrative 7 functions of a coroner, that will not be a judicial act 8 and this is where Jervis comes in helpful. 9 There is much in Jervis which is controversial but 10 hopefully this part is not as controversial. I am on 11 page 58 of the 13th edition and it is paragraph 2-144. 12 2-143 is the excerpt which has been referred to earlier 13 in the context of judicial review proceedings and -- 14 MR O'CONNOR: Madam, for your sake and for everyone else in 15 court, this is actually the extract behind tab 33 in the 16 bundle. 17 THE CORONER: Thank you. 18 DR VAN DELLEN: I am most grateful to my learned friend. 19 So 2-144, the editors of Jervis start off by saying 20 there can be no doubt for example that a decision as to 21 whether there should be a post mortem examination is 22 a judicial act because it reflects the right of the 23 personal representatives or next of kin of the deceased. 24 So they are linking back that judicial act -- 25 THE CORONER: I marked it in this version earlier on, so it</p> <p style="text-align: center;">Page 71</p>
<p>1 submitting can be looked at and in fact should be looked 2 at by this inquest. 3 Turning to regulation 7, that is support for 4 a coroner delegating administrative but not judicial 5 functions to coroner's officers and other support staff. 6 So there are clearly things that can be delegated that 7 on the reading of regulation 7, are not judicial 8 functions. So these are things that a coroner is doing, 9 that a coroner is delegating that reading regulation 7 10 is not a judicial function and we know that because the 11 coroner cannot delegate judicial functions, so what 12 a coroner is delegating are effectively administrative 13 functions and not judicial functions. 14 So we have a clear bright line between delegated 15 matters, administrative; non-delegated matters, 16 judicial. What my learned friend Mr O'Connor's response 17 to that is it is all too difficult, we cannot work 18 out -- 19 THE CORONER: I don't think that is his response. Forgive 20 me, his response the Act actually sets out the 21 distinction between judicial and administrative 22 functions. What it doesn't do is set out any 23 distinction between judicial and investigative. 24 DR VAN DELLEN: Absolutely. 25 THE CORONER: His argument is judicial includes</p> <p style="text-align: center;">Page 70</p>	<p>1 is easier for me to follow it again in the same version. 2 DR VAN DELLEN: My fault, I should have done -- 3 THE CORONER: Yes. 4 DR VAN DELLEN: So the first paragraph of 2-144, they are 5 linking back to the previous paragraph. So everything 6 that the submissions that you have heard about the 7 distinctions between judicial acts in different 8 jurisdictions, the editors of Jervis do not appear to be 9 quite on the same page in that regard, but I am more 10 interested in the second sentence. 11 The second sentence refers to the Chief Coroner's 12 Guidance -- this is of course the previous Chief 13 Coroner, now Sir Peter Thornton -- advises that 14 "functions delegable to coroner's staff include 15 contacting bereaved relatives, making enquiries on the 16 coroner's behalf". So that, I would respectfully 17 submit, those enquiries on the coroner's behalf, made by 18 coroner's officers, is delegated. It is 19 an administrative act and not a judicial act. 20 The footnote refers to paragraph 48 of the Chief 21 Coroner's Guidance on the Act, second edition, I have 22 turned up -- 23 THE CORONER: Have you looked up the authorities? The 24 photocopy is actually -- 25 DR VAN DELLEN: It just refers to the Chief Coroner's</p> <p style="text-align: center;">Page 72</p>

<p>1 Guidance and looking at the Chief Coroner's Guidance, it                  2 more or less repeats that paragraph, with the                  3 exception -- because I don't wish it to be thought I am                  4 in any way misleading you or the court, the third                  5 sentence in paragraph 48 says:                  6 "The Chief Coroner will issue guidance on the                  7 functions that coroners can delegate to coroner's                  8 officers and other staff, as in practice the distinction                  9 between judicial and administrative functions can be                  10 blurred and open to interpretation."                  11 Now, I have searched fairly assiduously through my                  12 handy A5 set of guidance and the closest I find to the                  13 promised forthcoming guidance is guidance on pre-signed                  14 forms, which, in my respectful submission, is not                  15 particularly helpful in the context of these                  16 submissions. But the point is, essentially, that there                  17 is this recognition between judicial functions and                  18 administrative functions and it is those enquiries being                  19 made by coroner's officers that my client, Mr Waumsley,                  20 is particularly interested in.                  21 Why is he interested in those enquiries? I ask                  22 rhetorically, of course.                  23 My learned friend Mr O'Connor says, well, this issue                  24 only bites in respect of the Taylor family, and I will                  25 not repeat what my learned friend Mr Clarke has said in</p> <p style="text-align: center;">Page 73</p>	<p>1 inquest, we are looking at what evidence was called at                  2 the inquest. What is in play is the enquiries made by                  3 the coroner's officers and --                  4 THE CORONER: You have identified before Mr Walgate's                  5 inquest, but do you mean --                  6 DR VAN DELLEN: In the other --                  7 THE CORONER: -- all enquiries made by all --                  8 DR VAN DELLEN: Essentially all the enquiries. For my                  9 client, he is particularly interested in enquiries that                  10 were made after Mr Walgate's death but I don't represent                  11 the other interested persons, I imagine they may well                  12 have similar questions and I would be surprised if they                  13 didn't. My learned friend Mr O'Connor went on to say it                  14 is a fallacy that coroners have discrete investigative                  15 and judicial functions.                  16 Madam, you have highlighted the nuance between                  17 investigative and administrative and investigative and                  18 enquiries, I am not going to belabour that point but                  19 again it is not quite the point I am making, and                  20 I appreciate I might have edged forwards from my written                  21 submissions, but it is about the difference between                  22 judicial and administrative functions.                  23 So then my learned friend Mr O'Connor went on to say                  24 "having a post mortem is part of the investigation.                  25 Again I have made it abundantly clear, madam, that I am</p> <p style="text-align: center;">Page 75</p>
<p>1 that regard, apart from endorsing it, but essentially                  2 this goes right back to Mr Walgate and the circumstances                  3 in which Mr Walgate was found and the enquiries made by                  4 coroner's officers then because that precedes the deaths                  5 of Mr Kovari and Mr Whitworth and then eventually                  6 Mr Taylor.                  7 So this is not an issue that is biting purely on                  8 Mr Taylor, the inquest touching on the death of Mr Jack                  9 Taylor. It is something that is very relevant to                  10 Mr Waumsley, the nature of those coroner's officer's                  11 enquiries.                  12 I will turn now if I may to just responding to my                  13 learned friend Mr O'Connor's submissions, and I was                  14 trying to make a very careful note but no doubt I will                  15 be corrected if I have not taken this down correctly,                  16 and my learned friend said Ms Persaud did not get to                  17 the -- he started off by talking about granular factual                  18 points in play here:                  19 "Ms Persaud did forgot get to the bottom or fully                  20 explore the issues in the inquest she conducted. What                  21 this boils down to is that evidence is not called at the                  22 inquest."                  23 With all due respect to my learned friend, that is                  24 not my submission. It is not my submission that it is                  25 right or appropriate to go into decision making at the</p> <p style="text-align: center;">Page 74</p>	<p>1 not suggesting that the decision to hold a post mortem                  2 is anything but a judicial act and is not permissible                  3 for this inquest to look at."                  4 Then my learned friend went on to say "it needs to                  5 be clear and well understood, marks the boundary of what                  6 can and cannot investigate, trying to understand or                  7 practice. Boundaries almost immediately merge."                  8 Effectively, and I took note of the judicial                  9 disapproval of my characterisation of his submission,                  10 but I am going to repeat it, he is essentially saying                  11 this is all just too difficult, it is too difficult                  12 working out what is a judicial function and what is                  13 an administrative function or investigative --                  14 THE CORONER: I think -- we have got to be careful. You are                  15 now saying, and I didn't understand this to be what you                  16 were saying in your written submissions, but this is not                  17 a criticism, you are now saying what you are actually                  18 focusing on is administrative function.                  19 DR VAN DELLEN: If we are looking at what the regulations                  20 say and we are looking at what can be delegable and we                  21 are looking at enquiries made by coroner's officers --                  22 THE CORONER: You are saying that is administrative and you                  23 are saying those are the issues that need to be looked                  24 into in this case.                  25 DR VAN DELLEN: I say, madam, quite clearly the practical</p> <p style="text-align: center;">Page 76</p>

<p>1 difficulties doing that do not immediately emerge, they                  2 are not too difficult to be looked at --                  3 THE CORONER: In a sense, the word "investigative" has been                  4 abandoned, hasn't it really?                  5 DR VAN DELLEN: Without being too blunt about it but                  6 I mean -- and I appreciate, you know that is not the                  7 position of those sitting immediately to my right,                  8 and --                  9 THE CORONER: Abandoned by you.                  10 DR VAN DELLEN: I endorse what they said about extant                  11 proceedings, so I don't wish to suggest it but if                  12 anything I am moving a step further, which is to say                  13 well, let's hear from the coroner's officers what                  14 enquiries they made, let's hear what steer they                  15 received, let's hear from those witnesses what they                  16 discovered and what they encountered. That is not                  17 a judicial act and that is within the purview of this                  18 inquest.                  19 Why is this relevant in Article 2 terms? My learned                  20 friend said he wouldn't want the families to think as                  21 a result some great subject area is going to be excluded                  22 from your investigation, but that is exactly the effect                  23 of his submission, is that the enquiries made by those                  24 coroner's officers will be excluded from this inquest.                  25 My client is very interested in what enquiries those</p> <p style="text-align: center;">Page 77</p>	<p>1 for East London. I have subsequently had the advantage                  2 of reading the very well drafted submissions from my                  3 learned friends, Mr Thomas, Queen's Counsel, and his                  4 juniors, and if it assists I am quite happy, as                  5 I hopefully made clear, that I endorse their position as                  6 to who the correct interested person can be, and if that                  7 correct interested person is the coroner's office,                  8 rather than the coroner herself, that may well be more                  9 appropriate and it is not necessarily my -- if I can try                  10 to phrase it as indelicately as this, my client doesn't                  11 feel particularly strongly as to the exact name of the                  12 legal entity that constitutes the interested person,                  13 provided that those enquiries can be looked at.                  14 Unless I can be of any further assistance in that                  15 regard.                  16 THE CORONER: No, thank you very much.                  17 Does anybody else want to make any submission on                  18 this topic?                  19 MR SKELTON: May I madam?                  20 THE CORONER: Please.                  21 Submissions by MR SKELTON                  22 MR SKELTON: For the Metropolitan Police. At the outset                  23 madam, I make these submissions to assist you on                  24 adjudicating what is a hard-edged question on legal and                  25 constitutional principle and not making any comment</p> <p style="text-align: center;">Page 79</p>
<p>1 coroner's officers made and I don't accept, and my                  2 client doesn't accept, that police officers can give                  3 evidence about what enquiries coroner's officers made.                  4 The relevance to that --                  5 THE CORONER: They can if the police officers were coroner's                  6 officers.                  7 DR VAN DELLEN: Yes, I appreciate there is that peculiarity                  8 in the coronial jurisdiction, that we have coroner's                  9 officers that may be employed by the                  10 Metropolitan Police, it is one of the quirks. But from                  11 the Article 2 point of view, the Article 2 significance                  12 is this. Madam, as you are fully aware, you do have                  13 an Article 2 investigative duty and this should not be                  14 an area in my respectful submission that remains                  15 unexamined, so as to comply with this court's Article 2                  16 investigative duties. That is really in my submission                  17 the significance of Article 2.                  18 The final point --                  19 THE CORONER: Sorry, the "this" in that sentence being the                  20 enquiries made by the coroner's officers?                  21 DR VAN DELLEN: I am grateful.                  22 My final point, my fifth point, is about who should                  23 be the interested person and in my written submissions,                  24 certainly at the previous pre-inquest review, I adopted                  25 the position it should be Her Majesty's Senior Coroner</p> <p style="text-align: center;">Page 78</p>	<p>1 about the merits or otherwise of the conduct of the                  2 coroner.                  3 THE CORONER: No.                  4 MR SKELTON: I agree or we agree with your counsel on this                  5 position for the reasons he has given. My I just                  6 summarise the position from our perspective.                  7 The first question is was the East London Coroner's                  8 investigation of the deaths of Mr Kovari and                  9 Mr Whitworth a judicial act. The answer to that we                  10 would submit is clearly yes.                  11 Coroners do not adjudicate on charges or allegations                  12 that are presented to them. Their junction is                  13 inquisitorial. So their investigations of deaths are                  14 always a fundamental coronial function exercised in all                  15 cases pursuant to the obligations and powers imposed and                  16 granted by parliament in the 2009 Act.                  17 I should say as an aside that the fact that coroners                  18 delegate the administrative exercise of their                  19 investigatory powers to others, including their officers                  20 or in some cases their solicitors or counsel, cannot and                  21 does not as a matter of principle, undermine the                  22 conclusion that the decisions and directions governing                  23 the exercise of those powers are judicial acts for which                  24 the coroner alone is responsible in law.                  25 So it follows, madam, that the coroner's</p> <p style="text-align: center;">Page 80</p>

<p>1 investigation of the deaths of Mr Kovari and                  2 Mr Whitworth in these cases, including the critical                  3 decisions on the scope and the lines of enquiry that she                  4 did or did not pursue was clearly conducted pursuant to                  5 her powers under the Act and must therefore be                  6 understood as an essentially judicial act.                  7 If that is right, madam, the second question arises,                  8 is it open for you as a matter of law, exercising your                  9 powers in this coroner's court, pursuant to your                  10 position as a judicial coroner nominated by the Lord                  11 Chief Justice pursuant to schedule 10 of the Act, to                  12 investigate and challenge and make findings in respect                  13 of the conduct of the coroner in the East London                  14 Coroner's Court. The answer to that, we submit, is                  15 unequivocally no.                  16 The mechanisms for investigating and challenging                  17 coronial investigations in the civil courts of England                  18 and Wales, including the adequacy of those                  19 investigations, are limited by statute and by the common                  20 law.                  21 There is no right of appeal against decisions made                  22 by the coroner or coroners or the conclusions reached at                  23 the end of inquests. But there are two mechanisms by                  24 which the sufficiency of a coroner's investigation and                  25 the inquest's conclusions whether reached by a coroner</p> <p style="text-align: center;">Page 81</p>	<p>1 officers and it is a matter of constitutional principle                  2 that they are protected from investigation by other                  3 judicial officers, except by way of supervisory review.                  4 Madam, that must remain the case, even after the                  5 coroner, or indeed any judge, has stopped acting in                  6 a judicial capacity. In other words the inquest or                  7 investigation question has concluded. Otherwise the                  8 important protection afforded by the principle of                  9 judicial immunity would in practice be minimal or                  10 meaningless.                  11 THE CORONER: Can you phrase that again, that must still                  12 apply even after?                  13 MR SKELTON: The coroner, or indeed any judge when one looks                  14 more widely at the principle of judicial immunity, has                  15 stopped acting in their judicial capacity, or                  16 specifically in the context of an inquest whether the                  17 investigation or the inquest has concluded.                  18 Otherwise --                  19 THE CORONER: Or been quashed.                  20 MR SKELTON: Or been quashed, yes.                  21 And the analogy of course is a judgment of the High                  22 Court being quashed by the Court of Appeal, the Court of                  23 Appeal judgments being overturned by the Supreme Court,                  24 et cetera. The fact that that occurs doesn't mean the                  25 original court or the appellate court is no longer</p> <p style="text-align: center;">Page 83</p>
<p>1 or by a jury may be challenged in the courts. The first                  2 of those mechanisms is section 13 of the Coroners Act                  3 1988, which was left in place notwithstanding the                  4 complete changes imposed by the 2009 Act. It is of                  5 course that section which was relied upon by the                  6 administrative court, the High Courts in this case, to                  7 open or order fresh inquests.                  8 The second is judicial review, which is a common law                  9 construct. Or a judicial construct. Whereby the High                  10 Court may exercise its inherent supervisory jurisdiction                  11 of the coroner's court, as an inferior court of record                  12 on conventional public law principles, and the High                  13 Court has open to it the usual judicial review remedies,                  14 quashing decisions and findings by coroners, remitting                  15 them from consideration or substituting its own                  16 decisions.                  17 There are no other mechanisms within the coronial                  18 and civil courts for coroner's investigations to be                  19 challenged.                  20 The absence of other mechanisms, other routes of                  21 challenge, reflect the fact that coroners are creatures                  22 of statute and the relevant statutes, primarily through                  23 the 2009 Act although to some extent in the 1988 Act, do                  24 not provide such a mechanism. The second reason there                  25 are no other mechanisms is because coroners are judicial</p> <p style="text-align: center;">Page 82</p>	<p>1 somehow a judicial entity and somehow doesn't have the                  2 protection afforded by the principle of judicial                  3 immunity. Otherwise it would obviously be the case that                  4 coroners or judges could be sued if they make mistakes.                  5 Criminal trials may go wrong through judicial decision                  6 making which turns out to be unlawful or simply wrong or                  7 irrational. Likewise inquests are derailed by decision                  8 making. If it were the case that that had occurred,                  9 then coroners could find themselves being defendants in                  10 the civil courts and that is clearly contrary to the                  11 principle of judicial immunity. The only way they could                  12 be challenged or overturned in the civil courts is by                  13 way of judicial review and that is a long established                  14 remedy.                  15 So in summary, madam, it is not open to you as                  16 a matter of law to investigate and for these inquests,                  17 whether through your auspices or those of the jury if                  18 they are empaneled, to make adverse findings against a                  19 coroner, or the coroner in this case, it would not be                  20 permissible and it is not permissible for one coroner in                  21 any circumstances to investigate and make findings in                  22 respect of another coroner. That is for the                  23 administrative court.                  24 Madam, those are my submissions. Unless I can                  25 assist you further.</p> <p style="text-align: center;">Page 84</p>

<p>1 THE CORONER: Thank you very much indeed.                  2 Mr Gibbs, did you want to say anything?                  3 MR GIBBS: No submissions, thank you.                  4 THE CORONER: Thank you. Mr O'Connor.                  5 MR O'CONNOR: Madam, there are just one or two things                  6 I wanted to say in reply but before I do so, as you know                  7 the plan had been that Mr Skelton would make his                  8 submissions after me and before Mr Clarke, for obvious                  9 reasons but that I am afraid I omitted to remind you of                  10 that when I finished.                  11 THE CORONER: Yes.                  12 MR O'CONNOR: I think it would be fair, I know Mr Clarke                  13 wants to say a few words in response to Mr Skelton. If                  14 we allow him to do that. We can see the time but                  15 I suspect Mr Clarke will not be very long and I know                  16 I will not be so I suggest we carry on.                  17 THE CORONER: Can I ask is the stenographer all right? Yes,                  18 Mr Clarke.                  19 Further submissions by MR CLARKE                  20 MR CLARKE: I will be hopefully very brief. First, madam,                  21 I am struggling to understand if I am honest what -- how                  22 the argument can hang together that, because something                  23 is -- because an activity is conducted under the Act, it                  24 must be judicial. That must lead back into, I think the                  25 same point as my learned friend, which was that part 1</p> <p style="text-align: center;">Page 85</p>	<p>1 absolutely plain that the quashing effect of the remedy                  2 under section 13 is broader than the record of inquest.                  3 Given the importance that that has assumed in the course                  4 of argument, I don't know whether I can hand up that                  5 authority.                  6 THE CORONER: Certainly, I was going to ask you if you could                  7 provide me with the relevant passages at least or the                  8 relevant authorities to which you have referred because                  9 they are not in the bundle.                  10 MR CLARKE: Certainly, yes. (Handed)                  11 THE CORONER: Thank you.                  12 MR CLARKE: The point flows from what is said at paragraphs                  13 15 to 18.                  14 Without reading out that whole passage, the relevant                  15 point -- well, it can be said in three parts. First of                  16 all, section 6 of the 2009 Act makes clear that the                  17 inquest is part of the investigation.                  18 Second, without completion of the inquest,                  19 an investigation would not be completed and would not                  20 therefore have been held for the purposes of section                  21 13(1)(b) of the Coroners Act 1988.                  22 Flower, as there had been no inquest in Flower the                  23 court lacked the jurisdiction to make the order under                  24 section 13(1)(b). The old investigation was still in                  25 being and the coroner could be invited to resume it in</p> <p style="text-align: center;">Page 87</p>
<p>1 of the 2009 Act is the statutory basis for the judicial                  2 activities of the coroner; but it doesn't follow from                  3 that that, because something has a statutory basis, it                  4 therefore necessarily must be a judicial act, still less                  5 does it mean anything about what the effect of a remedy                  6 under section 13 is. So there are different points of                  7 course, but they both need to be addressed. It is                  8 simply a logical fallacy to say because it is in the                  9 statute or because it is in part of the statute, it                  10 therefore must be judicial. The nature of what is or is                  11 not judicial is in the nature of the act, rather than                  12 the nature of the source.                  13 Second, I referred earlier to the passage from the                  14 judgment in Flower. Now, for the avoidance of doubt,                  15 that only comes up because, today, others have suggested                  16 that the effect of the remedy is restricted to the                  17 quashing of the document, the inquisition. Certainly                  18 reference is made to the quashing of the inquisition in                  19 the case law. But when there is a level of clarity                  20 about exactly what is being quashed, the case of Flower,                  21 in my submission, makes clear that where there is any                  22 part of a coronial process which exists but has not been                  23 concluded, the fact that the section 13 remedy can and                  24 must apply on the basis of this case in order to allow                  25 there to be any further action by any coroner, makes</p> <p style="text-align: center;">Page 86</p>	<p>1 light of new evidence on which the applicant was                  2 relying. Any new decision would be amenable to                  3 challenge by way of judicial review.                  4 I hope it is absolutely clear from that that the                  5 effect of the remedy could not possibly be therefore                  6 restricted to the record of inquest. To put the point                  7 another way, if the effect of the judicial act principle                  8 was to preclude any further investigation after the                  9 section 13 remedy had been applied, the possibility of                  10 there being any coronial investigation whatsoever would                  11 be prevented by the fact that any coroner would be                  12 functus officio. I hope that point is absolutely clear                  13 and if it is not I am happy to clarify. But I would                  14 emphasise those three points I have set out and                  15 paragraphs 15 to 18 of Flower.                  16 THE CORONER: Yes.                  17 MR CLARKE: If it assists, and I don't know whether it does                  18 but it is just a remark in passing, of course when                  19 something is quashed, the quashing clearly covers all                  20 judicial acts. It also covers administrative acts for                  21 what that is worth, to the extent it might be                  22 suggested -- I don't know, maybe this is taking it                  23 a step too far -- that our two submissions somehow are                  24 inconsistent with one another, the idea that what we are                  25 saying is that there is a judicial act but it has been</p> <p style="text-align: center;">Page 88</p>

<p>1 quashed but then we are saying there was not a judicial 2 act. That is not the nature of the point because the 3 effect of the remedy that we are referring to is not 4 circumscribed by the notion of the judicial act in any 5 event. 6 Immunity, now this comes as a bit of a surprise, 7 I would submit, madam, and that is because what it 8 refers to is immunity from suit. It is important to 9 remain clear headed about what the various barriers are 10 that might be in play in a judicial act. The principle 11 identified in Jamieson is a completely different thing 12 from the concept of immunity. The point can be dealt 13 with shortly in my submission. Inquests do not 14 determine civil or criminal liability, so any analogy 15 with immunity is entirely inapplicable. There is no 16 risk whatsoever that the effects of these proceedings 17 would be to determine civil liability or any other kind 18 of liability in respect of anyone who conducted 19 a previous investigation. 20 I don't know whether there is anything else that 21 I can assist you with in relation to those points or if 22 there is any unresolved question. 23 THE CORONER: No, thank you. 24 Mr O'Connor. 25</p> <p style="text-align: center;">Page 89</p>	<p>1 that cannot and should not take place, is because that 2 would be impermissible and because what would be 3 happening was Ms Persaud would be being challenged about 4 her judicial acts. You have my submission that her 5 discharge of her section 1 duty is in its entirety 6 a judicial act. That is why I say that shouldn't 7 happen. 8 But Mr Clarke's first point attempts to get in 9 before that in the analysis and what he says is, well, 10 we don't need to get to that because even if I was right 11 about that in an ordinary case, what has happened here 12 is that Ms Persaud's inquisitions have been quashed by 13 the High Court, so even if I might have been right in 14 another case, I cannot be right here. But, madam, in my 15 submission, that simply cannot possibly follow. One 16 only has to reflect on the fact of this particular 17 situation for it to be seen to be false, because what 18 happened after Mr Port's conviction was that Ms Persaud 19 herself sought the Attorney General's permission to 20 apply to the High Court. Having been granted permission 21 she applied to the High Court for those inquisitions to 22 be quashed on the basis that there was new evidence. 23 Mr Thomas on behalf of the families supported that 24 application and it is reported in the divisional court's 25 judgment that he didn't criticise Ms Persaud's actions.</p> <p style="text-align: center;">Page 91</p>
<p>1 Submissions in reply by MR O'CONNOR 2 MR O'CONNOR: Three short points for me. 3 The first point I wanted to address was Mr Clarke's 4 point, his first point. 5 THE CORONER: Yes, that is the one I was going to ask you 6 about. 7 MR O'CONNOR: Section 13. Which during the course of his 8 oral submissions it became clearer precisely the nature 9 of that point that he was advancing. So I would like to 10 say a little bit more in response. 11 Madam, I think a starting point is to go to what 12 Mr Clarke suggested would be the consequences of you 13 finding in his favour on this issue. What would happen, 14 well, the coroner, Ms Persaud, would be asked to give 15 a witness statement explaining her conduct. She would 16 no doubt be called to give evidence before the jury, if 17 there was one. She would be asked about what she did 18 and what she didn't do. She would be challenged. She 19 would be tested. She would be asked, "Why didn't you 20 commission this piece of evidence? Why didn't you ask 21 the police officer those questions? Why didn't you 22 adjourn your proceedings to allow other things to 23 happen?" And so on. 24 That is really what this is all about. Now, as you 25 know, madam, my answer to that, my submission as to why</p> <p style="text-align: center;">Page 90</p>	<p>1 Now, it cannot be right in my submission that simply 2 as a result of the High Court making an order under 3 section 13, that, yes, there is further evidence, yes, 4 we must quash those inquisitions and have further 5 inquests, everything else about the protection that 6 Ms Persaud would otherwise have enjoyed from challenge, 7 from her judicial conduct goes by the board. Mr Clarke 8 says, well, how can we be having those inquests at all? 9 The answer is, in conducting these further inquests, you 10 are not challenging Ms Persaud's conduct, you are simply 11 hearing the evidence. There is nothing wrong with that. 12 But where this principle that I have relied on does stop 13 you is in actually challenging and investigating 14 Ms Persaud's conduct and in my submission, a section 13 15 order simply does not have the effect, the wide ranging 16 effect Mr Clarke suggests to you it does. 17 THE CORONER: Can you just deal with the wider concept of 18 the coronial office? 19 MR O'CONNOR: As to the correct -- 20 THE CORONER: The correct identity but on the basis it is 21 not just Ms Persaud it is suggested enquiries should be 22 made of, or challenge given to, but the coronial office 23 in a wider sense, does the same principle apply? 24 MR O'CONNOR: It does in my submission. It is almost 25 certainly a distinction without a difference. It may be</p> <p style="text-align: center;">Page 92</p>

<p>1 that the argument becomes difficult at this stage simply                  2 because we have treated it as a hard-edged point of law                  3 without regard to the underlying facts. One example of                  4 that is Dr Van Dellen submissions, I had not understood                  5 him previously to be making a submission that in fact it                  6 was the investigation to Mr Walgate's death that he was                  7 interested in. But of course if he is interested in                  8 that, then that is not a matter for Ms Persaud at all,                  9 because as you remarked in your opening submissions, the                  10 inquest into Mr Walgate's death was transferred to the                  11 Hull coroner. So if, as Dr Van Dellen suggests, he is                  12 interested in what the coroner's officers were getting                  13 up to, it may well be that that is where it would lead.                  14 And I would echo the point Mr Skelton made on this point                  15 about administrative and judicial. One would need to                  16 analyse the administrative act in question. Certainly                  17 it has been part of my submission that there is                  18 a distinction between judicial act and administrative                  19 act but of course when -- it may be that when                  20 a coroner's officer for example undertakes some form of                  21 administrative act, he or she is acting as the agent for                  22 the coroner. So it is not enough for my learned friends                  23 to say look, gathering of evidence that is                  24 an administrative thing, because of course the judicial                  25 act that precedes that is the decision to instruct the</p> <p style="text-align: center;">Page 93</p>	<p>1 say, which is just about my submissions about this issue                  2 only relating to Mr Taylor's death. I am grateful to my                  3 learned friend for raising it, how he understood that                  4 submission. Can I simply say that the reason I made                  5 that submission was simply to try to put the argument in                  6 its correct place in the sort of analysis of these                  7 proceedings. It certainly was not my intention to in                  8 some way minimise the value either of this issue, which                  9 we have now been hearing submissions on for an hour or                  10 so, and is a novel and important issue. Still less,                  11 I emphasise, to underestimate the value or importance of                  12 Mr Taylor's death which certainly --                  13 THE CORONER: I understood that to be the case but if it was                  14 not understood in that way, I want to reinforce what you                  15 have just said.                  16 MR O'CONNOR: Madam, I hope you, and Mr Taylor's family who                  17 are here, will take it from me that that was the last                  18 thing I had in mind.                  19 THE CORONER: Thank you. Thank you very much.                  20 Thank you.                  21 I am not going to give a decision on this today.                  22 I will provide a written ruling which will be circulated                  23 in due course.                  24 Does anybody want to raise anything else as far as                  25 today's hearing is concerned?</p> <p style="text-align: center;">Page 95</p>
<p>1 coroner's officer to obtain that evidence or, arguably,                  2 the decision not to.                  3 So, madam, in my submission, I suggest that you                  4 pursue this matter as far as you can in your ruling on                  5 the basis of the submissions that you have heard, and on                  6 the basis of the facts as we understand them. I think                  7 you can resolve that hard-edged point that we have all                  8 addressed you on. But if there are questions about                  9 administrative acts or the acts of individual coroner's                  10 officers, they may simply have to be left over --                  11 THE CORONER: That is the second matter I was going to ask                  12 for your help on, if there are coroner's officers who                  13 carried out enquiries into the background of these                  14 deaths, their enquiries may come within the scope of                  15 these inquests, we don't know, do we, but they may.                  16 MR O'CONNOR: I think, madam, it would all -- there are two                  17 questions, first of all whether what they do is helpful                  18 or interesting to us, is it within scope in that sense.                  19 THE CORONER: Yes.                  20 MR O'CONNOR: Secondly, if I am right about judicial acts,                  21 are you precluded from looking at what they did. But my                  22 suggestion is that you rule on the question of judicial                  23 acts and then we can follow the course from there.                  24 THE CORONER: Yes.                  25 MR O'CONNOR: Madam, there was one other thing I wanted to</p> <p style="text-align: center;">Page 94</p>	<p>1 No. I will take silence as a no. Thank you very                  2 much.                  3 (1.17 pm)                  4 (The hearing concluded until a date to be set)                  5                  6                  7                  8                  9                  10                  11                  12                  13                  14                  15                  16                  17                  18                  19                  20                  21                  22                  23                  24                  25</p> <p style="text-align: center;">Page 96</p>

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