

<p>1 Friday, 15 November 2019</p> <p>2 (2.15 pm)</p> <p>3 Proceedings</p> <p>4 JUDGE MUNRO: Yes.</p> <p>5 MR O'CONNOR: Madam, this is the second pre-inquest review</p> <p>6 that you conducted into the inquest into the deaths of</p> <p>7 Anthony Walgate, Gabriel Kovari, Daniel Whitworth and</p> <p>8 Jack Taylor.</p> <p>9 Madam, I appear as counsel for the inquest, with my</p> <p>10 learned friend, Cicely Hayward; the families of the</p> <p>11 deceased are represented by my learned friend</p> <p>12 Leslie Thomas QC and Paul Clark; Mr Waumsley is</p> <p>13 represented by Anton van Dellen; the Metropolitan Police</p> <p>14 are represented by Peter Skelton QC and James Berry; and</p> <p>15 the IOPC are represented by Neil Moloney.</p> <p>16 My Lady, those are the parties who are currently</p> <p>17 interested persons in these proceedings. As you know,</p> <p>18 there are a group of 14 investigating officers, who are</p> <p>19 represented by my learned friend, Patrick Gibbs QC and</p> <p>20 Claire Dobbin.</p> <p>21 And finally, there is one further officer,</p> <p>22 Mr Sweetman, who is represented there by Mr Shaw, who is</p> <p>23 behind me.</p> <p>24 MR O'CONNOR: Madam, just in terms of housekeeping, I know</p> <p>25 that have you a bundle containing submissions and so on,</p> <p style="text-align: center;">Page 1</p>	<p>1 In fact, as Mr Gibbs helpfully pointed out, we missed</p> <p>2 off Mr O'Donohue, Jason O'Donohue, from that list. But</p> <p>3 adding him, that makes the 14 officers who have applied</p> <p>4 for interested person status.</p> <p>5 All other persons have had notice of that</p> <p>6 application. There's been no objection to it, and in</p> <p>7 our submission, it would be appropriate for you to make</p> <p>8 an order granting those 14 first interested person</p> <p>9 status.</p> <p>10 JUDGE MUNRO: Yes. Any observations to the contrary? No.</p> <p>11 All right, thank you very much. Then, that's what I'll</p> <p>12 do. I'll order that those 14 Officers, the 13 named</p> <p>13 there, together with Jason O'Donohue, be designated as</p> <p>14 interested persons.</p> <p>15 MR O'CONNOR: I'm grateful, madam.</p> <p>16 Before we move onto the next item of the agenda,</p> <p>17 there is one other officer, Mr Sweetman, who is not</p> <p>18 within that group of officers, and I think Mr Shaw would</p> <p>19 like to make an application on his behalf.</p> <p>20 JUDGE MUNRO: Yes, Mr Shaw.</p> <p>21 MR SHAW: Good afternoon, madam. I had intended to make it</p> <p>22 in writing, but it may be more convenient -- I represent</p> <p>23 Detective Sergeant Sweetman, who was directly involved</p> <p>24 as knowing two of the deceased. It seems, on</p> <p>25 reflection, that Detective Sweetman would benefit from</p> <p style="text-align: center;">Page 3</p>
<p>1 and also a very slim authorities bundle.</p> <p>2 In terms of the submissions, we provided written</p> <p>3 submissions to you, dated 1 November. Interested</p> <p>4 persons then responded with written submissions served</p> <p>5 next week. You have some supplemental submissions that</p> <p>6 we served yesterday afternoon, and then I hope you also</p> <p>7 have one more set of written submissions from</p> <p>8 Mr Van Dellen, which he served this afternoon.</p> <p>9 JUDGE MUNRO: Yes, I do. Thank you.</p> <p>10 MR O'CONNOR: And there is an agenda for today's hearing,</p> <p>11 which you'll find behind tab A1 of the main bundle.</p> <p>12 I propose to go through those items in sequence and</p> <p>13 perhaps if, for each of those items, or at least most of</p> <p>14 them, I say a few words and then, before moving on to</p> <p>15 the next item, you may invite submissions from anyone</p> <p>16 else who wants to make submissions on that particular</p> <p>17 issue.</p> <p>18 The first item, then, is the question of interested</p> <p>19 person status.</p> <p>20 As you know, madam, there has been an application</p> <p>21 made on behalf of the 14 officers, who Mr Gibbs</p> <p>22 represents, for interested person status.</p> <p>23 If you go to tab B1 in the bundle, that is where</p> <p>24 you'll find our submissions, and at paragraph 2 of those</p> <p>25 submissions there is a list of the officers in question.</p> <p style="text-align: center;">Page 2</p>	<p>1 status of an interested person.</p> <p>2 I invite you to exercise your powers under</p> <p>3 subsection M of section 47 of the relevant act, and</p> <p>4 afford that status to him, as the other officers. He's</p> <p>5 separately represented. He's outside the umbrella of</p> <p>6 the Federation cover and that's why I appear separately</p> <p>7 for him.</p> <p>8 JUDGE MUNRO: I understand. Thank you.</p> <p>9 MR SHAW: Thank you.</p> <p>10 JUDGE MUNRO: I'm assuming there's no observations on that</p> <p>11 application?</p> <p>12 MR O'CONNOR: We have no application. We, respectfully,</p> <p>13 submit that application should be granted on the same</p> <p>14 basis as you granted the other 14.</p> <p>15 JUDGE MUNRO: I will grant that.</p> <p>16 MR SHAW: Thank you.</p> <p>17 MR O'CONNOR: That deals with the first item on the agenda.</p> <p>18 The second item is entitled "Scope and list of issues".</p> <p>19 There is a list of issues which we have drafted, and it</p> <p>20 has to be found at tab C2 of the bundle.</p> <p>21 As I say, madam, this is a document that we drafted</p> <p>22 some weeks ago now. We have circulated it, initially,</p> <p>23 informally, to provide an opportunity for interested</p> <p>24 persons to comment on it. As you will have seen, we</p> <p>25 have made some amendments to it, in light of those</p> <p style="text-align: center;">Page 4</p>

<p>1 suggestions. Clearly, now interested persons have also 2 had an opportunity to make submissions in a more formal 3 manner to you for the purposes of today's hearing. 4 There are some, not many, points outstanding on 5 which we will address you in a moment, but just to flag 6 up where we're going with this, our submission is that, 7 once you have heard and determined those few matters 8 that are outstanding, we will invite you to treat this 9 document as representing the provisional scope of the 10 inquests going forward. 11 We do, madam, emphasise the word "provisional". 12 These proceedings are still at a relatively early stage. 13 In particular, the exercise of disclosure is not 14 complete, and it may well be that the content of this 15 document, therefore, will evolve further in the future. 16 The purpose of creating a document of this nature 17 and for you ruling on it is not so that the scope of 18 these proceedings is set in stone at this early stage, 19 but simply so that a level of agreement can be reached 20 which can inform those ongoing processes, including 21 disclosure. But as I say, it is most certainly open to 22 interested persons as the proceedings develop to suggest 23 amendments to it. 24 The first of the issues on which you will hear 25 submissions today, madam, is to question 19 in the list</p> <p style="text-align: center;">Page 5</p>	<p>1 deaths, at least there were so deaths after his, and so 2 one can't say that the police investigation into his 3 death might have had some causative effect in itself on 4 a later day. 5 We say that the investigation into Mr Taylor's death 6 is relevant for a different reason. The way we put it 7 at the last hearing was that evidence as to how the 8 police responded to Mr Taylor's death is likely to 9 inform the court's understanding of how they responded 10 to the earlier three deaths. That is a submission we 11 maintain. 12 As I've said, everyone agrees that the inquests must 13 consider the investigations into the first three deaths. 14 We submit that there are sufficient similarities with 15 and overlaps between those three investigations, on the 16 one hand, and the investigation into Mr Taylor's death, 17 on the other. 18 But the court will be assisted in considering those 19 first three investigations by also looking at the fourth 20 investigation. It is evidence of the way in which 21 a closely related group of police officers dealt with a 22 very similar death. 23 We submit, if this is of assistance, that in fact 24 that last investigation would be relevant to your 25 consideration of the first three investigations even if</p> <p style="text-align: center;">Page 7</p>
<p>1 of issues. 2 You will see that the structure of the list of 3 issues, essentially, follows -- or has sections relating 4 to each of the four cases. Then, at the end, there are 5 some generic issues. 6 Issue 19 falls under the section relating to the 7 Jack Taylor's death, and it is the issue focusing on the 8 investigation into his death. Both the Metropolitan 9 Police and the investigating officers have questioned 10 whether that is an issue that is properly within the 11 scope. 12 Putting the matter into some context, madam, as you 13 will see, there is a similar issue that appears under 14 each of the other three deaths, the earlier three deaths 15 in time. There is no contention about the inclusion of 16 that question within the scope relating to their deaths. 17 That is because it is agreed that the investigations 18 into the earlier three deaths are appropriately within 19 scope because they are, potentially, of causative 20 significance to the latter three deaths; in other words, 21 if the police investigations into the earlier deaths had 22 been conducted differently, then at least, arguably, the 23 later deaths might not have taken place. 24 The investigation into the final death, Mr Taylor's 25 death, does not fit into that rationale. There were no</p> <p style="text-align: center;">Page 6</p>	<p>1 Mr Taylor hadn't been killed by Mr Port. There isn't 2 that same element of causative significance; it's 3 simply, to use another term, similar fact evidence. 4 The Metropolitan Police written submissions have 5 stated at paragraph 10 that there is no evidence, or 6 rather no evidence has been identified, that any 7 particular actions or omissions during the police 8 investigation into Mr Taylor's death shed light on the 9 conduct of the three earlier investigations. 10 In our supplementary written submissions, we've 11 provided some examples of respects in which, as we 12 submit, the details of the investigation into 13 Mr Taylor's death do indeed, or may indeed, shed light 14 on those earlier three investigations. 15 We've set them out at paragraph 6 of our submissions 16 and I'll just go through them briefly. 17 The first point we make is simply the very close 18 factual similarity, as I've already said, between the 19 nature of -- or what the police officers found and 20 therefore what they needed to investigate. 21 All four men were found within a few hundred metres 22 of each other within the jurisdiction of the same police 23 in Barking. They were in similar positions and similar 24 states of dress, without their phones and with similar 25 levels of GHB in their systems. None of the deaths were</p> <p style="text-align: center;">Page 8</p>

<p>1 investigated as suspicion deaths for any length of time, 2 and Mr Taylor and Mr Kovari's deaths were assessed as 3 not suspicious at the scene. 4 So, the first point we make is just those factual 5 similarities, in terms of what presented itself to the 6 police officers, means that the way in which they were 7 investigated you are likely to be assisted by seeing how 8 the fourth investigation took place as a way of 9 understanding the earlier investigations. 10 Secondly, in the case of both Mr Kovari and 11 Mr Taylor, it was the same CID officer who attended the 12 scenes, and took or was involved in the decision that 13 the deaths were not suspicious; therefore, it would be 14 appropriate, in the course of an investigation into his 15 decision-making at the scene of Mr Kovari's death, to 16 ask him about his training, his usual decision-making 17 process, factors he took into account and to explore any 18 similarities with the approach taken at the scene of 19 Mr Taylor' death. 20 So, we say it would be highly artificial to take 21 that one witness as an example. We are bound to be 22 asking him about what he did at the scene of Mr Kovari's 23 death, the second death. He, in fact, performed a very 24 similar function following the discovery of Mr Taylor's 25 body, and we are, clearly, going to ask him about that</p> <p style="text-align: center;">Page 9</p>	<p>1 analysis either. 2 And the decision making process relating to that 3 blue sheet in Mr Whitworth's case will, clearly, be a 4 focus for these inquests. And we say, again, 5 understanding more of what did or didn't happen in 6 relation to the blanket in Mr Taylor's case will assist 7 by way of comparison. 8 So, madam, we make those points simply by way of 9 example and conscious that this is a very early stage of 10 the investigation. It's possible that other matters may 11 emerge. It may be that some of the matters I've 12 identified become less significant, but we hope that at 13 least they serve to demonstrate our submission that at 14 this stage it is appropriate for you to keep that issue 15 of the investigation into the Mr Taylor's death within 16 scope of the investigation. 17 It is quite conventional in our submission, madam, 18 for a coroner to adopt a wide approach to scope at the 19 outset of an investigation such as this. We've referred 20 in our written submissions to well-known authorities to 21 that effect; for example, the case of Dallaglio v Lewis. 22 And we submit that it is appropriate, as I say, for you 23 to keep the scope wide and keep the investigation into 24 Mr Taylor's death within scope at this stage. 25 Of course, that is a decision that you will need to</p> <p style="text-align: center;">Page 11</p>
<p>1 too. 2 A further point we've made is that the police did 3 not know that Jack Taylor was gay when his body was 4 located, and his family believed him to be the 5 heterosexual. 6 In considering whether the fact that other 7 individuals were known to be gay, immediately or within 8 a short period of time was relevant to the manner in 9 which those investigations were approached. 10 It may assist the court to prepare, on the one hand, 11 the approach taken in Mr Taylor's case, and on the 12 other, the approach taken in the earlier three cases. 13 Madam, two further factual points. 14 We know that following Mr Taylor's death, it was in 15 fact the police's work with CCTV enquiries which led to 16 the identification of Mr Port. So, we submit that it 17 would assist you to understand more about why they 18 undertook those enquiries when you are considering the 19 absence of those inquiries in the earlier three deaths. 20 Finally, there is, we submit, potentially at any 21 rate, a similarity between, on the one hand, the fact 22 that the red blanket that Mr Taylor was found on not 23 being seized, not being subjected to forensic analysis; 24 and the case of Mr Whitworth, where the blue sheet that 25 he was found on was seized, but it wasn't submitted for</p> <p style="text-align: center;">Page 10</p>	<p>1 keep under review as this investigation continues, and 2 we also accept that there will be further questions for 3 you to consider; for example, which witnesses to call, 4 and ultimately, what questions may be left to a jury, if 5 there is a jury -- and I know that's a matter we'll come 6 to make submissions to you on in due course today. 7 But in any event, those are matters for the future 8 and it may be that similar arguments are debated before 9 you when we come to hear those points. 10 But the question for you at present is simply 11 whether to keep this matter within scope at this earlier 12 stage, and as I have said, our submission is that you 13 should. 14 Now, it may be appropriate for you to hear from 15 other interested persons who wish to make submissions to 16 you on this point. I would suggest that it may help if 17 you hear from Mr Skelton and Mr Gibbs first, and then 18 from Mr Thomas and Mr van Dellen. 19 JUDGE MUNRO: Yes, I agree. 20 MR SKELTON: Madam, just picking up on what Mr O'Connor has 21 said, the Metropolitan Police are grateful for the 22 clarification that counsel to the inquest have given in 23 their supplemental submissions, in which they give 24 examples that Mr O'Connor has explained today in court, 25 of how the police investigation of Mr Taylor's death</p> <p style="text-align: center;">Page 12</p>

<p>1 might inform the court's understanding of the 2 investigations into the three previous deaths, and 3 that's a helpful explanation. 4 In light of the reasons he has given, we do not 5 pursue the submission that a proper basis for 6 investigating the facts pertaining to that police 7 investigation has not been identified. 8 However, madam, may I sound a few notes of caution? 9 First of all, the facts that Mr O'Connor identified, and 10 indeed other similar types of fact, may prove to be 11 relevant to an understanding of the earlier 12 investigations and any causative connection which they 13 have to the deaths in question. 14 However, the Metropolitan Police does not agree that 15 the quality of the investigation into Mr Taylor's murder 16 is of pertinence to the deaths. So, there is a 17 distinction, madam, to the facts pertaining to the 18 investigation and its quality. 19 And, madam, you will note that within the list of 20 issues at the moment, there is a dividing line between 21 investigative steps and facts pertaining to Mr Taylor's 22 investigation at 19A to C, and then its adequacy at D, E 23 and F. 24 We would submit that the adequacy of the 25 investigation does fall foul of the principle that only</p> <p style="text-align: center;">Page 13</p>	<p>1 Jack Taylor was the last of Stephen Port's murder 2 victims will impact on the decision as to witnesses and 3 evidence required. It may be, as the witness list 4 begins to firm up, and the timetabling likewise, that it 5 proves unnecessary to adduce substantial evidence about 6 the fourth police investigation. 7 The second point is that we also endorse the point 8 made by your counsel in that same paragraph, and indeed 9 today, that you will need to consider whether it is 10 permissible for any aspect of that investigation to be 11 reflected in the conclusions. 12 Again, that's another echo of the point about the 13 adequacy of the investigation not being an, arguably, 14 contributory factor to the deaths. By definition, any 15 inadequacy that is identified could not have affected 16 the murders that preceded it. 17 In paragraphs 6 to 8 of our written submissions, we 18 state that it would be unlawful for the investigation of 19 Mr Taylor's death to form any part of the conclusions to 20 these inquests, on the basis that the conduct of that 21 investigation cannot arguably have made a contribution 22 to the three earlier deaths. That is a position that we 23 maintain with the caveat that, bearing in mind the 24 points made by your counsel, it's possible that you may 25 wish to refer to that investigation in your summing-up</p> <p style="text-align: center;">Page 15</p>
<p>1 matters, which are potentially causative, in terms of 2 qualitative failings, should be included within the 3 scope of the inquest as part of a wide funnel that leads 4 to the jury's conclusions or your conclusions, depending 5 on whether a jury's empanelled. 6 The question is: what relevance does the adequacy of 7 the decision-making by the officers in Mr Taylor's 8 investigation have into any of the deaths? The answer 9 is, we would say, none. 10 However, the facts of their decision-making and how 11 they went about their decisions, the training that may 12 have led to their decision-making, may be relevant, but 13 that's a different question. 14 Having made that point, madam, and I think that 15 point echoes when one comes to look at Mr Stride's 16 instructions as well because, at the moment, he's 17 instructed to look at the adequacy of Mr Taylor's 18 investigation. If, madam, you accept the force of the 19 point and endorse it, then it will follow that Mr Stride 20 ought not to be the expressing a view on the adequacy of 21 the investigation either. 22 Finally, may I make two further points, madam. 23 First, we endorse the point made by your counsel in 24 paragraph 9 of their supplementary submissions, and 25 indeed again by Mr O'Connor today, that the fact that</p> <p style="text-align: center;">Page 14</p>	<p>1 in the jury, or if there is no jury empanelled, in your 2 factual findings. 3 JUDGE MUNRO: Could you just give me that paragraph number 4 again, in your submissions? 5 MR SKELTON: It's paragraphs 6 to 8 of our written 6 submissions. So, madam, we say it would be unlawful to 7 make qualitative findings about Mr Taylor's police 8 investigation in the jury's conclusions. 9 However, you may wish, in your summing-up to the 10 jury, to refer to the facts of that investigation, if 11 you see those facts as being relevant to the issues that 12 they, ultimately, consider; and likewise if you, 13 yourself, are sitting without a jury may make mutual 14 findings in respect of it insofar as they are relevant 15 to the pertinent conclusions as to how, when and where 16 each of the men died. 17 So, madam, those are my submissions on that issue. 18 JUDGE MUNRO: Thank you. Yes. 19 MR GIBBS: My submissions are exactly the same and are 20 illustrated best, perhaps, by holding the list of five 21 examples, which my learned friend, Mr O'Connor, has 22 given, for each of which I concede there is something to 23 be said, up against the rather different way in which 24 the list is expressed in the list of issues, and in 25 particular at D, E and F.</p> <p style="text-align: center;">Page 16</p>

<p>1 JUDGE MUNRO: Yes. Thank you. Mr Thomas. 2 MR THOMAS: Madam, our position is, as Mr O'Connor has set 3 out, we believe that these are adequate and appropriate 4 matters within the scope. As Mr O'Connor has indicated, 5 at this stage, the funnel is wide and the funnel can be 6 reviewed later on and there's no good reason at this 7 stage for narrowing the scope. 8 I would add two things. Firstly, the matters upon 9 which Mr O'Connor has addressed you on are also 10 relevant, potentially, to your findings under rule 25 11 when it comes to whether there are factors that may 12 prevent future deaths. 13 So, that is something to bear in mind. 14 And secondly, systems; whether there was 15 a systematic failing, and Mr Taylor's death may be 16 informative in relation to whether there were particular 17 systems at work, in terms of how the police were 18 investigating the suspicious deaths, that may well show 19 or may will be indicative of potential failures. 20 So, for those reasons, at this stage, we say that 21 all of these matters should remain within the scope. 22 JUDGE MUNRO: So, so far as D to F in the list of issues, 23 which are the controversial sections, how do you say the 24 adequacy of the investigation is relevant, as opposed to 25 the fact of it? You say it goes to the question of</p> <p style="text-align: center;">Page 17</p>	<p>1 a systematic failing. I say the word "failing" -- 2 obviously nothing's been determined as yet, or an 3 individual matter relating to individuals. 4 My second submission is by way of analogy with 5 medical inquests. Madam, you will be familiar that many 6 medical organisations conduct serious untoward incident 7 investigations, serious investigation reviews, called 8 SIRIs. It's not unheard of, but surprising, if that 9 material is not placed before a coroner. And arguably, 10 that is an investigation that is not causative of any 11 death; it's the organisation looking at what happened 12 and forming a view. That material is routinely placed. 13 JUDGE MUNRO: What material? 14 DR VAN DELLEN: The serious untoward incident report; the 15 hospital's own investigation; the Mental Health Trust's 16 own investigation; the PPO investigation in prison 17 deaths. That material is routinely placed before 18 a coroner at inquests, and it's not suggested that that 19 investigation is not causative and shouldn't be looked 20 at by the inquest. 21 And looked through that prism or that perspective, 22 Mr Taylor's investigation may well form material that 23 would fall into that broad category of an investigation 24 which occurs after a death. 25 My third submission is in relation to conclusions</p> <p style="text-align: center;">Page 19</p>
<p>1 whether there's a prevention of future deaths issue 2 here? 3 MR THOMAS: Exactly. Exactly. 4 JUDGE MUNRO: Right. Thank you. Dr van Dellen. 5 DR VAN DELLEN: Madam. May I echo my learned friend's, 6 Mr Thomas', submissions? I'm grateful to my learned 7 friend for the police's submissions where he draws 8 a distinction between facts and adequacy. 9 If I may address your Honour on three areas in 10 relation to that. The first is a distinction between 11 systematic and individual; the second is by way of 12 an analogy to medical inquests; and the third is in 13 relation to conclusions and preventing future deaths 14 reports. 15 In relation to the systematic and individual, it's 16 been touched on by my learned friend, Mr Thomas. 17 Effectively, the debate in many inquests is: is this 18 an omission by an individual or is this a wider, more 19 systematic organisational omission? And that debate, 20 effectively, is seen in every inquest, whether it be a 21 medical inquest, or police inquest or prison inquest. 22 By not looking at the investigation into Mr Taylor's 23 death potentially, madam, you will be deprived of the 24 opportunity of forming a view, whether in summing-up or 25 in your conclusion, as to whether what emerges is</p> <p style="text-align: center;">Page 18</p>	<p>1 and again, may I echo my learned friend, Mr Thomas', 2 submissions in that regard? 3 Conclusions in relation to preventing future death 4 reports are not restricted to matters that are causative 5 in an article 2 inquest; they are in fact not even 6 restricted to matters that are possibly causative. 7 A coroner or a jury is entitled, and arguably 8 should, make findings of fact in relation to facts which 9 bear upon a preventing future death report. 10 There is a real danger, in my respectful submission, 11 that, effectively, that's carved out and a preventing 12 future death report may be the poorer for not having had 13 the benefit of looking at the investigation of all four 14 deaths. 15 But madam, unless I can assist any further in that 16 regard. 17 JUDGE MUNRO: No, thank you. 18 DR VAN DELLEN: Thank you. 19 JUDGE MUNRO: Yes. 20 MR O'CONNOR: In my submission, at least as far as what you 21 should be doing now on this issue, there is almost 22 nothing, if in fact nothing, between the submissions 23 that you've heard. 24 The only question for you, at this stage, is how to 25 draft the list of issues.</p> <p style="text-align: center;">Page 20</p>

<p>1 As a number of people have identified, there will, 2 of course, be questions down the line about issues to be 3 left to the jury, and so on. That is not anything, 4 clearly, that you have to make a ruling on now. 5 As far as issue 19 and subsections D, E and F are 6 concerned, in our submission, Mr Skelton is not -- I'm 7 not sure if Mr Skelton did actually suggest that those 8 subparagraphs should be, as it were, deleted, but if 9 that was the consequence of what he was submitting, we 10 respectfully submit that that is not the correct 11 approach. 12 It's possible to read those three subparagraphs in 13 different ways. 14 JUDGE MUNRO: Can I just find them? Can you remind me -- 15 MR O'CONNOR: The list of issues is behind tab C2 and it's 16 on the fifth page of that document. 17 JUDGE MUNRO: Yes. 18 MR O'CONNOR: So, to take D, for example, the adequacy and 19 consequences of the decision to treat the scene as 20 non-suspicious, that feeds into one of the examples I 21 gave, because if you recall it was the same officer who 22 was involved in that decision-making, both in 23 Mr Kovari's death, the second, and also Mr Taylor's 24 death, which we're looking at here. 25 Now, if one reads that sentence as, if you like, a</p> <p style="text-align: center;">Page 21</p>	<p>1 whether it was taken consistently with training and 2 policies. In other words, you will want to understand 3 whether it's an adequate decision. 4 So, in our submission, both similar reasoning 5 applies to D, E and F. It's simply if one reads them 6 as, effectively, directions towards a fact-finding 7 exercise, rather than making, in the end, decisions 8 which might involve some sort of causative analysis, 9 then they can and should be left in that list of issues. 10 I will be making submissions in a slightly different 11 context in a moment, that one mustn't over read this 12 list of issues. As I have said already, it is a living 13 document. You will be hearing other submissions 14 relating to it in due course. 15 But so far as this particular issue is concerned, in 16 our submission, it's not necessary to delete those 17 subparagraphs. I endorse what my learned friends have 18 said on a slightly separate point, about these matters 19 also being relevant to the possible prevention of 20 further death reports. That is another basis on which 21 these matters can be left in. 22 Madam, in the end, it will have been of great value 23 to have ventilated this issue now. We all know where we 24 stand; to some extent, battle lines have been drawn. In 25 the end, in my submission, there is no need for you to</p> <p style="text-align: center;">Page 23</p>
<p>1 signpost towards a finding that the jury might make in 2 due course, then we accept, as I've already accepted 3 that that is it not going to be something that is 4 possible in respect of the investigation into 5 Mr Taylor's death. But it is equally possible, we would 6 submit, to read that as directing the investigation 7 towards a fact. 8 Mr Skelton sought to draw a distinction between 9 a fact and a matter of opinion, but the adequacy of 10 a decision is, after all, we would submit, a fact. 11 To take that example, you will be looking at whether 12 the decision ultimately -- the most important question 13 for you in this set of facts will be the decision as 14 to -- the question of whether the decision to treat 15 Mr Kovari's death as non-suspicious was appropriate, 16 whether it was a failing, whether it led to other 17 things. 18 The way in which we've put it is that asking 19 yourself similar questions about the same process in 20 Mr Taylor's death will assist you. 21 The analysis won't stop when you get to the stage of 22 understanding that a similar decision was taken in 23 Mr Taylor's case. You will want to go on and understand 24 why that decision was taken; whether it was taken for 25 the same reasons as the decision in Mr Kovari's case;</p> <p style="text-align: center;">Page 22</p>	<p>1 delete those subparagraphs from the list of issues. 2 JUDGE MUNRO: Yes, thank you. 3 MR O'CONNOR: Madam, turning to the next issue that arises 4 from this list of issues, for this matter the focus is 5 paragraphs 21 and 22 of the list of issues. 6 Again, madam, the starting point is a large matter 7 of agreement between all of those involved in these 8 proceedings. Everyone is agreed that one of the core 9 issues to be investigated at the inquests will be that 10 of whether the police investigations into any of the 11 four deaths were affected by prejudice in respect of the 12 sexuality of Mr Walgate, Mr Kovari, Mr Whitworth, 13 Mr Taylor, or for that matter, Mr Port. And that issue 14 is currently represented by issues 21 and 22 on the 15 list. 16 As a matter of drafting history, you will have seen 17 that, at an earlier stage, that broad issue is 18 represented by different questions that were repeated 19 within each of the subsections relating to each of the 20 four deaths, but it's been moved. In my submission, 21 that's perhaps helpful for doing it in this way, so that 22 it only appears once within the generic issues section. 23 At the same time, another amendment was made. The 24 earlier drafting referred to a question of whether any 25 of the individuals' sexuality had any indirect or direct</p> <p style="text-align: center;">Page 24</p>

<p>1 impact on the decisions taken during the investigation, 2 and the Metropolitan Police suggested that that language 3 was very close to that of the Equality Act. And so, 4 using it in our list of issues, at least created a risk 5 that the inquest might be moving towards, or perceived, 6 as determining issues of civil liability, which 7 of course is prohibited by section 10 of the Coroner's 8 and Justice Act.</p> <p>9 Madam, it was for that reason, that we altered the 10 drafting slightly, so that it now simply reads or asks 11 the question whether the police investigations of any of 12 the four deaths were affected by prejudice, and then 13 there are the words "or ignorance in respect of the 14 sexuality of the individuals involved".</p> <p>15 The written submissions that have been filed on 16 behalf of the families make the very good point that 17 there is limited value in detailed drafting points being 18 taken about a document of this nature, at this early 19 stage of the proceedings, and we very much agree with 20 that point.</p> <p>21 You're going to hear from them, but I don't think 22 there's any real disagreement amongst us about the issue 23 that is going to be determined. There will be a good 24 deal of disclosure and evidence relating to it, and so 25 far as the issue needs to be refined, or perhaps</p> <p style="text-align: center;">Page 25</p>	<p>1 use the very general word "prejudice" at this stage and 2 then see where it takes us.</p> <p>3 That is all I wanted to say on that issue, but 4 I don't know whether my learned friends had any 5 submissions to make.</p> <p>6 JUDGE MUNRO: Mr Clark.</p> <p>7 MR CLARK: Thank you, madam. I will be, hopefully, very 8 brief. Three brief points. The first is to restate 9 what was said in our written submissions and by learned 10 counsel to the inquest, that effectively this is not 11 a document to be read like an insurance contract.</p> <p>12 JUDGE MUNRO: No.</p> <p>13 MR CLARK: That may go some way to undermining what I'll say 14 next, but because of its importance I will make the 15 point. The point is that if it's suggested that the 16 wording of "prejudice or ignorance" remains in, then the 17 reason that -- this is really the trigger for our 18 objections in this, was the idea that it would be a task 19 for the inquest, whether that be you or the jury, to 20 make a distinction between "prejudice" and "ignorance" 21 as if they were different categories --</p> <p>22 JUDGE MUNRO: I haven't heard everybody, but my view is that 23 "or ignorance" is extremely ambiguous and my current 24 view is that that should be deleted, and then I suspect 25 what you're about to say doesn't need to be said.</p> <p style="text-align: center;">Page 27</p>
<p>1 representations made that further disclosure needs to be 2 obtained, that that will take place in due course.</p> <p>3 Just before I sit down, madam, I think two further 4 points. One is that, in our submission -- and this 5 reflects what we said in our written submissions -- the 6 best way to draft this question would simply be to 7 delete the words "or ignorance".</p> <p>8 It seems to us that the simple reference to the 9 question of whether the police investigations were 10 affected by prejudice covers both what one might call 11 "direct or indirect", or "conscious or unconscious" 12 prejudice. There is no need to overspecify the matter.</p> <p>13 So, we would submit that those words "or ignorance" 14 could and should be deleted. That was the first point.</p> <p>15 The second point, Dr van Dellen has raised the 16 question of a further distinction between prejudice on 17 the part of individual police officers, on the one hand, 18 and institutional prejudice, on the other.</p> <p>19 Again, in our submission, both of those concepts are 20 covered by the use of the word "prejudice". There will 21 be, as I've said, plentiful evidence about these 22 matters. There is no need, in my submission, to adapt 23 the drafting to cover that point.</p> <p>24 And in fact, those few differences that have emerged 25 perhaps reinforce the point that it is easier simply to</p> <p style="text-align: center;">Page 26</p>	<p>1 MR CLARK: I won't labour the point, madam.</p> <p>2 The last point is with that spirit in mind. It's 3 just a slightly different suggestion as to the wording 4 that could play the role of what would be there in place 5 of the single word "prejudice". We would suggest that 6 there may be some argument to say that the real question 7 is simply whether irrelevant considerations -- whether 8 they pertain to sexuality or otherwise -- but whether 9 irrelevant considerations affected the investigations.</p> <p>10 I advance that, really, because the word "prejudice" 11 may lead a jury to be more reticent about making 12 a finding about something, which really is as simple as 13 whether or not a relevant consideration has impacted on 14 the investigation, or similarly inappropriate 15 considerations, as that may do the same job.</p> <p>16 JUDGE MUNRO: Well, we're a long way from questions for 17 a jury, aren't we? That might be the time to make that 18 point. I would have thought that the word "prejudice" 19 would cover all aspects, including relevant 20 considerations and irrelevant considerations, insofar as 21 they impacted on decisions that were made.</p> <p>22 MR CLARK: I won't detain you any further with points that 23 may be better addressed at the conclusion.</p> <p>24 DR VAN DELLEN: Essentially, this is in paragraph 8 of my 25 written submissions. Apologies this reached you so</p> <p style="text-align: center;">Page 28</p>

<p>1 recently. It's in respondent to my learned friend's, 2 Mr O'Connor's, submissions. It's just, effectively, the 3 significance of scope is that it informs disclosure, 4 madam, as you're fully aware. And directions you may 5 make about disclosure will be triggered about whether 6 matters of inside scope or outside scope. 7 And the reason why I belabour perhaps the 8 institutional point in paragraph 8 is I would hate to be 9 in a position where the inquest begins and there's a 10 suggestion that material hasn't been disclosed from the 11 Metropolitan Police Service covering institutional 12 discussions about this issue, the issue of bias within 13 the institution. 14 My first concern, madam, is that there is 15 a collective agreed understanding of the significance of 16 institutional bias. 17 My -- 18 JUDGE MUNRO: Yes. 19 DR VAN DELLEN: My second concern is -- perhaps, again, my 20 learned friend, Mr Clark, referred to an insurance 21 construction point; it may be a Chancery construction 22 point, but I would hate it to be thought that prejudice 23 means an individual's prejudice rather than it 24 reflecting an institutional bias or institutional 25 prejudice.</p> <p style="text-align: center;">Page 29</p>	<p>1 promptly. The reason for my paragraph 8 is that it 2 wasn't clear to me, having read the written submissions 3 from my learned friend, Mr Skelton, on behalf of the 4 police service. 5 JUDGE MUNRO: Right. Thank you. 6 Mr Skelton, can you assist on that? Mr O'Connor's 7 just said that the word "prejudice" can cover both 8 individual and systematic prejudice. 9 MR SKELTON: It could conceivably, I have to accept that. 10 I'm aware of changing the wording as drafted, madam. 11 Your counsel -- originally, I think we had suggested 12 "prejudice" and "ignorance". I would, I'm afraid, 13 perhaps, I hope not pedantically, draw a distinction 14 between those two nouns. 15 JUDGE MUNRO: There's certainly a distinction between the 16 two nouns. My concern was that they are -- potentially, 17 the words "or ignorance" are ambiguous. 18 MR SKELTON: And "ignorance" can be pejorative; it can be a 19 form of prejudice -- 20 JUDGE MUNRO: It could be not knowing or it could be 21 "ignorance", in a different sense of the word. 22 MR SKELTON: Yes, and Mr Gibbs' phrase "lack of 23 understanding", which I think he proffered in his 24 written submissions, I think captures the type of 25 ignorance that one is looking at. Because one is</p> <p style="text-align: center;">Page 31</p>
<p>1 Madam, you would have seen our views of the word 2 "bias" quite extensively in my written submissions, but 3 I would hate to think that "prejudice" would be narrowly 4 defined, rather than defined more broadly as the 5 institution potentially grappled with this particular 6 issue or not. 7 That very much reflects my learned friend, 8 Mr Clark's, submissions about not reading "prejudice" as 9 being too high a threshold, and incorporating 10 subconscious bias as well, and including institutional 11 subconscious bias. 12 It may be that my learned friends for the police 13 accept that and I'm tilting at a windmill. I didn't 14 elide that from their written submissions. 15 I appreciate -- I've had a brief discussion with my 16 learned friend, Mr O'Connor, outside, madam, as you will 17 expect, about whether the police in fact recognise that 18 institutional bias or institutional prejudice falls 19 within question 21. 20 My concern, and certainly Mr Waumsley's concern, 21 reading paragraphs 21 and 22, would be that that 22 recognition from the police that, yes, institutional 23 bias falls within scope, that that recognition is there. 24 If my learned friend, Mr O'Connor, is right and 25 we're all agreed on that issue, I can sit down very</p> <p style="text-align: center;">Page 30</p>	<p>1 ignorant of things, in terms of not knowing about 2 things, doesn't necessarily mean one is prejudiced and 3 biased. That, I'm sure, will come out in the evidence. 4 JUDGE MUNRO: Yes. 5 MR SKELTON: As long as that nuance is accepted as an 6 evidential possibility, then I don't object to the 7 wording. 8 Madam, I wouldn't, however, accept that 9 institutional bias, or institutional prejudice or 10 institutional homophobia should be included in the list 11 of issues, as it's presently drafted. I think that is 12 going too far. First, for pragmatic reasons, as 13 Mr O'Connor says, let's see where the evidence takes us. 14 It may be there's no bias or prejudice; it may be that 15 there is. If it's one person or more than one person, 16 that's where the evidence will take us. You don't need 17 to put any labels on it at this stage. 18 JUDGE MUNRO: Provided it doesn't affect disclosure? 19 MR SKELTON: Provided it doesn't affect disclosure, although 20 no doubt it will be an issue that senior witnesses will 21 be asked about, I imagine, from the MPS in due course: 22 is this something which you recognise could affect other 23 investigations, a lack of understanding about a certain 24 section of the community, for example? I would 25 hypothesise would be an issue.</p> <p style="text-align: center;">Page 32</p>

<p>1 There are other good reasons, though, why it 2 shouldn't be written into the scope explicitly at this 3 stage. First of all, it hasn't yet been defined fully, 4 in terms of which institution the Metropolitan Police 5 Service as a whole, the CID who investigated the murder 6 ultimately, or Barking and Dagenham Borough officers. 7 And that's an important distinction. If one is to 8 embark upon a wider investigation of an institution, 9 such as the Metropolitan Police Service, which is a huge 10 institution, then that widens the scope of the inquest 11 very considerably beyond the four murders, which you are 12 looking at in this context. 13 On that subject, madam, you'll be acutely aware this 14 is not a public inquiry in the manner of Stephen 15 Lawrence investigation and other public inquiries, where 16 one can look more thematically and more widely at wider 17 issues that may affect the wider public. You have 18 a statutory obligation to discharge the obligations 19 under the 2009 Act and to go no further than that. 20 So, with those words of caution, madam, I endorse 21 your counsel's proposal. 22 JUDGE MUNRO: Thank you. Can I just hear from Mr Gibbs? 23 MR GIBBS: I offered lack of understanding as a potential 24 alternative to ignorance. Of course, it would be of 25 great concern, and potentially relevant and therefore</p> <p style="text-align: center;">Page 33</p>	<p>1 point or to be overly emotive about it. But in terms of 2 the role of in any inquest, it is partly to allay public 3 concern about the matters that are the subject of that. 4 That is, lawfully, part of the role and function of 5 an inquest. 6 JUDGE MUNRO: But where we are, and we began this 7 discussion, was that the words in paragraph 21 would be 8 whether the police investigations of any of the four 9 deaths were affected by prejudice, on the basis that 10 both individual and systematic prejudice were included 11 in those words, and on the basis that this is 12 a provisional and working document that can be 13 fine-tuned after disclosure has been made and 14 everybody's seen the evidence, as it's likely to come 15 out. 16 DR VAN DELLEN: Yes, but my learned friend for the police, 17 Mr Skelton, appears to suggest that the institutional 18 prejudice, bias, however it's badged, would not fall 19 within that definition and would not fall within 20 systemic prejudice -- 21 JUDGE MUNRO: No, he said it may do. 22 DR VAN DELLEN: He made -- 23 JUDGE MUNRO: He said it may do. 24 DR VAN DELLEN: So, that's my first concern, is there 25 doesn't appear to be a recognition that it does and it</p> <p style="text-align: center;">Page 35</p>
<p>1 within the scope, if one of the later deaths had been 2 contributed to by prejudging one of the earlier deaths 3 by reference to sexuality. 4 Equally, you might think, madam, it would be of 5 similar concern if one of the later deaths had been 6 contributed to by the investigation into one of the 7 earlier deaths, having been imperfect by reference to 8 lack of understanding of sexuality. 9 So, either a prejudgment by reference to the 10 sexuality or a failure to understand a situation by 11 reference to sexuality might, in my submission, 12 potentially be relevant. Whether there's any great 13 advantage at this stage in arguing about the precise 14 wording, I leave to the court. 15 JUDGE MUNRO: Yes. Thank you. Dr van Dellen, did you want 16 to say anything else? 17 DR VAN DELLEN: Yes, I'm very grateful, madam. 18 Madam, hopefully, you can see the very great concern 19 that there is about the police service saying that 20 institutional whatever it's called, prejudice, bias, 21 lack of understanding, ignorance, whatever term and 22 whatever taxonomy is applied to it, there is 23 understandable public concern about the fact that there 24 have been four murders in east London, and the manner in 25 which they took. And I'm not saying this is a jury</p> <p style="text-align: center;">Page 34</p>	<p>1 should. It's highest it's put it is "may". 2 My second concern is my learned friend, Mr Skelton, 3 said of course senior witnesses, senior officers from 4 the Metropolitan Police can, and no doubt will, be asked 5 questions about institutional bias. 6 With respect, the difficulty is that, if the 7 Metropolitan Police don't disclose material that bears 8 on that question, that will inevitably diminish the 9 ability to ask questions about that particular issue. 10 Either the issue of institutional bias -- 11 JUDGE MUNRO: That's why I said to Mr Skelton, bearing in 12 mind the disclosure position. 13 DR VAN DELLEN: Slightly. 14 JUDGE MUNRO: That's why your argument, at the moment, is 15 premature because we don't know what form the 16 disclosure's going to take yet. 17 DR VAN DELLEN: Absolutely, about I'm very conscious the 18 reason why there are such careful submissions about 19 scope, bearing in mind everything my learned friends, 20 Mr O'Connor, Mr Thomas and Mr Clark, have said about not 21 being overly insurance contract driven about it, is 22 because of a concern that the Metropolitan Police are 23 saying: well, institutional bias is not falling within 24 question 21. 25 Madam, what would be of assistance would be for a</p> <p style="text-align: center;">Page 36</p>

<p>1 very clear steer to be given by the court to say: well, 2 actually, institutional bias is part -- because these 3 are four murders, institutional bias is an important 4 part of what this inquest is going to be looking for. 5 That is not a mad scamper across green fields. That 6 is a core function, I would respectfully submit, under 7 the 2009 Act, a core function of an inquest. 8 I'm very aware my submissions don't improve with 9 repetition, madam, so unless I can assist any further in 10 that regard. 11 JUDGE MUNRO: No, thank you. 12 MR O'CONNOR: Madam, I hope it may allay some of 13 Dr van Dellen's concern, but I certainly didn't 14 understand Mr Skelton to be driving his submissions 15 towards a point where he would be entitled to argue at 16 some later point that paragraph 21, the word "prejudice" 17 within that paragraph did not include the concept of 18 institutional bias. 19 JUDGE MUNRO: He said the opposite, he said they may do. 20 MR O'CONNOR: I think we can all agree that the 21 investigation will not stop at the point where we have 22 established whether the individual officers were or were 23 not prejudiced, or biased, or whatever the adjective we 24 use it. It will, clearly, need to go further than that. 25 As I understand Mr Skelton's submissions, he was simply</p> <p style="text-align: center;">Page 37</p>	<p>1 or not. On balance, I think our submission is that 2 "prejudice" is enough for the time being, but if you 3 take a different view, they could be added. 4 JUDGE MUNRO: Well, it is different, for the reasons that 5 Mr Gibbs articulated. I mean, speaking to the facts of 6 these deaths, if it were the case that an officer had a 7 lack of understanding of about GHB, and what it might do 8 or not do, or how it might be ingested or not ingested, 9 that could be highly relevant, so I think I am in favour 10 of adding the words "lack of understanding". 11 MR O'CONNOR: So be it, madam, we will add them. 12 JUDGE MUNRO: Thank you. 13 MR O'CONNOR: But with that amendment, can I then -- in 14 fact, that brings to an end the debates about the 15 content of the scope, that list of issues, and can I 16 invite you, as I said at the beginning, to adopt that 17 list as the provisional scope of these inquests? We 18 will draw up a further investigation of the document 19 reflecting that, madam, and circulate it. 20 JUDGE MUNRO: Yes. I'm certainly consent to say at this 21 stage that the list will include the questions in 22 relation to Mr Taylor, and the investigations, including 23 down to (f), at this stage, on a provisional basis. 24 MR O'CONNOR: Yes. I'm grateful. 25 Madam, the last point arising from my submissions,</p> <p style="text-align: center;">Page 39</p>
<p>1 sounding a note of caution about quite how far it might 2 be appropriate for what, at the end of the day, are 3 inquests into four deaths, rather than a public inquiry, 4 to go in its examination of this issue. 5 JUDGE MUNRO: Yes. 6 MR O'CONNOR: And that is a matter, madam, which will be 7 driven, to some extent, by the requests for evidence, 8 both in terms of witness evidence and in terms of 9 disclosure, that we make of the Metropolitan Police. 10 And madam, everyone in court can be assured that 11 this is an issue that we are very alive to. We will be 12 making disclosure requests to the Metropolitan Police 13 relating to these institutional issues, and we'll also 14 be asking for these issues to be addressed in witness 15 evidence. 16 If any of the interested persons think that those 17 documents or that evidence doesn't go far enough, 18 of course they can raise it with you. Equally, if 19 Mr Skelton thinks that our requests go too far, then can 20 he come back as well. 21 JUDGE MUNRO: Yes. 22 MR O'CONNOR: So, madam, I don't think we need any 23 amendments relating to the institutional point. 24 Madam, we have a relatively open mind as to whether 25 it would assist to add the words "lack of understanding"</p> <p style="text-align: center;">Page 38</p>	<p>1 although it doesn't relate to the drafting, was simple 2 a query that was raised about the judicial review. We 3 have raised in our submissions, of course, one other 4 factor that may affect the scope of these inquests going 5 forward, is the judicial review proceedings that have 6 been launched, and there was a query about exactly what 7 those proceedings involved from Mr Gibbs. 8 Of course, his clients, until today, were not 9 interested persons in the inquests, and as a result, 10 they were not served with the papers as interested 11 parties to the judicial review proceedings. 12 Simply, so there is no doubt about the matter, 13 madam, a judicial review claim was issued by 14 Hudgeell Solicitors, who instruct my learned friend, 15 Mr Thomas, who is acting for the families, on 16 11 October. All interested persons at the date of the 17 issue were identified as interested parties to those 18 proceedings. 19 The claim challenges your ruling following the last 20 PMI, which was to the effect that it would not be 21 permissible for you to include the conduct of the 22 original inquests into the deaths of Mr Kovari and 23 Mr Whitworth within the scope of these inquests. 24 Madam, you have served an acknowledgment service and 25 summary grounds of defence, as have the Metropolitan</p> <p style="text-align: center;">Page 40</p>

<p>1 Police, and that is where matters rest at moment and no 2 directions have been issued by the High Court, and nor 3 has any decision been made on the question of 4 permission. 5 JUDGE MUNRO: All right. Thank you. So far as disclosure 6 of that material is concerned, is it going to be 7 disclosed to Mr Gibbs and Mr Shaw? 8 MR O'CONNOR: Certainly, your acknowledgement of service has 9 been disclosed to Mr Gibbs today. 10 JUDGE MUNRO: Yes, Mr Shaw? 11 MR O'CONNOR: I don't believe it has. I mean, in fact what 12 will need to happen is, now they have interested person 13 status in the inquest, they will be made, no doubt, 14 interested parties to the judicial review and they will 15 obtain those documents, in any event. 16 JUDGE MUNRO: Yes. 17 MR O'CONNOR: So, madam, that deals with that item on the 18 agenda. 19 The next item is the question of disclosure, and 20 that is addressed in general terms in the disclosure 21 updates that were provided to the parties, which you'll 22 find behind tab C1 in the bundle. 23 Madam, as you know, the starting point for 24 disclosure in these proceedings was the lengthy report 25 that was prepared by the IOPC. That document, which</p> <p style="text-align: center;">Page 41</p>	<p>1 in fact relates to a point we make over the page, in the 2 disclosure update at paragraph 9D. 3 In that paragraph we say -- well, I'll quote from 4 it -- we refer to material that was obtained by the 5 investigation team in Operation Lilford. 6 Operation Lilford, of course, being the Metropolitan 7 Police investigation into Mr Port that led to his 8 prosecution and conviction. So, in other words not the 9 immediate investigation into any of these four deaths, 10 but the investigation that was triggered once he'd been 11 identified. 12 So, all of the material gathered by 13 Operation Lilford as to the actions of Stephen Port, and 14 indeed of Messrs Walgate, Kovari, Whitworth and Taylor, 15 from the time Mr Port first met them, and what we say at 16 paragraph 9D is that our present view is that this 17 information will be useful and manageable if it's 18 contained in a witness statement, setting out a summary 19 of what was established in each case and what 20 investigative methods were deployed. 21 And my learned friend, Mr Thomas, raises some 22 concern about that and has said in his submissions that 23 it might be more appropriate if the underlying documents 24 themselves should be disclosed, rather than a summary. 25 We've addressed this point at some length in our</p> <p style="text-align: center;">Page 43</p>
<p>1 runs to some several hundred pages, was disclosed 2 earlier this year. 3 JUDGE MUNRO: Yes. 4 MR O'CONNOR: The next stage in disclosure was what we have 5 described as the "IOPC used material". What we mean by 6 that is the material that the IOPC referred to in their 7 report. You will see at paragraph 3 of this update, 8 which is dated 1 November, that it was, at this stage, 9 anticipated that the majority of this material will be 10 disclosed by or shortly after 15 November, that is 11 today. 12 In fact, I can say that practically all of that 13 material, which runs to some 4,000 pages of 14 documentation, has now been disclosed. I think there 15 are five or six documents only, which are a few 16 practical issues relating to them, and they haven't been 17 disclosed. But other than that, that entire tranche of 18 material, the IOPC used material, has now been disclosed 19 on the electronic system and so is available to 20 interested persons. 21 So, the short point is, madam, we are making good 22 progress with the disclosure exercise, although there is 23 some way to go. 24 The issue that's been raised by my learned friend, 25 Mr Thomas, in his written submissions about disclosure</p> <p style="text-align: center;">Page 42</p>	<p>1 written submissions, and I hope that what we've said 2 there allays the concern that was expressed. 3 In summary, the position is that all of the material 4 obtained by Operation Lilford has been provided to us by 5 the Metropolitan Police. All of that material is being 6 considered by your team. 7 Our reference to summaries is not to be taken at all 8 as any sense that we are taking any short cuts. And 9 indeed, a large number of those underlying documents 10 that have been provided to us by the Metropolitan Police 11 will be disclosed to interested persons. It is simply 12 that there are some categories of documents where the 13 underlying documents are particularly voluminous and/or 14 that they contain sensitive information where, at least 15 in the first instance, it seems to us, it will be more 16 proportionate and in fact more helpful to provide 17 disclosure by way of a summary. 18 Madam, if I could just try and put some flesh on 19 those bones by providing an example. As I've said, one 20 of the topic areas of this type of material that we have 21 is evidence about the movements of Port and the 22 deceased. And there is a voluminous quantity of CCTV 23 product involved in that underlying evidence; for 24 example, stills from the CCTV footage; schedules of what 25 each of those stills shows; plans; location of CCTV</p> <p style="text-align: center;">Page 44</p>

<p>1 cameras; timings, and so on.</p> <p>2 In fact, that material is very difficult to make</p> <p>3 sense of because what it amounts to is a large number of</p> <p>4 pieces of a jigsaw, which one has to spend time</p> <p>5 putting together. In our submission, it is far better</p> <p>6 to provide a summary of what that material shows, rather</p> <p>7 than simply unloading on the IPs large quantities of the</p> <p>8 basic material like that, which they would then have to</p> <p>9 make sense of.</p> <p>10 That is one example -- I won't go into detail about</p> <p>11 others, but that is the type of material that we have in</p> <p>12 mind. As I said, what we are proposing is simply to</p> <p>13 provide these summaries in the first instance.</p> <p>14 If, having considered the summaries, any of the</p> <p>15 interested persons want to see the underlying documents,</p> <p>16 or perhaps more likely a few of the underlying</p> <p>17 documents, then of course they can ask to see those and</p> <p>18 make that application.</p> <p>19 I would add, madam, that those summaries that we are</p> <p>20 referring to are likely to be of great assistance when</p> <p>21 we actually get to the hearing as well, because that</p> <p>22 dense underlying material I refer to is very</p> <p>23 indigestible as evidence and it is likely to be much</p> <p>24 easier to work on the basis of summaries.</p> <p>25 Madam, that's all I wanted to say about that point.</p> <p style="text-align: center;">Page 45</p>	<p>1 off, as I said more than once this afternoon, as we</p> <p>2 haven't in fact finished the process of disclosure yet.</p> <p>3 I'm not, if I may, going to give a time where we do</p> <p>4 that. We will simply carry on with the process. We</p> <p>5 will deal with disclosure and as soon as we can, we will</p> <p>6 send round a further copy of that list with some</p> <p>7 proposals about who should be called, and so on.</p> <p>8 The service of the list at this stage on interested</p> <p>9 persons was not intended to indicate that we're asking</p> <p>10 anything of them at this stage, or for that matter, to</p> <p>11 indicate how quickly we will get on with the next stage.</p> <p>12 It was simply to show them our working so far.</p> <p>13 And of course, it is a very long list, but if we've</p> <p>14 missed anyone, then we would be glad to be told at this</p> <p>15 stage.</p> <p>16 Madam, I can be even shorter on expert evidence.</p> <p>17 Interested persons know Mr Stride has been instructed.</p> <p>18 He was working on this report, and they will see it as</p> <p>19 soon as it is ready for them to see it, but it may be</p> <p>20 that there's very little more to say about his report at</p> <p>21 this stage.</p> <p>22 Madam, the next issue to come to is the question of</p> <p>23 the jury. Before we come to that, I don't know if</p> <p>24 anyone has anything to say about any other witnesses.</p> <p>25 JUDGE MUNRO: Mr Skelton?</p> <p style="text-align: center;">Page 47</p>
<p>1 I don't know --</p> <p>2 JUDGE MUNRO: Does that allay your fears, Mr Thomas?</p> <p>3 MR THOMAS: I'm reassured. I am.</p> <p>4 JUDGE MUNRO: If I may say so, it's a very good example, the</p> <p>5 police will have accumulated numerous discs of CCTV,</p> <p>6 many of which none of the five relevant people appear</p> <p>7 and produced then a compilation --</p> <p>8 MR THOMAS: Madam, if I can cut this short, I'm reassured by</p> <p>9 what my learned friend has said. You can understand why</p> <p>10 we've taken the position we've taken in relation to the</p> <p>11 summary. My friend has explained it. If there will be</p> <p>12 an opportunity later on, once we've had the chance to</p> <p>13 consider the summary, if we need to have a look at some</p> <p>14 of the underlying documents and there isn't a problem.</p> <p>15 JUDGE MUNRO: No, all right. Thank you very much.</p> <p>16 MR O'CONNOR: I'm grateful, madam.</p> <p>17 Madam, I can take the next two items on the agenda</p> <p>18 very briefly. They are witnesses and expert evidential.</p> <p>19 As far as witnesses is concerned, we've done a first</p> <p>20 draft of a witness list. We hope that's of some</p> <p>21 assistance to the interested persons.</p> <p>22 The next step to be taken in that regard is for us</p> <p>23 to expand on that by indicating on the list which</p> <p>24 witnesses we propose should be called, or whose</p> <p>25 statements should be read and so on. That is some way</p> <p style="text-align: center;">Page 46</p>	<p>1 MR SKELTON: Madam, yes. As your counsel noted in their</p> <p>2 written submissions, the MPS have raised concerns about</p> <p>3 Mr Stride's experience and qualifications, and therefore</p> <p>4 the authority with which he can express opinions about</p> <p>5 the conduct of these murder investigations.</p> <p>6 We remain concerned that this could affect adversely</p> <p>7 the validity of his expert opinions, and thereby the</p> <p>8 conclusions reached at these inquests, but we appreciate</p> <p>9 what your counsel have said, that he has been instructed</p> <p>10 and we will see how matters develop.</p> <p>11 May I just then go back to a point I made earlier,</p> <p>12 if I may? In respect of the ambit of Mr Stride's</p> <p>13 instructions, which echoes the point I made earlier</p> <p>14 about the adequacy of the police investigation into</p> <p>15 Mr Taylor's death.</p> <p>16 If, madam, you agree that there should be a</p> <p>17 distinction between the findings of fact in respect of</p> <p>18 how that murder investigation was conducted, and</p> <p>19 qualitative findings as to the adequacy or otherwise of</p> <p>20 the decision-making and the actions that were taken,</p> <p>21 then the latter should fall away from Mr Stride's</p> <p>22 instructions.</p> <p>23 Madam, as I have accepted earlier, the MPS accepts</p> <p>24 that the facts based on your counsel's submissions that</p> <p>25 pertain to Mr Taylor's investigations may shed light on</p> <p style="text-align: center;">Page 48</p>

<p>1 the earlier investigations, but the adequacy we don't 2 accept does so, and indeed may muddy the waters as to 3 the jury's understanding of the overall adequacy of the 4 three earlier murder investigations, which may or may 5 not be relevant to the deaths. 6 JUDGE MUNRO: Thank you. 7 MR GIBBS: Yes, might I just say, on the instruction of 8 Mr Stride, we've offered, and I repeat it for the 9 record, some submissions about that, which were dated 10 2 October, which I know that you will have seen. They, 11 I suspect, will not have surprised you in terms of the 12 way such experts are normally instructed. They are 13 different from the way in which this expert has been 14 instructed, or it is proposed that he be instructed. 15 There is, in my submission, a distinction between 16 a list of issues, which we understand of course for 17 today's purposes is an adaptable document; it's 18 a provisional document; it will require to be revisited 19 when disclosure has been given in fuller form, on the 20 one hand, and the instructions to an expert witness as 21 to what his or her task is. 22 JUDGE MUNRO: I don't think I have your document to hand, 23 Mr Gibbs. 24 MR GIBBS: It's entitled "Outline Instructions to a Policing 25 Expert" and it's a document which, on one view, teaches</p> <p style="text-align: center;">Page 49</p>	<p>1 In any event, I don't accept the distinction 2 Mr Skelton seeks to draw again between matters of fact 3 and matters of opinion. In my submission, without going 4 back into that debate about the fourth investigation as 5 regards the first three, Mr Stride will give his opinion 6 about the adequacy of the first three investigations. 7 In just the same way as we were discussing earlier, his 8 views about the adequacy of the fourth investigation may 9 well assist in us understanding his views about the 10 first three. So I don't understand -- 11 JUDGE MUNRO: It's a similar fact point again. 12 MR O'CONNOR: It is, and I don't accept that there should, 13 therefore, be any cut-off in the way in which he's 14 instructed. It may be that, when we get to it, we may 15 agree that there should be limits on the extent to which 16 on the questions that Mr Stride is asked. But, again, 17 that is a different matter and we'll come to it in due 18 course. 19 JUDGE MUNRO: All right. Thank you. 20 Yes, Mr Clark. 21 MR CLARK: Madam, just very briefly, it's the same thrust as 22 the point just made by my learned friend, counsel to the 23 inquest, in respect of the points made by Mr Skelton as 24 to the distinction between adequacy and fact. 25 Perhaps it may assist to make this somewhat</p> <p style="text-align: center;">Page 51</p>
<p>1 a grandparent to suck eggs. 2 JUDGE MUNRO: I know I've read it, but I haven't reread it 3 for the purposes of today. 4 MR O'CONNOR: I'm afraid it's not in the bundle. 5 MR GIBBS: I don't seek to address you about it now. 6 JUDGE MUNRO: Now. All right. 7 MR GIBBS: You may wish to revisit it. 8 JUDGE MUNRO: Yes, I will reflect on that. 9 MR GIBBS: Thank you. It was offered with some trepidation, 10 because obviously one didn't want to dictate to counsel 11 to the inquest at all, but it, in my submission, 12 certainly its design is unsurprising, as I repeat, 13 perhaps in the way in which that experts might 14 normally -- the open way in which such experts might 15 ordinarily receive their instructions. 16 MR O'CONNOR: Madam, just on that last point, as you say, 17 Mr Gibbs' document was seen by you and your team and it 18 was taken into account in the instruction of Mr Stride, 19 so I hope that provides some context. 20 As I've indicated, Mr Stride has been instructed, he 21 is working on his report. I would, therefore, make two 22 points in response to what Mr Skelton has said. The 23 first is that, to some extent, it is academic because 24 Mr Stride has been instructed and he is working on his 25 report.</p> <p style="text-align: center;">Page 50</p>	<p>1 additional point, which is that the distinction between 2 adequacy of the last of the investigations and adequacy 3 of the previous is in the broader context about the same 4 overall topic. 5 There is no possible relevance of facts in any of 6 the investigations, other than to speak to the question 7 of adequacy and vice versa. So, there's the idea that 8 you can separate out the last investigation and say 9 there's something which is, in practical reality, 10 different in terms -- whether it's about the task of 11 an expert or defining the scope for the purposes for 12 now. 13 There is no practical difference that can be drawn 14 from what you're being asked to distinguish. It may be 15 that that doesn't add anything to what's been said, but 16 I thought I would put the family's concerns on record. 17 JUDGE MUNRO: Yes, thank you. 18 Well, Mr O'Connor, as you say, Mr Stride has been 19 instructed. I'm certainly content for him to continue 20 to reflect on the matters about which he has been asked. 21 There may be very different considerations as to what 22 precise evidence he can give as and when the time comes. 23 MR O'CONNOR: Yes, I'm grateful. Madam, I think that then 24 does bring to us the question of a jury. 25 JUDGE MUNRO: Yes.</p> <p style="text-align: center;">Page 52</p>

<p>1 MR O'CONNOR: You will recall that this issue was put off 2 from the last hearing, partly because we recognise that 3 further work needs to be done on the question of scope 4 before you ruled on the question of jury, and 5 also Mr Gibbs at that point hadn't had access to the 6 IOPC report. 7 But those matters have now been rectified and the 8 written submissions that you received contain competing 9 submissions on the question of jury between Mr Gibbs, on 10 the one hand, and Mr Thomas and Mr van Dellen, on the 11 other. 12 Madam, I'm going to allow them to make their 13 submissions, but perhaps if I just introduce the matter 14 in this way. First of all, we say you can and should 15 rule on the question of jury now. There is no reason to 16 put it off any further. 17 The legal framework is section 7 of the Coroner's 18 and Justice Act, which you have behind tab 1 of your 19 authorities bundle. 20 JUDGE MUNRO: Yes. 21 MR O'CONNOR: And you will note, madam, first of all, 22 subsection 1: 23 "An inquest into a death must be held without a jury 24 unless subsection 2 or 3 applies." 25 So, the starting point is a presumption against</p> <p style="text-align: center;">Page 53</p>	<p>1 you to address. First of all, is there a mandatory 2 requirement under section 7(2)(b); and secondly, if not, 3 should you exercise your discretion under section 7(3). 4 As far as the mandatory requirement is concerned, 5 madam, the cases of Fullick, and also the senior 6 coroner's ruling in the Westminster Bridge inquest are 7 in the authorities bundle, and I believe you've had a 8 chance to read them. 9 JUDGE MUNRO: Yes, I have. I have read them both thank you. 10 MR O'CONNOR: I'm not going to take you to them, but in our 11 submission, really, there are a number of points you can 12 take from them. First of all, there is a reference to 13 the threshold, the reason to suspect threshold. Madam, 14 I'm sure that's a threshold you're very familiar with. 15 It's the same as the power of arrest threshold. It's 16 a low threshold, but as the senior coroner observes in 17 Westminster, it's solo as to encompass mere speculation. 18 As to the type of factual situation where the 19 criterion of an omission of a police officer, because 20 that's what we're dealing with here, will be met, in my 21 submission, the cases of Fullick and Westminster provide 22 you with some assistance, to the extent that they are 23 two ranging shots, if you like, at opposite ends of 24 a spectrum. 25 Fullick was a case where a vulnerable member of the</p> <p style="text-align: center;">Page 55</p>
<p>1 sitting with a jury. That's the first point. 2 JUDGE MUNRO: Yes. 3 MR O'CONNOR: Second point, subsection 2: 4 "An inquest must be held with a jury if the senior 5 coroner has reason to suspect ..." 6 And there are some criteria. 7 So, there we have a mandatory requirement that you 8 must sit with a jury if the criteria are met. 9 And the passage that is relevant for today's 10 purposes is sub-subsection (b): if you have reason to 11 suspect that the death resulted from an act or omission 12 of a police officer or a member of the service police 13 force in the course of execution of the officer's duty. 14 So, if you were satisfied that that condition is 15 met, then there is a mandatory requirement for a jury. 16 And the third point, subsection 3: 17 "An inquest into a death may be held with a jury if 18 the senior coroner thinks that there is a sufficient 19 reason for doing so. 20 So, there subsection 3 is a discretionary provision 21 which, if you like, counterbalances subsection 1. The 22 presumption is without a jury, but you have a discretion 23 to go against that presumption if you think there is 24 sufficient reason for doing so. 25 So, essentially, madam, there are two questions for</p> <p style="text-align: center;">Page 54</p>	<p>1 public, who had attended a police station to give an 2 interview, was simply left alone, plainly unwell, and 3 died. Those facts were found to satisfy the criteria 4 for a jury. That, in other words, amounted to 5 an omission which met that test. 6 At the other end of the spectrum, with the 7 Westminster Bridge inquest, the omission that was said 8 to satisfy the test was simply the omission of the two 9 armed officers in New Palace Yard to save PC Palmer from 10 being attacked by the terrorist. 11 And the point was made there was that, first of all, 12 of course, the immediate cause of death was nothing to 13 do with the police, it was the attacker; but secondly, 14 the causal link between what was described as the 15 omission and the death was slim, on the basis that there 16 was a very short period of time where the police 17 officers might have intervened. And in light of all the 18 circumstances explained by the chief coroner, it was 19 highly speculative whether they could have saved his 20 life, in any event. 21 Our case, this case, we respectfully submit, falls 22 between the two streams marked by the Fullick and 23 Westminster. On the one hand, as Mr Gibbs submits, the 24 deaths in these inquests, plainly, resulted from the 25 actions of Mr Port, so similar to Westminster, there is</p> <p style="text-align: center;">Page 56</p>

<p>1 a third party involved. They were not the direct or 2 immediate result of an act of omission by a police 3 officer in the purported execution of his duty. 4 So, in that sense, this case is clearly not on all 5 fours with Fullick where the omission was, in itself, 6 sufficient to engage the mandatory provisions. 7 On the other hand, as I say, these cases are not as 8 close to the other end of the other spectrum as that of 9 PC Palmer in Westminster, the acts or omissions of the 10 police in these cases were not a split second failure to 11 prevent a violent attack, but rather putting the case at 12 it highest, a series of possible investigative failures 13 into the first three deaths that could have caused the 14 last death of Mr Taylor. 15 We submit it is at least highly arguable, that 16 having regard to the low threshold for suspicion, there 17 are grounds to suspect that acts or omissions by police 18 officers in their investigations into the first three 19 deaths can be said to have resulted in the death of 20 Jack Taylor. 21 In our written submissions, we give the factual 22 example without in any way pre-judging the case. As for 23 the reasons for or appropriateness of this issue, it may 24 assist to consider the fact that the bed sheet found 25 with Mr Whitworth was not submitted for DNA analysis at</p> <p style="text-align: center;">Page 57</p>	<p>1 MR O'CONNOR: And they haven't waived in that at all. 2 And secondly, for all the reasons that I've said, 3 I've already explored, even if you conclude that this is 4 not a mandatory case, then it doesn't fall far short of 5 one, both in terms of an omission and also the 6 involvement of the police. 7 We also make the point on the other side of the 8 balance, at paragraph 31 of our submissions, another 9 factor, which is a factor you're entitled to take into 10 account, is the consideration that His Honour Judge Rook 11 took in one of the Deepcut inquests, that in essence, 12 complexity and volume of material being a fact weighing 13 against having a jury. He said in deciding not to 14 exercise his discretion in that case, it is an exacting 15 and difficult investigation into events that took place 16 17 years ago, for which a professional judge is well 17 suited. 18 Clearly, the passage of time isn't the same here, 19 but we submit that similar considerations apply on the 20 other side of the scale in this case. 21 That's all I wanted to say by way of introduction. 22 I'll have other submissions to make. 23 JUDGE MUNRO: Yes. So, Mr Thomas, your position remains the 24 same? 25 MR THOMAS: It does. It does. Madam, I'll be short.</p> <p style="text-align: center;">Page 59</p>
<p>1 a time when Mr Port's DNA was on the national DNA 2 database. So, that's the way we put it on the mandatory 3 limb, and it is highly arguable that it is satisfied. 4 Even if you are not satisfied that the mandatory 5 criterion is met, in our submission, there is a powerful 6 case for you exercising your discretion under the 7 discretionary limb. 8 We set out, madam, at paragraph 30 of our written 9 submissions, the matters that the Divisional Court 10 identified in the Fullick case that should be considered 11 in determining whether or not to exercise this 12 discretion. None of them are to be thought of as 13 determinative at the moment. 14 I won't read the list out, but you'll see that two 15 of them, first of all, the wishes of the family, and 16 secondly, the question of whether the facts of the case 17 are at least analogous or similar to a case where 18 a mandatory requirement would have been in place, are 19 relevant for you to consider and we say both of those 20 matters are in play here. The families have been 21 consistent in their expressed desire for these inquests 22 to be heard with a jury. They made that submission at 23 the very first PIR decision -- 24 MR THOMAS: That remains the position. 25 JUDGE MUNRO: Yes, so I understand.</p> <p style="text-align: center;">Page 58</p>	<p>1 I don't think there's much I need to add to what 2 Mr O'Connor has said. 3 Can I just direct you in the case of Fullick to the 4 passages that I would invite you to look at? 5 JUDGE MUNRO: Yes. 6 MR THOMAS: We say, firmly and squarely, this case falls 7 within section 7(2)(b), and we remind you, respectfully, 8 that that is a mandatory provision, and all you need at 9 this stage is reason to suspect that the death resulted 10 from an act or omission of, and it would be a police 11 officer, in the purported execution of that officer's 12 duty. 13 And the passages that you may find of assistance, 14 madam, are to be found at paragraph 34, where it makes 15 it plain that the reason to suspect the test has a low 16 threshold -- you'll see that there -- and is objective 17 in nature. 18 We would remind you that, if you go down to 19 paragraph 35, the second sentence, that the requirement 20 that the constable should before arrest, satisfy himself 21 that there is in fact reasonable grounds for suspicion, 22 is described as very limited. And madam, that's 23 something you're very familiar with, within the criminal 24 sphere. 25 Paragraph 36, first line, reasonable suspicion has</p> <p style="text-align: center;">Page 60</p>

<p>1 never been equated with prima facie proof. 2 And then, madam, we do take you to paragraph 37 and 3 the quote from the case of Davy. Do you see that, 4 madam? 5 JUDGE MUNRO: If you look at my version, I've highlighted 6 it. 7 MR THOMAS: So, madam, we invite you to look at that quote, 8 which you've got highlighted, so look at it again: 9 reason to suspect; low threshold; triggering the 10 obligation to empanel a jury; suspicion for these 11 purposes as being a state of conjecture or surmise 12 arising from the start of an investigation, which 13 obtained prima facie proof, et cetera, et cetera. 14 Then, madam, perhaps it could be summarised, bearing 15 in mind the facts that Mr O'Connor has touched upon, 16 particularly in relation to Mr Taylor's death, look at 17 the way that the Administrative Court puts it in the 18 very first sentence of paragraph 39, and that is: in 19 broad terms, the question to be answered is therefore as 20 follows: could or should the police have done more. 21 And note this, at this stage, nobody's inviting you 22 to answer that question, it's a question that is 23 a proper question for you to ask when deciding whether 24 or not to make a decision as to whether or not a jury 25 should be empanelled.</p> <p style="text-align: center;">Page 61</p>	<p>1 had all the disclosure, but you could, at this stage, 2 see how someone like me, representing the family, might 3 be putting various questions to various witnesses. 4 This is not a case that's going to be of real 5 difficulty or complexity for a jury, in terms of whether 6 the police should have done more in terms of their 7 investigations and the lines of the inquiry, as this 8 serial murderer went through various deaths. And in 9 particular the way that the -- and I know this is 10 sensitive, but the way that the deceased were left, the 11 similarities and so forth. 12 We say that this is a case that a jury would be able 13 to handle very easily, and the fact that there may be a 14 lot of paperwork is not something that will affect 15 a jury's ability to understand the potential omissions 16 that may be alleged against the police in this case. 17 Madam, those are my submissions. 18 JUDGE MUNRO: Thank you. 19 DR VAN DELLEN: Madam, I'll also be fairly brief and may 20 I again echo my learned friends, Mr O'Connor and 21 Mr Thomas', submissions, in particular the very cogent 22 submissions about the complexity of this, certainly in 23 relation to Mr Whitworth's death, there are a number of 24 discrete items which any member of the public can 25 readily understand were not followed up.</p> <p style="text-align: center;">Page 63</p>
<p>1 And we say that that question, if that's looked at 2 objectively, bearing in mind it's a low threshold, 3 of course, there's only one answer to that question at 4 this stage, that arguably there's a lot that the police 5 could and should have done. 6 So, we say, madam, in summary, that when you look at 7 the test under 7(2), you will be driven to the 8 inevitable conclusion that the jury should be 9 empanelled, and if there were any doubts, given how 10 close we say you would be under 7(2), we say you should 11 exercise -- if I'm wrong on 7(2), this is clearly a case 12 where your discretion should be exercised under 7(3), 13 for the reasons that Mr O'Connor has given, which I do 14 not repeat. 15 Can I just mention one final thing, just to deal 16 with -- Mr O'Connor's being balanced in his submissions 17 to you and one of the things he said is: on the other 18 side of the coin, in terms of the 7(3) discretionary 19 grounds that you could take into account is the 20 complexity of the case might be something that weighs 21 against sitting with a jury. 22 May I just address you very quickly on that? What I 23 say in relation to that submission is, quite simply, the 24 facts of this case and what is being potentially 25 alleged, and I -- madam, you'll appreciate we haven't</p> <p style="text-align: center;">Page 62</p>	<p>1 I have two main submissions, if I may. 2 You've heard submissions about reason to suspect 3 being a very low threshold. I'm not going for touch on 4 that. I've intimated in paragraph 11 of my submissions, 5 madam, the choice of the words "resulted from" rather 6 than "caused by", and that was a change from the 1988 7 Act. 8 The 1988 Act did use the words "caused by" in the 9 equivalent provisions of section 8 of the 88 Act. That 10 was changed by the parliamentary draftsman to "resulted 11 by". I would respectfully submit that that drops the 12 threshold. It may be in fact that, madam, you don't 13 need to turn your mind to that and it may be that you 14 can approach the words "resulted by" through the same 15 prism of causation. But I merely make that point 16 because it runs with the grain of the low reason to 17 suspect, the low threshold reason to suspect. 18 Mr Thomas stole my thunder in relation to 19 paragraph 39 of Fullick, but I will respectfully, for my 20 second submission, madam, draw your attention, if I may, 21 to the case of Chaffey, which my learned friend, 22 Mr O'Connor, cited in his submissions, and it's 23 paragraph 60 of Chaffey. 24 He didn't cite paragraph 60, but if I could 25 respectfully draw your attention to -- I think I've got</p> <p style="text-align: center;">Page 64</p>

<p>1 that right, but -- I don't have a copy, unfortunately, 2 but it's paragraph 60 of Chaffey and it's the second 3 sentence. 4 So, the learned judge refers in the first sentence 5 to: 6 "In our view, the legislative policy underlying 7 section 7(2)(8)(b) of the 2009 Act is clear. So what 8 the learned judge is doing is looking at the intention 9 of the parliamentary draftsman; what is the legislative 10 purpose behind 7(2)(b). 11 And then the learned judge goes to say: 12 "Where death occurs in custody or because of the act 13 or omission of a police officer [and obviously the word 14 'because' is there], the actions of the agents of the 15 state are under scrutiny and the verdicts at the inquest 16 [old language, obviously] must be returned by a jury as 17 a body of people who are, and are perceived to be, 18 wholly independent of the state." 19 Then, in paragraph 60, it goes on to talk about the 20 perception, no disrespect of course being intended in 21 any way to the court. 22 But the point, really, is a parliamentary 23 draftsman's purposive approach. This is a paradigm 24 example of where the actions of agents of the state are, 25 obviously, under scrutiny and the wording of the learned</p> <p style="text-align: center;">Page 65</p>	<p>1 friend's quite right about the presence of the words, 2 but wrong otherwise. 3 My second submission is you'll understand that 4 because I concede, and have done openly and in writing, 5 your broad discretion under 7(3), and indeed at my 6 paragraph 10(d), that a reasonable case could be made 7 either way here, you'll understand that I will say 8 little about 7(2)(b) now. Three things though, please. 9 11.3 I've already referred you to. My submission is 10 that, unless there is a good reason in law to do so, you 11 should not stray far in your interpretation from the 12 natural meaning of the words in the statute and the 13 words are "resulted from". 14 So that secondly, when my learned friend Mr Thomas 15 addresses you on reason to suspect, I say nothing about 16 that at all. That is not the issue in which I join. 17 Reason to suspect is exactly as everyone has it. The 18 issue I invite you to consider is not "reason to 19 suspect" but "resulted from". 20 Thirdly, in referring you to paragraph 39 of the 21 Fullick case, which you may just have turned up at my 22 learned friend Mr Thomas' invitation during his 23 submissions. 24 JUDGE MUNRO: Yes. 25 MR GIBBS: Although it's true that in this case, and in the</p> <p style="text-align: center;">Page 67</p>
<p>1 judge is, must be returned by a jury. 2 And that's why -- I appreciate I put it at a very 3 high -- I put it very highly in my submissions, that it 4 would be unlawful for there not to be a jury because of 5 what is said in Chaffey and paragraph 60, where his 6 Lordship says the verdicts of the inquest must be 7 returned by a jury. But unless I can assist any 8 further. 9 JUDGE MUNRO: No, thank you. Mr Gibbs. 10 MR GIBBS: May I begin, madam, with my learned friend 11 Dr van Dellen's submissions about the change in the 12 wording from one act to the next and a suggestion that 13 the test has been altered in some way that militates in 14 favour of you here summoning a jury. 15 Could I invite you to our submissions dated 16 8 November and paragraph 11. 17 JUDGE MUNRO: Yes. 18 MR GIBBS: Paragraph 11.3. 19 JUDGE MUNRO: Yes. 20 MR GIBBS: That's a repetition of the submission I made 21 a few months ago and in the footnote I've provided the 22 court with the earlier wording. I think the suggestion 23 is that it previously used to be "caused by" and now 24 it's "resulted from". In fact it previously used to be 25 "resulted from an injury caused by". So my learned</p> <p style="text-align: center;">Page 66</p>	<p>1 words of the then senior coroner, the question to be 2 answered was could or should the police have done more, 3 that was the question in that case on her facts, that is 4 not intended, it's in my submission plain from the 5 judgment, as a general direction as to how 7(3) should 6 be approached. 7 JUDGE MUNRO: Or to put any gloss onto the statute. 8 MR GIBBS: Quite. 9 Then my third submission is, turning to 7(3) -- and 10 the Fullick guidance, remembering of course that the 11 Fullick case was a case under 7(2)(a) and not a 7(2)(b). 12 But turning to -- 13 JUDGE MUNRO: Yes. The principal consideration there was 14 whether the deceased was in custody. 15 MR GIBBS: Yes, and the decision turns, as the court 16 immediately sees, upon the vulnerability of the person 17 and the obligation upon the police to take care of her 18 in these circumstances, and, just to state the obvious 19 distinctions, of an identifiable person, not someone who 20 later turned out to be that person, not the world at 21 large, but an identifiable person in a police station 22 about whom the police knew a number of things at that 23 time, she being the deceased. 24 So on the question of the application of the Fullick 25 guidance, may I immediately say that the wishes of each</p> <p style="text-align: center;">Page 68</p>

<p>1 of the four families is obviously extremely important. 2 The fact that they've been consistently expressed adds 3 nothing to do that. They could only today have decided 4 that that was what they really wanted and that would be 5 really important. But it's not determinative. It's not 6 the only thing that matters, to state the obvious, and 7 the next subparagraph in the Fullick judgment refers to 8 the submissions made by all the other interested persons 9 as well and you have mine. 10 The case concerning the deaths at Hillsborough has 11 been mentioned, as it so often is now, as an example of 12 the great length of proceeding with which a jury can, in 13 the right hands, cope. In my submission, Hillsborough 14 is not tremendously good precedent for everything, it 15 stands almost outside precedent, and certainly that, if 16 one's looking for good examples in the other direction, 17 and of course each of them turns upon its own facts, 18 then in fact each of the three Deepcut inquests over 19 which His Honour Judge Rook presided are reasonable 20 examples, perhaps something akin to this, save that 21 there were, as you remember, admittedly in two groups of 22 two and over ten years, four deaths there which were 23 suspect and required investigation and that coroner 24 dealt with them all separately but still concluded that 25 each would be better served by him not summoning a jury.</p> <p style="text-align: center;">Page 69</p>	<p>1 four. 2 MR O'CONNOR: They do. 3 JUDGE MUNRO: Yes. Fine. Thank you very much. I can deal 4 with my decision on this now. 5 Ruling 6 JUDGE MUNRO: I've concluded that I do have a reason to 7 suspect that the deaths resulted from the acts or more 8 importantly omissions of a police officer or police 9 officers so that the mandatory provisions apply and 10 there must be a jury at these inquests. 11 For the sake of completeness, in any event, had 12 I decided that the mandatory provisions did not apply, 13 I would have been minded to conclude that section 7(3) 14 of the Act applied and find that there was a sufficient 15 reason for the inquest to be held with a jury. 16 MR O'CONNOR: Madam, I'm grateful. 17 That then just leave us with the last item on the 18 agenda. 19 JUDGE MUNRO: Yes. 20 MR O'CONNOR: Which is the question of listing. 21 JUDGE MUNRO: Yes. 22 MR O'CONNOR: And there are two elements to it, one possibly 23 easier to deal with than the other. 24 Taking the easier first, there will need to be at 25 least one more pre-inquest review. We submit that it</p> <p style="text-align: center;">Page 71</p>
<p>1 JUDGE MUNRO: Thank you. Anything in response? 2 MR O'CONNOR: No, nothing further. 3 JUDGE MUNRO: Can you just help me with one matter? In 4 relation to the statutory test, clearly the word "the 5 death" is the wording, but here there are four deaths. 6 MR O'CONNOR: Yes. 7 JUDGE MUNRO: And I have to be satisfied -- well, I would 8 have to have a reason to suspect in relation to each the 9 four. That must be right, mustn't it? 10 MR O'CONNOR: Well, madam -- 11 JUDGE MUNRO: I mean, in the sense that my decision should 12 relate to the four deaths. 13 MR O'CONNOR: Well, these are four separate inquest which 14 are being held together. 15 JUDGE MUNRO: Quite. 16 MR O'CONNOR: I think the starting point is, if you were 17 satisfied in respect of any one of them, that you are 18 going to summon a jury, then the practical outcome of 19 that is that that jury will hear all four inquest unless 20 anyone one was to suggest that, for that or any other 21 reason, one of the inquests should be split away. 22 JUDGE MUNRO: Yes. 23 MR O'CONNOR: I think that's probably the analysis. 24 JUDGE MUNRO: But, for the reasons that have articulated in 25 any event, similar considerations apply to each of the</p> <p style="text-align: center;">Page 70</p>	<p>1 will likely be most useful to have a further hearing 2 early next year, probably, given the timing of 3 disclosure and so on, it's more likely to be useful to 4 have that hearing in February than January. But may we 5 respectfully leave the position as that you will say 6 that there will be another hearing at about that point 7 and, once it becomes clear when the most useful time to 8 hold that hearing is, obviously in advance of that, 9 Mr Carlyon will inform the parties of what the 10 arrangements for that hearing will be. 11 JUDGE MUNRO: Yes. Certainly. 12 MR O'CONNOR: Moving from the easier to the harder issue, 13 madam, the question of listing of the substantive 14 hearing is not an easy one and is something that has 15 been debated a little in correspondence and Mr Carlyon 16 has sought indications of availability from those 17 representing the various parties in the inquests. 18 We've dealt with it in our written submissions in 19 a little detail at paragraphs 17 to 20, so it's at the 20 end of our written submissions. 21 Perhaps if I can just introduce the matter with 22 three short points. 23 The first is that I think it's common ground that, 24 because of the preparation that needs to take place, the 25 earliest date when we could get the inquest on would be</p> <p style="text-align: center;">Page 72</p>

<p>1 some time around May next year. So that's the starting 2 point. 3 The availability of counsel is obviously of some 4 importance and in particular it's important that the 5 families should have the representatives that they wish 6 to have if at all possible. 7 JUDGE MUNRO: Yes. 8 MR O'CONNOR: Looking at availability, there is a window 9 in June and July when certainly Mr Thomas is available 10 and I know, madam, that you're available then too. 11 The difficulty is that there are a number of other 12 counsel who are very unlikely to be available at that 13 time, including myself and Ms Hayward but also Mr Gibbs. 14 We are likely all to be involved in the inquiry into the 15 Manchester bombing during that period and I believe that 16 Mr Skelton is unavailable at that time also. I should 17 say that there is at least a chance that the Manchester 18 hearing will move, in which case some of us might become 19 available in that time. But that is the difficulty 20 with June and July. 21 Looking at the dates of availability, the earliest 22 at which everyone can be available and in a sense in 23 which one could fix a hearing now in the knowledge that 24 everyone can make it is in fact not until January 2021 25 and, madam, I know that you clearly would have a concern</p> <p style="text-align: center;">Page 73</p>	<p>1 understood to be in the interests of the bereaved, or at 2 least largely in the interests of the bereaved that 3 expedience is achieved. So I just echo what's just been 4 said about the preference of the family in that regard 5 and also the second point, just to add a different 6 dimension to that, which is no doubt, ma'am, you'll be 7 well familiar with the material that applies in the 8 criminal courts arising from the Advocate's Gateways as 9 to way that vulnerable witnesses should be treated. You 10 will also no doubt therefore be well aware of the 11 importance that placed in that material and also in the 12 context of treatment of vulnerable witnesses generally 13 about certainty of scheduling. 14 With that in mind, may I suggest, echoing my learned 15 friend's submissions, that whilst there is obviously 16 an initial reaction perhaps of horror at the kind of 17 delay that's being suggested, that first of all the fact 18 that it's the families who make clear what their 19 preferences are in that regard and second some level of 20 certainty can be achieved by listing as my learned 21 friend suggests, that the instinctive -- 22 JUDGE MUNRO: Are you referring to the double listing or 23 listing in general in 2021. 24 MR CLARK: Listing in 2021. 25 JUDGE MUNRO: Yes.</p> <p style="text-align: center;">Page 75</p>
<p>1 at least about listing the hearings as long into the 2 distance as that, although, as I've already said, there 3 may be advantages in listing it at a time when at least 4 we know that everyone can be there and we can work 5 towards it. 6 Madam, in our written submissions, we suggested, 7 albeit perhaps a slightly inelegant compromise, possibly 8 at this stage deciding on some form of double listing so 9 that we identified a period in June and July and also 10 a period in January and, as it were, waited to see 11 whether the June and July dates became more available 12 for those of us in the room. That is one possibility, 13 but there are clearly other ways in which this matter 14 could be dealt with. 15 JUDGE MUNRO: Yes. 16 MR O'CONNOR: Madam, I don't think I need say more than that 17 by way of introduction and perhaps if you hear what 18 others in the room have to say. 19 JUDGE MUNRO: Yes, certainly. Mr Thomas. Mr Clark. 20 MR CLARK: Yes, just very briefly, ma'am. Whilst of course 21 the overall period that an inquest takes, there's always 22 an interest in expedience in relation to that, just two 23 points of which no doubt you'll be well aware. The 24 first is, whilst not only offered as an interest which 25 is in the interest of the family, it is nonetheless</p> <p style="text-align: center;">Page 74</p>	<p>1 MR CLARK: Being able to do that does provide -- of course, 2 everything is somewhat fluid, but it would tend to 3 suggest that that listing is more likely to be 4 maintained than listing it earlier only for it to be 5 pushed back. 6 JUDGE MUNRO: And obviously you're speaking on instructions 7 from the families. 8 MR CLARK: Very much so, ma'am, yes. 9 JUDGE MUNRO: Yes, because they are my primary consideration 10 so far as listing is concerned. 11 MR CLARK: Yes. 12 JUDGE MUNRO: So really what you're saying is, because of 13 the certainty that we could have if we said January of 14 2021, that would be their preference. 15 MR CLARK: Indeed, and there's recognition of the fact that 16 that renders difficult proceedings perhaps slightly less 17 traumatic. 18 JUDGE MUNRO: Yes. I mean, one other concern I had, 19 Mr Thomas, and this is in relation to dates I think with 20 you, if it were June, there would be a very, very tight 21 six week slot so far as my availability and your lack of 22 availability is concerned and I know we've all canvassed 23 that this is going to take six weeks but, if it were to 24 take seven, that could be potentially catastrophic. 25 MR THOMAS: Madam, my view would be, bearing in mind your</p> <p style="text-align: center;">Page 76</p>

<p>1 decision was to sit with a jury, that it's always better 2 to over estimate than to underestimate -- 3 JUDGE MUNRO: Exactly. 4 MR THOMAS: -- because it would be a disaster if we were to 5 say six weeks and then -- you know, you never know with 6 juries, you might have sickness, you just don't know. 7 So I allowed Mr Clark to do the submissions, because I'm 8 in a different position, because I don't want this case 9 to be unnecessarily delayed just because of my 10 unavailability in autumn. 11 JUDGE MUNRO: No. 12 MR THOMAS: And I fully appreciate -- I will say this: 13 I spoke to the families who I represent before today, 14 I've spoken to them on previous occasions and I've said 15 to them that I don't want to be the person holding this 16 up. But they've expressed in very strong terms that 17 they would like me to continue on this case. I know 18 that I've been on this case from the very beginning with 19 them -- 20 JUDGE MUNRO: Yes. Well, that's what I wanted to ensure was 21 the position. 22 MR THOMAS: Yes, that's -- 23 JUDGE MUNRO: That is the position. Yes, well, I see 24 nodding from the families. Thank you for that 25 indication.</p> <p style="text-align: center;">Page 77</p>	<p>1 Of course, we're mindful also of the judicial review 2 proceedings and the listing for that, which, as yet, is 3 unknown. 4 JUDGE MUNRO: Exactly. 5 MR SKELTON: Particularly bearing in mind that several 6 interested parties have just arrived on the scene, so 7 far as that is concerned, and will have the right to put 8 in submissions et cetera and I'm also mindful of my 9 experience in the Birmingham bombings inquest where 10 there was an appeal process which effectively derailed 11 the start by over a year. That is very unfortunate. 12 But, madam, I'm just sounding a note of caution, bearing 13 in mind professional commitments and so on. 14 JUDGE MUNRO: Yes, I follow that. Thank you. 15 MR GIBBS: May I simply say, so that it has been said, that 16 of course everything already voiced is accepted. Those 17 whom I represent would rather give their evidence sooner 18 than later and have the families know the answer sooner 19 rather than later. 20 JUDGE MUNRO: Thank you very much, Mr Gibbs. 21 Well, it's clearly a very difficult balancing 22 exercise and that's why I wanted to ensure that the 23 position so far as the families was concerned was as 24 clear to me as it possibly could be and, bearing in mind 25 their very firm indication that they would want these</p> <p style="text-align: center;">Page 79</p>
<p>1 Right, does anyone want to dissent from a suggestion 2 that the inquest be listed in January? 3 MR SKELTON: Cautiously, if I may. 4 JUDGE MUNRO: Ah, right. 5 MR SKELTON: I was going to stand up and say, madam, that 6 none of us is irreplaceable, but Mr Thomas has 7 identified that he is isn't replaceable and for 8 understandable reasons and one has to respect that, as 9 you have identified. 10 It is, however, a very long delay of some very 11 important inquests that have already been delayed for a 12 very protracted period of time and certainly from the 13 MPS' perspective to try and get these inquests on next 14 year would be the appropriate and expedient thing, 15 bearing in mind the Chief Coroner's guidance that one 16 should try as soon as possible to proceed. 17 We all have various professional commitments that 18 come and go and that sometimes puts us all in 19 difficulties. I have a difficulty in June, as it 20 happens, but I'm not irreplaceable, although I'm sure 21 continuity is proportionate. 22 If these cases were to be held in autumn of next 23 year, that would give closure to all of those involved, 24 all of the interested persons, by the end of 2020, which 25 is clearly preferable to 2021.</p> <p style="text-align: center;">Page 78</p>	<p>1 inquests to take place with the assistance of their 2 current team, I am going to say that these inquests will 3 take place in January of 2021. 4 For the avoidance of doubt, I can't see any reason 5 why they shouldn't begin on the first Monday in 6 January of 2021 and I'll ensure that they are listed by 7 this court on that date and they will be heard at this 8 court on that date. 9 MR O'CONNOR: Madam, I'm grateful. That brings us to the 10 end of the agenda. 11 JUDGE MUNRO: Thank you. 12 MR O'CONNOR: There's nothing else that we wish to raise. 13 I don't know if any of the other -- 14 JUDGE MUNRO: Shall I say to the listing officer eight 15 weeks? I'd like to ensure that we've kept a large 16 window. It's not going to filled any time soon with 17 criminal case, it has to be said, but the time will come 18 when it begins to be. I'll say eight weeks. 19 MR O'CONNOR: Yes. I think that would be wise, madam. 20 JUDGE MUNRO: Yes. Thank you all very much. 21 (4.12 pm) 22 (Hearing concluded) 23 24 25</p> <p style="text-align: center;">Page 80</p>

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