

<p>1 Friday, 10 July 2020</p> <p>2 (2.13 pm)</p> <p>3 Pre-Inquest Review Hearing</p> <p>4 (Hearing held via video/telephone link)</p> <p>5 THE CORONER: Good afternoon, everyone. I hope everybody</p> <p>6 can hear me, would you raise a hand if you cannot?</p> <p>7 No hands.</p> <p>8 This is the third pre-inquest review held in</p> <p>9 connection with the inquests into the deaths of</p> <p>10 Anthony Walgate, Gabriel Kovari, Daniel Whitworth and</p> <p>11 Jack Taylor.</p> <p>12 As you all will know, due to the restrictions in</p> <p>13 place as a result of the coronavirus epidemic</p> <p>14 I considered that this pre-inquest review should take</p> <p>15 place by way of a partially remote hearing. I am</p> <p>16 sitting in court 12 at the Central Criminal Court, but</p> <p>17 counsel to the inquests, interested persons and their</p> <p>18 legal representatives are participating remotely via the</p> <p>19 cloud video platform.</p> <p>20 As this hearing is being conducted in this way, it</p> <p>21 is necessary for me to formally state at the outset that</p> <p>22 I give permission for the use of live video to enable</p> <p>23 participants to access these proceedings. I should</p> <p>24 emphasise that it is a contempt of court to record,</p> <p>25 play, dispose or publish a recording or transcript of</p> <p style="text-align: center;">Page 1</p>	<p>1 If there is any problem with the link, or with the</p> <p>2 audio, please, as I say, raise a hand and we will try to</p> <p>3 deal with that. You all have Mr Carlyon's email</p> <p>4 address, he is present in the court with me here and</p> <p>5 will be able to deal with anything if you want to notify</p> <p>6 him of a difficulty by email.</p> <p>7 In terms of the advocates, I understand that we have</p> <p>8 present on the video-link Mr Thomas, Queen's Counsel --</p> <p>9 although I cannot see his name. Yes, he is here, thank</p> <p>10 you very much, Mr Thomas -- Mr Clark and Ms Favata for</p> <p>11 the families of Mr Walgate, Mr Kovari, Mr Whitworth and</p> <p>12 Mr Taylor.</p> <p>13 Dr van Dellen for Mr Waumsley.</p> <p>14 Mr Skelton, Queen's Counsel and Mr Berry on behalf</p> <p>15 of the Metropolitan Police.</p> <p>16 Mr Moloney, solicitor for the IOPC.</p> <p>17 Mr Gibbs, Queen's Counsel and Ms Dobbin for the 14</p> <p>18 police officers who are represented by Reynolds Dawson</p> <p>19 solicitors.</p> <p>20 Mr Shaw on behalf of DS Sweetman.</p> <p>21 I will now hand over to Mr O'Connor to go through</p> <p>22 the agenda for today's hearing.</p> <p>23 MR O'CONNOR: I am grateful, madam.</p> <p>24 MR CLARK: I have just received a message, it may be that</p> <p>25 this is not going to delay the hearing anyway, but</p> <p style="text-align: center;">Page 3</p>
<p>1 these proceedings. This means it is a criminal offence</p> <p>2 to make or attempt to make any recording or broadcast of</p> <p>3 these proceedings.</p> <p>4 In a moment I shall hand over to Mr O'Connor,</p> <p>5 counsel to the inquests, however I first wanted to say</p> <p>6 that whilst I am sorry that circumstances mean that we</p> <p>7 are not all able to be physically present in court</p> <p>8 today, I am very glad that a number of the family</p> <p>9 members have been able to join by video-link.</p> <p>10 I know that the solicitors to the inquest have</p> <p>11 provided all interested persons with some guidance as to</p> <p>12 how this hearing is to be conducted. There are a few</p> <p>13 things I would like to reiterate however to ensure that</p> <p>14 this partially remote hearing takes place smoothly for</p> <p>15 all of us.</p> <p>16 Firstly, a transcript will be published on the</p> <p>17 inquest website later today.</p> <p>18 Secondly, please would all participants ensure that</p> <p>19 their microphones are muted unless they are speaking and</p> <p>20 all those who do not have a speaking part should keep</p> <p>21 their microphones off throughout the proceedings.</p> <p>22 Please try to pause before you start speaking in order</p> <p>23 to ensure that the previous speaker has finished</p> <p>24 speaking and that there is no speaking over the top of</p> <p>25 one another.</p> <p style="text-align: center;">Page 2</p>	<p>1 I understand some of the family members have been trying</p> <p>2 hard for the last 20 minutes to get into the hearing</p> <p>3 have not managed. I only know that from an email from</p> <p>4 my instructing solicitor at the moment. I don't know</p> <p>5 whether or not that issue can be resolved, I am just</p> <p>6 pointing it out and I am sorry to cut across you,</p> <p>7 Mr O'Connor.</p> <p>8 THE CORONER: Mr Clark, would you like to us to wait to see</p> <p>9 if the families can manage to get in or would you like</p> <p>10 us to offer some help to them from this end?</p> <p>11 MR CLARK: I am grateful for the offer. I wonder if we</p> <p>12 could have a couple of minutes to clarify if there is</p> <p>13 a problem. I certainly don't want to cause any further</p> <p>14 delay.</p> <p>15 THE CORONER: No, but I would like them to be able to hear</p> <p>16 us if they possibly can and if they would like to do so.</p> <p>17 MR CLARK: Thank you.</p> <p>18 MR THOMAS: Madam, I would agree with that, I think it is</p> <p>19 really important that the family do participate if they</p> <p>20 can.</p> <p>21 THE CORONER: Yes. Do we know who of the family is here and</p> <p>22 can hear?</p> <p>23 MR THOMAS: We are just checking that right now. (Pause)</p> <p>24 MR CLARK: Thank you so much, madam, I understand the issue</p> <p>25 is resolved and they are now in the hearing. I am sorry</p> <p style="text-align: center;">Page 4</p>

<p>1 to have raised that and added to the delay. Thank you.</p> <p>2 THE CORONER: Thank you very much.</p> <p>3 Yes, Mr O'Connor.</p> <p>4 MR O'CONNOR: Thank you.</p> <p>5 Thank you, madam.</p> <p>6 Madam, you mentioned the agenda which was circulated</p> <p>7 some time ago. I have in fact this morning circulated</p> <p>8 a slightly more detailed list of topics to be addressed</p> <p>9 at this hearing. I hope that the advocates have</p> <p>10 received a copy of that and I know that you have as</p> <p>11 well, madam.</p> <p>12 THE CORONER: Yes, I have.</p> <p>13 MR O'CONNOR: The intention is certainly to facilitate the</p> <p>14 hearing, I will go from one topic to another. My</p> <p>15 intention is to introduce each topic as we come to it</p> <p>16 and no doubt those advocates who wish to address those</p> <p>17 matters after I have finished speaking will do so.</p> <p>18 As I say, the intention is simply to make this</p> <p>19 hearing run as smoothly as possible.</p> <p>20 The first topic was housekeeping, madam, and I know</p> <p>21 that you have received written submissions.</p> <p>22 First of all we have submitted some written</p> <p>23 submissions.</p> <p>24 There have then been some very helpful responsive</p> <p>25 submissions received from most of the interested</p> <p style="text-align: center;">Page 5</p>	<p>1 is still awaited will be relevant to some of the matters</p> <p>2 that we go on to discuss later in the hearing.</p> <p>3 Madam, moving on to the second item on my circulated</p> <p>4 list of topics, I come to the question of listing and</p> <p>5 hearing arrangements. There are really two matters for</p> <p>6 discussion under this topic, madam.</p> <p>7 The first is the listing of a further preliminary</p> <p>8 hearing. As I will come on to submit, we suggest that</p> <p>9 such a hearing is listed in the autumn.</p> <p>10 Secondly, the question of the substantive hearings</p> <p>11 in these inquests.</p> <p>12 As I say, madam, on the first point, it will be</p> <p>13 apparent from the written submissions that there will be</p> <p>14 a need for a further pre-inquest review. We invite you</p> <p>15 to list such a hearing on date to be fixed in September.</p> <p>16 I understand that arrangements are being made to</p> <p>17 identify a date that is convenient to the court but</p> <p>18 I believe that that process hasn't quite finished yet.</p> <p>19 I invite you at this stage simply to indicate that there</p> <p>20 will be such a hearing on a date that interested persons</p> <p>21 will be notified of in due course. The hearing will be</p> <p>22 at the Old Bailey and we don't know at this stage</p> <p>23 whether or not it will be necessary for it to be</p> <p>24 a virtual hearing but, again, interested persons will be</p> <p>25 given detail of the arrangements prior to the hearing.</p> <p style="text-align: center;">Page 7</p>
<p>1 persons.</p> <p>2 Finally, we have served some brief supplementary</p> <p>3 written submissions following on from that.</p> <p>4 I know you have received and read those submissions,</p> <p>5 madam. No doubt I and other advocates will refer to</p> <p>6 them during the course of today's hearing but I should</p> <p>7 say by way of starting point that I don't intend to read</p> <p>8 out everything that is in those submissions and I hope</p> <p>9 that both I and other people addressing you can take as</p> <p>10 read what is contained in those submissions.</p> <p>11 THE CORONER: Yes.</p> <p>12 MR O'CONNOR: The other matter I intended just to raise at</p> <p>13 the start, madam, simply for information for interested</p> <p>14 persons, relates to the question of expert police</p> <p>15 evidence.</p> <p>16 In our first set of submissions at paragraph 25 --</p> <p>17 I don't ask you to turn it up -- we referred to</p> <p>18 Ms Mackay's evidence which interested persons are aware</p> <p>19 as being obtained. We did say it was possible that that</p> <p>20 report may be served prior to this hearing, as will be</p> <p>21 apparent that has not taken place. I can report that</p> <p>22 good progress is being made on finalising that expert</p> <p>23 report. We anticipate it will be served on interested</p> <p>24 persons in the next couple of weeks.</p> <p>25 I mention that now because the fact that that report</p> <p style="text-align: center;">Page 6</p>	<p>1 Madam, that then leads me to the second point, which</p> <p>2 is the substantive hearing.</p> <p>3 You have seen a certain amount of detail about the</p> <p>4 arrangements for the substantive hearings in the written</p> <p>5 submissions. May I make it clear what our starting</p> <p>6 point is, which is a simple one. You have already set</p> <p>7 a date of January 2021 for the substantive hearings to</p> <p>8 take place. We are quite confident that we will be</p> <p>9 ready for those hearings at that time. The families</p> <p>10 have waited a long time for these hearings to take place</p> <p>11 and our submission is that we should proceed with the</p> <p>12 substantive hearings in January if it is at all</p> <p>13 possible. As I have indicated in our written</p> <p>14 submissions, we are very much working on the basis that</p> <p>15 we will be able to go ahead. We hope that we will be</p> <p>16 able to go ahead with an in-person hearing at the</p> <p>17 Old Bailey.</p> <p>18 Madam, in normal times there would be very little</p> <p>19 more to be said about this matter. Of course these are</p> <p>20 not normal times. Everyone is aware of the</p> <p>21 uncertainties that have been created by the COVID</p> <p>22 pandemic. In particular those present will be aware of</p> <p>23 the difficulties that the pandemic has caused and no</p> <p>24 doubt will continue to cause for court hearings.</p> <p>25 Madam, given the fluidity of the position, and the</p> <p style="text-align: center;">Page 8</p>

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<p>1 fact that we are not due to have the substantive</p> <p>2 hearings until January next year, in my submission there</p> <p>3 is little value in debating the fine detail of the</p> <p>4 position now. Our proposal is that we will circulate</p> <p>5 a detailed note with the details of the arrangements</p> <p>6 that we propose for January in advance of the next</p> <p>7 hearing in September. That will be the time in our</p> <p>8 submission for you to take decisions about exactly what</p> <p>9 is to happen in January. It may well be that interested</p> <p>10 persons have something to say about the matter now but</p> <p>11 as I say, our essential proposal is that this is</p> <p>12 a matter which you can and should return to at the</p> <p>13 hearing in September.</p> <p>14 Madam, I suggest that if there are any further</p> <p>15 submissions on this issue then you hear them now before</p> <p>16 I turn on to the next issue in my list.</p> <p>17 THE CORONER: Yes, thank you.</p> <p>18 Mr Thomas, anything on any of the matters that</p> <p>19 Mr O'Connor has raised so far?</p> <p>20 Thank you.</p> <p>21 I will ask Mr Clark as well because I know sometimes</p> <p>22 he deals with certain of the topics on behalf of the</p> <p>23 families. Anything from you, Mr Clark, on what has been</p> <p>24 said so far?</p> <p>25 MR CLARK: No, thank you.</p> <p style="text-align: center;">Page 9</p>	<p>1 thing as high as one can in order to test the</p> <p>2 proposition of January, with 14 counsel or however many</p> <p>3 it would be in court. It might be that at present the</p> <p>4 list officer at the Old Bailey wouldn't have such a case</p> <p>5 down for January, but I don't know whether that is right</p> <p>6 or that is wrong, and you will know better than I?</p> <p>7 THE CORONER: In short, that is right, Mr Gibbs, but</p> <p>8 everything is changing on a daily basis and we expect</p> <p>9 some quite significant changes as far as social</p> <p>10 distancing is concerned in the next couple of weeks.</p> <p>11 Clearly we are going to be in a much better position in</p> <p>12 September to know one way or the other.</p> <p>13 Does that deal with everybody who wants to say</p> <p>14 anything on the topics that have been raised so far?</p> <p>15 All right, thank you.</p> <p>16 Mr O'Connor, next matter?</p> <p>17 MR O'CONNOR: Thank you, madam.</p> <p>18 I turn then to the question of disclosure, and</p> <p>19 disclosure of course in inquest proceedings has a double</p> <p>20 meaning. We use it to refer both to the disclosure of</p> <p>21 material to you, the coroner, and, secondly, disclosure</p> <p>22 made by you to interested persons.</p> <p>23 As we have indicated in our written submissions,</p> <p>24 both elements of that process are now well advanced in</p> <p>25 these proceedings. In terms of the disclosure that you</p> <p style="text-align: center;">Page 11</p>
<p>1 THE CORONER: Dr van Dellen?</p> <p>2 DR VAN DELLEN: No thank you, madam.</p> <p>3 THE CORONER: Mr Skelton?</p> <p>4 MR SKELTON: Thank you, madam. Only to endorse your</p> <p>5 counsel's wish that the inquest proceed in January 2021</p> <p>6 as planned.</p> <p>7 Secondly, simply to noted the point that was made in</p> <p>8 our written submissions at paragraph 2, that the</p> <p>9 Metropolitan Police is under a great deal of pressure</p> <p>10 itself at the moment due to the pandemic, both in terms</p> <p>11 of its front line policing and in terms of its reduction</p> <p>12 in staff. I don't, madam, anticipate that this is going</p> <p>13 to jeopardise your proceedings but it does put some</p> <p>14 pressures on us internally in responding to requests for</p> <p>15 information and witness statements and so on.</p> <p>16 THE CORONER: Yes, thank you.</p> <p>17 MR SKELTON: Thank you.</p> <p>18 THE CORONER: Mr Gibbs?</p> <p>19 MR GIBBS: Madam, by September you and the Old Bailey will</p> <p>20 plainly both know more about the practicality of</p> <p>21 January. The only point which I sought to make in our</p> <p>22 written submissions at paragraph 9 is that if this were</p> <p>23 a criminal case with an equivalent number of moving</p> <p>24 parts, that is perhaps if it were a potential four-way</p> <p>25 cut throat in front of a jury, and I am putting the</p> <p style="text-align: center;">Page 10</p>	<p>1 have made to interested persons, that is disclosure of</p> <p>2 course of material that has previously been disclosed to</p> <p>3 you. That process has now been ongoing since November</p> <p>4 of last year. In our most recent submissions we</p> <p>5 indicated that the total amount of material that has</p> <p>6 been disclosed is in the order of some 8,000 pages of</p> <p>7 documents. As we described at paragraph 12 of our first</p> <p>8 submissions, the categories of document that have been</p> <p>9 disclosed -- just so that those observing this hearing</p> <p>10 have an idea of what is involved.</p> <p>11 We have disclosed to interested persons all relevant</p> <p>12 documents from the original police investigations that</p> <p>13 you requested.</p> <p>14 We have disclosed almost all of the witness</p> <p>15 statements, the interviews that were made by the</p> <p>16 officers who were involved in the original</p> <p>17 investigations, including Operation Lilford statements</p> <p>18 and IOPC interviews and prepared statements.</p> <p>19 We have disclosed to interested persons witness</p> <p>20 statements and interviews made and given by family</p> <p>21 members to the IOPC and to Operation Lilford.</p> <p>22 We have also disclosed a significant number of</p> <p>23 documents generated by Operation Lilford, in particular</p> <p>24 detailed summaries of telephone and computer evidence</p> <p>25 obtained and also forensic evidence.</p> <p style="text-align: center;">Page 12</p>

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<p>1 We have disclosed a large number of policy and 2 guidance documents, as well, finally, as documents from 3 the criminal trial, including agreed facts, images, maps 4 and plans. 5 Madam, the position is well advanced, as I say. 6 There are some items that remain to be disclosed and we 7 have given some detail on those in our written 8 submissions but viewed as a whole the process is almost 9 complete and one should record on your behalf the 10 gratitude of our team to those who have been involved in 11 that process, including the families and also the 12 Metropolitan Police, who have been working hard to 13 assist us, despite, as Mr Skelton has indicated, the 14 other calls on their resources in recent months. 15 Madam, at paragraphs 5 and 6 of our supplemental 16 submissions, and I do invite you to turn to those 17 paragraphs, we have made requests. In paragraph 5, we 18 invite you to make a direction requesting all interested 19 persons to confirm in writing by 28 August that they are 20 not aware of any further documents that are potentially 21 relevant to the scope of the inquest. Indeed, we 22 request that all IPs provide any such documents that 23 they are aware of as soon as possible. 24 That addresses the first stage of disclosure which 25 we hope will then be complete, that is the disclosure of</p> <p style="text-align: center;">Page 13</p>	<p>1 disclosure that has been given as one that is very much 2 ongoing and so it may or may not be appropriate for you 3 to make formal directions on these matters at or after 4 the hearing today. 5 The issues that the families have identified in 6 their written submissions really fall into three 7 categories. 8 The first relates to disclosure that has been made 9 and evidence relating to the coronial process, that is 10 the coronial process that existed prior to these 11 inquests. In particular the inquest that took place 12 into the deaths of Mr Kovari and Mr Whitworth. 13 The first point that the families have raised is 14 a request for the recordings of the inquest hearings 15 that took place into those two deaths. 16 In our written submissions we have responded to 17 that. We have indicated that the transcripts of those 18 proceedings are available and so we have questioned what 19 value the recordings themselves would have in those 20 circumstances. There is one further point that I should 21 make in that regard. In our supplementary submissions 22 at paragraph 7c we did refer to DI Schamberger's 23 evidence and his reference to a brief meeting that he 24 had with the coroner, Ms Persaud, before those inquest 25 hearings. He said "in fact they did not speak about the</p> <p style="text-align: center;">Page 15</p>
<p>1 material to you. 2 At paragraph 6, we have issued a general invitation 3 to interested persons to undertake a careful review of 4 all the material that has now been disclosed and to 5 highlight to us any areas where they contend that there 6 is any failing, any shortcomings, in the disclosure that 7 has been made. I will not read out the paragraph but we 8 have asked that if they do wish to identify any such 9 areas, then they do so with precision to assist us. 10 Madam, there are some particular issues on 11 disclosure that have been raised by the families. 12 I think it is probably convenient if I go on to deal 13 with those now, since what I have so far said about 14 disclosure is of a fairly general nature and I doubt 15 whether others will have very much by way of response to 16 those matters. 17 If I may then turn to the issues that have been 18 raised by the families, I will deal with those now. 19 As I say, the families have raised a number of 20 points which we have responded to in our written 21 submissions. I say now but I anticipate Mr Clark may 22 wish to make some further submissions about those 23 matters, which of course will be welcome, although it 24 follows from what I have already said that we regard the 25 process of identifying any gaps there may be in the</p> <p style="text-align: center;">Page 14</p>	<p>1 deaths at any great length", those were the words he 2 used during that conversation. 3 We propose, madam, to invite DI Schamberger to 4 provide a short further statement detailing, as far as 5 he can remember, the precise contents of that 6 conversation. As I said, I hope that assists. With 7 that gap filled, as it were, we do question whether 8 there is indeed any value in obtaining the recording of 9 the inquest. 10 THE CORONER: Yes, and that conversation would not of course 11 have been recorded, would it? 12 MR O'CONNOR: We assume not, madam. It certainly seems to 13 have taken place, as far as we can tell in the coroner's 14 room, so no, it wouldn't have been recorded. But 15 I should add, other than that, it seems to us that 16 everything of relevance that took place on that day took 17 place in the courtroom and therefore would have been 18 recorded and will appear on transcripts. 19 Madam, sticking with the question of the previous 20 coronial process. You will have seen in the family's 21 submissions more general submissions questioning whether 22 there is a shortfall in the evidence in this area. 23 I will let Mr Clark address you on those matters. We 24 have responded to them in short form in our written 25 submissions already, but perhaps I may just by way of</p> <p style="text-align: center;">Page 16</p>

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<p>1 introduction summarise our position.</p> <p>2 The first point to make is that you have, of course,</p> <p>3 ruled that it is not permissible for you to include</p> <p>4 within the scope of these inquests an investigation into</p> <p>5 that initial coronial investigation that took place.</p> <p>6 You can hear evidence about the steps that were taken</p> <p>7 and about what passed at the inquest but you are not</p> <p>8 entitled to explore the rationale or the merits of the</p> <p>9 previous coroner's investigation. That is a line that</p> <p>10 you must not cross and, so far as the effect of the</p> <p>11 submissions now made invites you to cross that line, we</p> <p>12 submit that you may not do so.</p> <p>13 As I have already said, and this is the second</p> <p>14 point, you are entitled to hear evidence of a factual</p> <p>15 nature about what steps the previous coroner actually</p> <p>16 took. There is plentiful evidence about that. We have,</p> <p>17 for example, emails between the coroner's officers and</p> <p>18 the police officers involved. As I have already</p> <p>19 mentioned, we have transcripts of evidence given at the</p> <p>20 inquests.</p> <p>21 Subject to the point I have already mentioned, we</p> <p>22 are not aware of any gaps in that evidence and if the</p> <p>23 families are aware of any gaps, they should identify</p> <p>24 them.</p> <p>25 The third point I would make, just by way of</p> <p style="text-align: center;">Page 17</p>	<p>1 blame the CPS for any shortcomings in the initial police</p> <p>2 investigations. We on the other side have questioned</p> <p>3 whether in fact that is likely to take place and again</p> <p>4 we suggest that if Mr Gibbs can make some submissions on</p> <p>5 this point, it may assist you and alleviate the</p> <p>6 families' concerns in that regard.</p> <p>7 We have suggested, madam, both in regard to the</p> <p>8 coronial issue and in regard to the CPS issue, that the</p> <p>9 jury will be assisted and by some evidence of a very</p> <p>10 high-level headline nature from the Metropolitan Police</p> <p>11 simply to describe the normal working arrangements</p> <p>12 between on the one hand the police and on the other hand</p> <p>13 both the coronial staff and also the CPS. It is our</p> <p>14 intention to invite the Metropolitan Police to address</p> <p>15 those matters in the preliminary overview evidence that</p> <p>16 they will give at the outset of the proceedings.</p> <p>17 Madam, the third category of material that is being</p> <p>18 raised by the family is, if you like, a miscellaneous</p> <p>19 category. They have asked for BTP records and CCTV</p> <p>20 footage to be disclosed. You will have seen what we</p> <p>21 have said about that in our written submissions. As far</p> <p>22 as we are aware, relevant BTP records have already been</p> <p>23 disclosed. The CCTV footage that was obtained by</p> <p>24 Operation Lilford we are sure will be of an extremely</p> <p>25 large volume. It is with that in mind that we have</p> <p style="text-align: center;">Page 19</p>
<p>1 introduction, is that the families have suggested that</p> <p>2 the police witnesses -- in other words the individuals</p> <p>3 who undertook the initial investigations into the</p> <p>4 deaths -- may seek to blame the coroner for any</p> <p>5 shortcomings in their investigation. As we have set out</p> <p>6 in our written submissions, we don't accept that</p> <p>7 premise. It will be useful, we suggest, to hear what</p> <p>8 Mr Clark and perhaps Mr Gibbs may have to say about</p> <p>9 those matters, and that indeed may alleviate the</p> <p>10 family's concerns in that regard.</p> <p>11 Finally on this point, madam, we emphasise what we</p> <p>12 in fact set out at paragraph 6, I think it was, of our</p> <p>13 supplementary submissions. That is that what you will</p> <p>14 be most interested by in discussions about any gaps that</p> <p>15 need to be filled in the evidence is precise submissions</p> <p>16 about what documents may be missing or what witnesses it</p> <p>17 is submitted need to be called. We very much encourage</p> <p>18 the families to approach this matter in that way.</p> <p>19 Madam, there are, as I indicated, three general</p> <p>20 areas raised by the families. I have already addressed</p> <p>21 the coronial process. I can be more brief on the other</p> <p>22 two.</p> <p>23 The second relates to the CPS process. There is</p> <p>24 a similar point made here, in other words there is</p> <p>25 a concern by the families that the officers may seek to</p> <p style="text-align: center;">Page 18</p>	<p>1 invited the Metropolitan Police to summarise the content</p> <p>2 of the relevant CCTV footage in the statement about</p> <p>3 Operation Lilford that is being prepared. We suggest</p> <p>4 that the families review the contents of that statement,</p> <p>5 when it has been disclosed, and then consider whether</p> <p>6 any CCTV footage really does need to be disclosed and if</p> <p>7 they maintain that submission, which no doubt you can</p> <p>8 consider in September, we invite them to be very precise</p> <p>9 about precisely what footage they think is necessary.</p> <p>10 Madam, we hope that has been of assistance, it is</p> <p>11 a rather long introduction to these points but that may</p> <p>12 be a good moment for me to suggest that you invite</p> <p>13 submissions from the other parties on this issue.</p> <p>14 THE CORONER: Yes. You may not immediately know the answer</p> <p>15 to this, Mr O'Connor, but while it is in my mind, do you</p> <p>16 know whether the CCTV officer who gave evidence at the</p> <p>17 criminal trial is a witness whose statement has been</p> <p>18 disclosed in this inquest?</p> <p>19 MR O'CONNOR: You are right, madam, I am afraid I don't know</p> <p>20 the answer to that. What I am certain of is that the</p> <p>21 officer, the officers, who are preparing the</p> <p>22 Operation Lilford statement will have access to that</p> <p>23 statement, will have knowledge of its contents. I am</p> <p>24 sure that that statement could be obtained, if it hasn't</p> <p>25 already been disclosed.</p> <p style="text-align: center;">Page 20</p>

5 (Pages 17 to 20)

<p>1 THE CORONER: All right. Thank you very much. 2 Before I come to Mr Clark, can I establish with 3 Mr Skelton and/or Mr Gibbs whether they can help on 4 really three questions. 5 Firstly, do either of you understand it to be the 6 case of any of those for whom you represent that any 7 shortcomings are alleged against the coroner or her 8 officers? 9 Secondly, so you can answer both questions in turn, 10 do you understand it to be the case that there is any 11 suggestion of failure by the CPS or any shortcomings by 12 the CPS? 13 Can I ask Mr Skelton first? 14 MR SKELTON: Madam, as far as I am aware, the answer to that 15 question is no, in both cases. 16 May I sort of, as it were, outside of the sort of 17 virtual format video forum take instructions on that for 18 confirmation, please? 19 THE CORONER: Yes. 20 MR SKELTON: Which I will do and if necessary I will make 21 myself known subsequently. 22 THE CORONER: You anticipate you can do that during the 23 course of this hearing; do you? 24 MR SKELTON: I am going to do it now, madam, yes, offline, 25 as it were. If I have something to add to my negative</p> <p style="text-align: center;">Page 21</p>	<p>1 Mr Gibbs? 2 MR GIBBS: Yes, the answers are no, and no. 3 THE CORONER: I am very grateful. 4 MR GIBBS: On the subject of the MPS officer to give 5 evidence about procedure, may I say something a bit 6 later on about policies and procedures generally. You 7 will have read my written submission on the subject. It 8 concerns what one might call witness number 2, and who 9 that should be. The question you ask applies to that 10 same issue, in other words coronial and prosecutorial 11 process might be one of the processes that witness 2 12 would cover, and then one has to ask who should 13 witness 2 be. 14 THE CORONER: Yes, I follow. Thank you. 15 Mr Clark, I wanted to clarify those matters with 16 those representing the police officers, in order that 17 that may assist to some extent in you articulating your 18 submissions but by all means do so in any way you see 19 fit, please. 20 MR CLARK: Thank you very much, ma'am. If I may. Before 21 I address the issues that pertain to the previous 22 coronial investigation and to some extent the CPS, there 23 are three much smaller matters that have already been 24 touched on which I will deal with quickly first. 25 The first concerns the indication in learned counsel</p> <p style="text-align: center;">Page 23</p>
<p>1 answer, then I will indicate that, thank you. 2 THE CORONER: Thank you. 3 Before you go though, Mr Skelton, do you have any 4 objection to the proposal that a Metropolitan Police 5 officer makes what has been described as a high-level 6 statement setting out for the jury really the process 7 which operates as between the police and the coroner and 8 the police and the CPS where there has been a suspicious 9 death? 10 MR SKELTON: Madam, the answer to that is no. I think 11 I discussed this with Mr O'Connor prior to this hearing. 12 I understand that this is really just to introduce the 13 jury to the sort of logistics and procedures that go on. 14 Obviously there is a sort of local element to how things 15 prevail in different coroner's districts. I think this 16 cannot encapsulate all of the variations that will occur 17 procedurally across London and indeed across England and 18 Wales, so we will keep it as a matter of generality and 19 keep it relatively simple. 20 Madam, just going back to your original questions, 21 I now have instructions to confirm that the answer is no 22 in terms of criticisms. 23 THE CORONER: In terms of both the coroner and the CPS? 24 MR SKELTON: Yes. 25 THE CORONER: Thank you very much.</p> <p style="text-align: center;">Page 22</p>	<p>1 to the inquest's submissions. This is in paragraph 5 2 and earlier in the submissions about a direction for 3 a deadline by which the point could be clarified that 4 interested persons are not aware of any further 5 documents that are relevant that should be disclosed. 6 I wonder if it is possible to clarify the 7 distinction between interested persons who are in the 8 position of being the source of material, such that they 9 may well do that off their own bat effectively, compared 10 to interested persons identifying potentially relevant 11 material in the context of submissions as to potential 12 further disclosure. 13 If the direction were to encompass the latter, it 14 would be our suggestion that the deadline be set at 15 a time after the first round or the disclosure had been 16 deemed complete. It may well be that was the intention 17 in any event and I am misunderstanding. 18 THE CORONER: Yes, I am sure that was the intention. You 19 clearly cannot identify lacunae until you have had 20 complete disclosure or what is said to be complete 21 disclosure. 22 Am I right about that, Mr O'Connor? 23 MR O'CONNOR: Madam, as a matter of principle, that is of 24 course correct. 25 To be clear, our intention was that the direction we</p> <p style="text-align: center;">Page 24</p>

6 (Pages 21 to 24)

<p>1 were inviting you to give was only to apply as at 2 paragraph 5 to a confirmation that individual interested 3 persons had no more disclosure to give to you. 4 THE CORONER: Yes. 5 MR O'CONNOR: In terms of a second stage identifying any 6 gaps, although Mr Clark is right that as a matter of 7 logic no final view can be reached about gaps until they 8 have had everything. As I have already said, the vast 9 majority of disclosure has already been made. This is 10 a rolling process. What we have said at paragraph 6 of 11 our submissions is that we encourage potentially 12 an ongoing dialogue with the solicitor to the inquests 13 so that if, as and when interested persons become aware 14 of any gaps that they think might exist then they 15 identify those to the solicitor to the inquest as soon 16 as possible, so the work can proceed in the way that it 17 has been already. 18 THE CORONER: Yes. 19 Mr Clark, that seems sensible. As you and indeed 20 others are going through the material, if you identify 21 gaps, simply mark them up and notify the solicitor to 22 the inquest. It may be that he will say to you, "We 23 were just going to fill that gap" or it may be he will 24 say, "We didn't know about that gap, thank you very much 25 for pointing it out".</p> <p style="text-align: center;">Page 25</p>	<p>1 assume that the transcripts are accurate and that you 2 don't need the recordings. 3 MR CLARK: Thank you, madam. 4 The last of the smaller matters relates to, I will 5 deal with them together, the matters pertaining to 6 British Transport Police material and CCTV. Nothing to 7 add, I just wanted to clarify that. We are thankful for 8 the indication that there is a witness statement 9 touching on CCTV and as learned counsel to the inquest 10 suggests, we will deal with the issue in that way. 11 THE CORONER: You are not pursuing either of those points at 12 this stage? 13 MR CLARK: At this stage, no. Thank you, madam. 14 THE CORONER: Thank you. 15 MR CLARK: I will move on then to the question concerning 16 the previous coronial investigation. 17 THE CORONER: Yes. 18 MR CLARK: Thank you. 19 First, may I indicate in terms of structure 20 an important distinction between two questions. 21 The first is whether material that might be obtained 22 and disclosed is relevant and therefore gives rise, all 23 other things being equal, to a right to disclosure. 24 The second question, distinct from that question of 25 relevance, the question of whether there are any legal</p> <p style="text-align: center;">Page 27</p>
<p>1 MR CLARK: Absolutely, madam. It was only for the avoidance 2 of doubt, I presumed that what we explained was the 3 position and I thank you for the clarification. 4 In respect of the question about recordings of the 5 inquest hearings in addition to the transcript. The 6 point about proportionality is taken on board, of 7 course. It is mentioned only because of the importance 8 of those hearings and the observation out of experience 9 of myself and colleagues that there are occasions where 10 for practical reasons, nothing mysterious about it, but 11 when details are missed from transcripts which are there 12 in recordings. 13 I bear in mind also of course that those recordings 14 are material that can be accessed in other ways if 15 interested persons wish to access them in that way. The 16 point is not pressed particularly hard, but the 17 observation is made in case you would, as we suggest you 18 should, see fit to obtain that material for yourself and 19 disclose it. 20 THE CORONER: I am certainly not going to do that at this 21 stage. I for my part have not yet read the transcripts. 22 If there were, for example, large passages where the 23 typist has recorded "inaudible" or something like that, 24 then it may be necessary to check the recordings. But 25 unless that situation arises, I think we can safely</p> <p style="text-align: center;">Page 26</p>	<p>1 bars to otherwise relevant material being disclosed. 2 I will address them in turn. 3 By way of further clarification, of course, the real 4 question in the latter category is whether your ruling 5 of 15 July 2019 is a legal bar to disclosure of the 6 material that we refer to. I will deal with it in that 7 way. 8 Before I come to that, then, returning to the first 9 question on relevance, we have understood, and we have 10 noted learned counsel to the inquest's analysis, and it 11 seems your analysis, madam, of what the evidence says at 12 the moment. We say we maintain the submission that 13 there is reason to think that our position is at least 14 arguable and it is coherent and sustainable on the 15 evidence as it stands. 16 Let me clarify exactly what that position is. The 17 words that have been used about whether there is any 18 attack or any criticism, and that was the way we put it 19 in our submissions and we stand by that, but the issue, 20 if I may, to clarify we say is broader. It is about 21 whether or not the overlap between the police 22 investigation and the coronial investigation, the 23 factual effect of that, which is something which has 24 become apparent as more evidence has been disclosed, 25 whether or not the existence of that overlap as shown we</p> <p style="text-align: center;">Page 28</p>

<p>1 say by the evidence that we have referred to in our 2 written submissions, will effectively hollow out the 3 ability to investigate effectively any of the 4 investigations in this inquest. It will do that in our 5 submission potentially by precluding investigation of 6 some aspects of the explanations offered of the 7 particular steps taken in the police investigation. 8 For the avoidance of any doubt, this is not about 9 whether or not there are individual witnesses who intend 10 to criticise the coroner from the police side, nor is it 11 about, or nor is it restricted to, whether or not there 12 is written evidence in which those kinds of criticisms 13 are advanced. The argument about whether or not there 14 are criticisms of the police evidence at this stage for 15 the reasons I have indicated does not answer the 16 question. 17 The question is rather does the inability to examine 18 what underlies an explanation offered by the police for 19 reliance on ... whether it is advice from the CPS or 20 whether it is a decision or the outcome of or an aspect 21 of the coronial process. 22 In any event, ma'am, as we are all aware, it is not 23 for the interested persons to be determining what the 24 issue might be, even if a police officer were or were 25 not to say there was something wrong with a coronial</p> <p style="text-align: center;">Page 29</p>	<p>1 response to any enquiries from the police were 2 addressed. Decisions as to at what stage or when the 3 final inquest should go ahead, what the scope should be, 4 what the bundles should include. Matters of that type. 5 As I say, I well appreciate that this will raise 6 questions as to the relationship between those potential 7 points of disclosure in your ruling of 5 July, but I am 8 going to come to that, I have not addressed that point 9 yet. 10 THE CORONER: No, I know you haven't. 11 I just want to see if we agree about this. Have you 12 seen the disclosure that has been made, which includes, 13 for example, questions going from the coroner's officers 14 or from the coroner to the police and their responses? 15 MR CLARK: Yes, ma'am. 16 THE CORONER: You have seen that? 17 MR CLARK: Yes. 18 THE CORONER: You have seen Mr O'Connor's supplementary 19 submissions, which submit that there is no known gap in 20 any of that and there is no additional material apart 21 from the statement he has referred to that we propose to 22 take from DI Schamberger, everything else has been 23 disclosed as I understand it. 24 MR CLARK: Yes. 25 THE CORONER: What is this relevant material of which you</p> <p style="text-align: center;">Page 31</p>
<p>1 investigation, that is a matter of law which in any 2 event would be a question for you. 3 The point is whether the necessary overlap which has 4 become clearer by reference to the evidence that we 5 referred to in our submissions, whether the effect of 6 that is to hollow out the scope in terms of the police 7 investigation as it stands. 8 The difficult relationship that there is, the 9 difficult distinction -- we say unsustainable 10 distinction -- between the police investigation and the 11 coronial investigation produces practical problems, that 12 is clear, but that is a different point from whether or 13 not the material is relevant. 14 I move on now, ma'am, if I may to the question -- 15 THE CORONER: Before you move on, Mr Clark, you rightly 16 began with the question: is the material relevant? All 17 right? 18 Is what material relevant? What material do you say 19 has not been disclosed that might exist that might be 20 relevant? 21 MR CLARK: Witness statements from the coronial service 22 which deal with and explain the investigative steps 23 taken, explain the decisions taken and the reason for 24 them. So decisions as to whether or not to obtain 25 a given piece of evidence. Decisions as to how any</p> <p style="text-align: center;">Page 30</p>	<p>1 speak? 2 MR CLARK: Two categories, ma'am. 3 The first is witness statements from members of the 4 coronial service. 5 The second is contemporaneous records of the 6 coronial investigation as it proceeds. 7 Different coronial officers operate in different 8 ways, some nowadays use the WPC system, but there are 9 records in the context of those types of contemporaneous 10 databases which provides an indication of how 11 an investigation proceeds, about what decisions were 12 made, about its scope and the evidence needed to address 13 it. 14 I understand that -- 15 THE CORONER: You are saying those matters are not yet 16 disclosed? You are saying that is not in the process 17 that you have already had disclosed to you? 18 MR CLARK: Yes, I am saying that, yes. 19 THE CORONER: Right. 20 MR CLARK: As I understand it, ma'am, and I am guessing to 21 some extent here, but it seems that the material that 22 has been provided, which speaks to part of the coronial 23 process, may have been the product of disclosure from 24 the police which necessarily would include -- in fact, 25 it somewhat illustrates my point -- correspondence with</p> <p style="text-align: center;">Page 32</p>

<p>1 the coronial office. As I understand it, I may be 2 wrong, there has not been a fulsome straightforward 3 disclosure request from the coroner's office of the 4 material that records its investigation. Clearly we 5 haven't had any statements from coroner's officers or 6 otherwise.</p> <p>7 THE CORONER: No, but if the police have disclosed to me the 8 correspondence that has gone between them, for example, 9 via email, between the coroner's office and a police 10 officer and backwards and forwards. You don't need the 11 same disclosure from the coroner's office because both 12 sides of the correspondence has been disclosed from the 13 police, do you see what I mean?</p> <p>14 MR CLARK: Absolutely, ma'am, yes. I don't specifically 15 refer to email correspondence, or indeed anything which 16 would as a matter of logic come from a disclosure 17 request made to the police.</p> <p>18 THE CORONER: You are saying what is missing is witness 19 statements from the coroner's officers as to how the 20 process was conducted?</p> <p>21 MR CLARK: Yes. Or from the coroner, as you may see fit.</p> <p>22 THE CORONER: Right. Thank you.</p> <p>23 MR CLARK: Shall I move on, ma'am, to the second --</p> <p>24 THE CORONER: Yes, please.</p> <p>25 MR CLARK: Thank you.</p> <p style="text-align: center;">Page 33</p>	<p>1 take you back, if I may, to -- it is paragraphs 28 to 30 2 that I will now refer to. The reason I am referring to 3 this is because in our submission it is imperative to 4 have clear sight of exactly what the legal issue was 5 that was determined in that ruling and thereby what was 6 not determined in it.</p> <p>7 Paragraph 28 says the following: 8 "I want to emphasise that the issue raised is one of 9 pure law and it is irrelevant to this ruling whether 10 there were in fact acts or omissions by Ms Persaud/her 11 office or her officers." 12 Then it says: 13 "There either is a legal power to review or there is 14 not and I have ruled that there is not." 15 Just pausing there for a second, that makes clear it 16 was a matter of pure law. What is then that question of 17 pure law? Paragraph 29 doesn't touch on that so much 18 but part of paragraph 30 does, the relevant part is 19 this: 20 "Those prime examples of the acts/omissions which 21 are open to criticism when articulated are quite 22 obviously judicial acts or omissions which all agree and 23 I have concluded cannot be challenged." 24 In our submission, the issue relates to the 25 preclusion upon determining the adequacy of judicial</p> <p style="text-align: center;">Page 35</p>
<p>1 The question is: does the ruling of 15 July 2019 2 entail a barrier to what is at least in our submission 3 relevant documentary evidence?</p> <p>4 In our submission we say no. If I may, ma'am, I am 5 more than happy just to read out the relevant parts but 6 if I could ask you to turn to the text of your ruling of 7 15 July 2019.</p> <p>8 THE CORONER: I do not have it here, I am afraid. It might 9 be possible for me to get it.</p> <p>10 MR CLARK: I am happy to read out the relevant sections if 11 that would help --</p> <p>12 THE CORONER: Yes, do.</p> <p>13 MR CLARK: Thank you.</p> <p>14 It is the last few paragraphs in the ruling that 15 I will refer to. I will start with the very last 16 paragraph, and then go back slightly. The last 17 paragraph says: 18 "Finally I should add that should the disclosure 19 process reveal relevant evidence upon the topics 20 highlighted then that evidence will form part of the 21 evidence at the inquests." 22 That on our reading, ma'am, respectfully indicates 23 that to the extent that relevance, as I have already set 24 out, is established, then that would lead to disclosure. 25 Just to put that into a little bit more context, I will</p> <p style="text-align: center;">Page 34</p>	<p>1 acts. So that is the nature of the ruling.</p> <p>2 Going back then, again, within the same paragraphs, 3 this is at paragraph 29, it says the following: 4 "However, the scope of these inquests will have at 5 its heart any failings or missed opportunities by police 6 (and possibly others) to investigate matters which might 7 have prevented one or more of the later deaths." 8 Ma'am, in our submission, and rightly so, the text 9 in parenthesis in that paragraph makes clear that 10 non-police investigations could be considered as 11 a matter of evidence in this inquest, and rightly so. 12 In our submission, that could only possibly relate to 13 the coronial investigation. It may however be that you 14 had something different in mind, it is just that we 15 cannot understand what that might be.</p> <p>16 The point here is, ma'am, that the nature of the 17 decision is about the judicial act. In our submission, 18 the ruling of 15 July 2019 doesn't prevent the 19 disclosure of evidence and the obtaining of evidence of 20 the type that we have indicated.</p> <p>21 Practically, ma'am, may I make a suggestion as to 22 how this may all pan out. One suggestion, and it is the 23 suggestion that I think we put as the most realistic, is 24 that this whole process unfolds with relevant evidence 25 provided to all, as it would be and should be in any</p> <p style="text-align: center;">Page 36</p>

<p>1 inquest. That submissions, if it would assist you, 2 ma'am, are given after there is clarity, sharp clarity, 3 as to where on the facts the issues might arise. That 4 clarity will allow you then to considerate the apposite 5 question in our submission, the apposite question being: 6 do those issues, those defined issues, entail 7 a potential qualitative re-examination of a judicial 8 act? At that point it would be entirely possible or 9 entirely appropriate in our submission, if your decision 10 is maintained on this point, for there to be directions 11 to the jury which effectively indicate to them that any 12 qualitative analysis, any critical findings cannot 13 pertain to a judicial act. There would have then been 14 much greater clarity than we could ever have now as to 15 what the relevant judicial acts might be.</p> <p>16 Clearly some of the activities of a coronial 17 investigation are not judicial acts, but that decision, 18 that question, was only ever considered in the abstract 19 on a previous occasion. It had been an applied question 20 which can only be determined effectively once we know 21 what the issues are. It would be temporally 22 inappropriate in our submission also to seek to address 23 that now. The right time is at the close of the 24 evidence, as it would be in relation to any legal 25 submissions.</p> <p style="text-align: center;">Page 37</p>	<p>1 DR VAN DELLEN: Madam, if I may very briefly I endorse 2 everything which my learned friend Mr Clark said on 3 behalf of the family members. I have a very narrow 4 point on the evidence to be placed before the jury about 5 the interrelationship between coronial investigations 6 and police investigations.</p> <p>7 Mr Skelton, probably rather kindly, described there 8 being a local element in different coronial districts. 9 That is probably putting it as neutrally as it possibly 10 could be.</p> <p>11 What might be of assistance to a jury would be to 12 understand, firstly, the principle about how there can 13 be effectively two parallel investigations, one coronial 14 and one police. The second part of that evidence being 15 the specific arrangements in east London by which 16 information is passed backwards and forwards between 17 (Inaudible) investigation teams.</p> <p>18 There is an obvious potential relevance for any 19 preventing future deaths report that may or may not be 20 in that area, which is to try and understand whether 21 this is/appears to be a local peculiarity to east 22 London, this passage of information, or whether that is 23 a broader systemic problem that is relevant to all 24 coronial districts.</p> <p>25 Madam, I can't assist you any further and Mr Clark</p> <p style="text-align: center;">Page 39</p>
<p>1 Those are my submissions as to why the decision of 2 15 July 2019 does not get in the way of the disclosure 3 requests that we are asking for. Recalling that this is 4 not a submission on scope, nor is it a submission on 5 interested person status.</p> <p>6 You may well, ma'am, be minded against us that that 7 is incorrect. Our submission in that regard is that if 8 you do consider that your ruling of 15 July 2019 is 9 a full answer to the disclosure request that we have 10 made, that you revisit that decision, bearing in mind 11 the fact that we now have evidence which indicates the 12 indivisible link in our submission between any analysis 13 of any investigation in these cases.</p> <p>14 It may well be in your mind, ma'am, if do you see 15 fit to reconsider that decision, that whilst the ruling 16 itself characterised the submissions made by the 17 families as effectively unarguable, that 18 Mrs Justice Steyn, in addressing the question of 19 permission, found the contrary.</p> <p>20 Unless I can assist you further on those points, 21 those are our submissions.</p> <p>22 THE CORONER: No, thank you very much.</p> <p>23 Does anybody else want to make any submissions in 24 relation to the topics raised by Mr Clark?</p> <p>25 Dr van Dellen?</p> <p style="text-align: center;">Page 38</p>	<p>1 very eloquently stated his position, which I entirely 2 endorse. Unless I can be of any further assistance.</p> <p>3 THE CORONER: Can you just articulate the peculiarity, what 4 do you mean?</p> <p>5 DR VAN DELLEN: I am trying to put it as neutrally as I can, 6 madam.</p> <p>7 Effectively each coronial district develops their 8 own custom and practice, to the extent that some 9 coroner's officers are local authority employees and 10 some are police officers. In some cases the coroner 11 adopts wholesale the police investigation. In other 12 places the coroner effectively considers themselves the 13 investigator and is not interested in a PPO report or 14 not interested in a NHS serious incident report and 15 looks at the facts, essentially on a tabula rasa basis.</p> <p>16 I know not the details of how east London works and 17 functions, and this ties in to my learned friend 18 Mr Clark's submission, but the point is that at a very 19 high-level, as my learned friend Mr Skelton said 20 effectively, the jury will be assisted by knowing that 21 there are two parallel investigation processes ongoing 22 with information passing between them.</p> <p>23 In my submission, the jury would also be assisted 24 potentially by understanding exactly how it works in 25 east London: how is information passed to the coroner's</p> <p style="text-align: center;">Page 40</p>

<p>1 office? Actually tying into my learned friend 2 Mr Clark's submission, of far more relevance to this 3 inquest is then how is information passed back from the 4 coroner's office to the police at the most basic level, 5 reading the transcripts of the first inquest hearings, 6 there is information being put towards DI Schamberger, 7 or placed before DI Schamberger. That is at the actual 8 inquest itself, but there is also information passing 9 from coroner's officers back to the police officers as 10 well, and it is that process, which as my learned friend 11 Mr Clark says, quite rightly, falls within the scope of 12 this inquest: what does the Metropolitan Police do with 13 that information? What is the process by which that 14 information is transmitted from the coroner's officers.</p> <p>15 I say the coroner's officers as opposed to the 16 coroner, madam for obvious reasons. From the coroner's 17 officers to the Metropolitan Police, is it done in an ad 18 hoc way, a structured way, is there something particular 19 or peculiar about east London which means that for some 20 reason the police don't necessarily place sufficient 21 weight on information they are receiving from 22 a coroner's office or concerns expressed by a coroner's 23 officer or the coroner?</p> <p>24 Madam, I hope that assists in explaining the 25 submission I was trying to make.</p> <p style="text-align: center;">Page 41</p>	<p>1 creep if some of the questions that are made are 2 actioned by your team, that that will in fact occur, and 3 we would counsel against that.</p> <p>4 As far as the points made by Mr van Dellen are 5 concerned, again, we would caution against expanding 6 your investigation into a systemic examination of the 7 coronial system, whether or not locally or nationally. 8 That seems to us to be a matter that is beyond what is 9 directly relevant to the four deaths and is also 10 a matter which is difficult for a coronial court, as 11 opposed to an inquiry, to investigate practically and 12 reasonably.</p> <p>13 We would submit that should not be done in this 14 case.</p> <p>15 Those are all the submissions I propose to make on 16 the specific issues, unless Mr O'Connor raises other 17 points which we need to address.</p> <p>18 May I then just go back if I may to the original 19 point that he made right at the start of his submissions 20 about the direction that he is asking you to make.</p> <p>21 As he said in his written submissions, and indeed in 22 his oral submissions, disclosure is largely completed 23 and it is not anticipated that substantial further 24 documentation will be required. There has been 25 throughout that process, as I am grateful to Mr O'Connor</p> <p style="text-align: center;">Page 43</p>
<p>1 THE CORONER: I think as a matter of generality (Inaudible). 2 Thank you.</p> <p>3 Am I feeding back? Am I feeding back at myself?</p> <p>4 DR VAN DELLEN: No, madam.</p> <p>5 THE CORONER: Right. I am told somebody has left 6 a microphone on when they are not talking. Thank you.</p> <p>7 I assume nobody else wants to come back on that 8 topic apart from Mr O'Connor?</p> <p>9 MR SKELTON: Madam, it is Peter Skelton for the MPS. 10 THE CORONER: Of course.</p> <p>11 MR SKELTON: Just to be clear, madam, Mr O'Connor raised two 12 broad issues. One was the generic approach to 13 disclosure and his request that you make a direction; 14 secondly, there were specific issues.</p> <p>15 May I address you on both of those separately?</p> <p>16 THE CORONER: Of course.</p> <p>17 MR SKELTON: First of all, generally on the specific issues 18 that Mr O'Connor sketched out in anticipation of 19 Mr Clark's submission, we endorse your counsel's 20 approach. The order or direction and ruling that you 21 made last year must stand and there cannot be any change 22 of tack that might undermine the principle behind that 23 ruling that the coronial decision making, as implemented 24 by the coroner's officers, should not be investigated by 25 these inquests. There is a danger, I think, of mission</p> <p style="text-align: center;">Page 42</p>	<p>1 for acknowledging, helpful liaison between the MPS and 2 your team in providing that disclosure. That will of 3 course continue right up through and throughout the 4 entire duration of this process, including the inquest 5 itself.</p> <p>6 It has been agreed in dialogue with your counsel 7 that your legal team will make requests of the MPS to 8 search its databases for specific additional categories 9 of documents. Although we are waiting the specifics of 10 exactly what is sought, that is a process that we 11 envisage will be completed within a reasonable timeframe 12 and should complete the MPS's disclosure to you, madam.</p> <p>13 What I would submit though, if I may, is that the 14 MPS at least should not be asked to give a general 15 unconstrained as it were assurance in the terms sought 16 by your counsel at paragraph 5 of their submissions.</p> <p>17 This is not a way of sort of avoiding the 18 responsibility to provide disclosure to your 19 investigation, but is merely a matter of practicality 20 and proportionality.</p> <p>21 As far as the MPS is concerned, there are, we 22 estimate, about 576 officers and staff who were involved 23 in Operation Lilford. The paper trail which they 24 produced during the course of that investigation is 25 understandably vast. To review it again would take</p> <p style="text-align: center;">Page 44</p>

<p>1 many, many weeks of work and effort and, even then, the 2 results of that effort will be almost entirely 3 duplicative of the disclosure that has already been 4 provided, which we respectfully submit would be 5 an unnecessarily burdensome task, not just for the MPS 6 but for your own legal team who would have to sift 7 through to find if there were any new documents and to 8 remove duplicates and so on.</p> <p>9 So, as it were, an open-ended request that 10 an undertaking or an assurance is given that all 11 relevant documents have been given, would necessarily 12 require a disproportionate and impractical exercise. 13 May I suggest then that your direction, if you are 14 minded to make one, is caveated with some wording to 15 this effect, that the IPs and those stakeholders who 16 hold documents, having conducted reasonable and 17 proportionate searches, then give the assurance that 18 they have provided all relevant material. That will 19 prevent the sort of difficulty that we are otherwise 20 faced with, which is that we would have to check 21 everything to give the assurance, which would be 22 disproportionate.</p> <p>23 Madam, that is all I was proposing to say along 24 those lines. It may be that Mr O'Connor will address 25 this with you and if he does and I have anything to say</p> <p style="text-align: center;">Page 45</p>	<p>1 It may be, and may I suggest that this is left at 2 the moment as a matter of discussion between your team 3 and the Metropolitan Police. It may be that in the case 4 of the Metropolitan Police, we are able to suggest to 5 the Metropolitan Police that they add some further 6 detail relating to the searches that they have done, 7 which will, if I can put it this way, provide a greater 8 level of assurance to the others involved in this 9 process about exactly what Metropolitan Police have done 10 by way of for example searches.</p> <p>11 I hope that in that way a document may be provided 12 which other interested persons can look at and consider 13 and if they have any doubts or problems with the 14 searches and the exercises that have been conducted by 15 the Metropolitan Police, that could then be raised at 16 the next hearing. As I say, in principle, we agree with 17 what Mr Skelton has said and I hope that the suggestion 18 I have made is a way of, on the one hand, facilitating 19 the Metropolitan Police's concerns, but on the other 20 hand ensuring that all those involved in these 21 proceedings have a good understanding of all that the 22 Metropolitan Police have done and means of challenging 23 that if they have any concerns about it.</p> <p>24 Madam, that is all I wish to say about that matter. 25 As far as the submissions that both Mr Clark and</p> <p style="text-align: center;">Page 47</p>
<p>1 in response, may I do so? 2 THE CORONER: Yes, of course. 3 MR SKELTON: Thank you. 4 THE CORONER: Anything from anybody else before I ask for 5 Mr O'Connor's response? 6 No. Thank you. 7 MR O'CONNOR: Madam, thank you. I can respond briefly, 8 I think.</p> <p>9 May I take first the point that Mr Skelton has just 10 raised about the terms in which an assurance is given 11 that proper disclosure has been made. Madam, in short, 12 we see the force of what Mr Skelton has said. He is 13 right to say that your team have had lengthy and 14 detailed discussions with the Metropolitan Police about 15 the various disclosure searches that they have 16 undertaken.</p> <p>17 He is also right, as you would expect, that 18 proportionality had figured large in those discussions. 19 At any time it is appropriate that searches are 20 constrained by a level of proportionality and at these 21 times you may think it is particularly important.</p> <p>22 Madam, may I suggest that we add the words that 23 Mr Skelton has suggested to the general requirement to 24 give the assurance that we have identified at 25 paragraph 5 of our submissions.</p> <p style="text-align: center;">Page 46</p>	<p>1 Dr van Dellen have made are concerned, I would emphasise 2 two things at the outset, madam.</p> <p>3 The first is that what we are concerned with here 4 today is the question of disclosure. We will come, no 5 doubt, to debate about questions for the jury, and all 6 sorts of other matters, but for today's purposes, what 7 you are interested in is the question of disclosure.</p> <p>8 The second point I would make at the outset is that, 9 as I have already emphasised, this is a rolling process, 10 it is one where there is plenty of scope for dialogue 11 between your team and interested persons. We welcome in 12 that regard the submissions that have been made today 13 and it may well be that we can have a continuing 14 dialogue about this issue, which is clearly one which 15 the families feel strongly about.</p> <p>16 With those preliminary points made, what I would say 17 by way of substance is that what governs disclosure, as 18 Mr Clark has said, is relevance. What determines 19 relevance is whether an issue is within or outside 20 scope. In my submission, the effect of the ruling that 21 you made, which Mr Clark has referred to, on the 22 question of scope is actually very clear. The effect is 23 that what is within scope is the factual question of 24 what the coroner's office did or didn't do by way of 25 investigating these deaths and the discussions and</p> <p style="text-align: center;">Page 48</p>

12 (Pages 45 to 48)

<p>1 communications they did or didn't have with the police. 2 Those factual matters are all within the scope of the 3 inquest. What is not within the scope of the inquest is 4 any question as to the merits of that investigation. 5 For example, you may not explore why certain 6 decisions were taken, or whether, ultimately in the 7 jury's view, those decisions were good, bad or 8 indifferent. 9 Where that leaves us, in my submission, as regards 10 to disclosure is that we should make the disclosure of 11 the documents that we have and that are available 12 showing what the coroner's office did or didn't do in 13 investigating these deaths. If I may identify two 14 categories of material. 15 First, we have the coroner's files relating to these 16 particular deaths. As a matter of principle, in our 17 submission, those files are disclosable. I can confirm 18 that in relation to the deaths of Mr Kovari, 19 Mr Whitworth and Mr Taylor those files have already been 20 disclosed. In the few minutes available we have not 21 been able to confirm whether the file in relation to 22 Mr Walgate has been disclosed on Relativity, I am 23 afraid. You will recall the different ways in which 24 these files were dealt with is not straightforward, but 25 I would accept that certainly that file ought to be</p> <p style="text-align: center;">Page 49</p>	<p>1 Madam, as I said at the outset, this is an ongoing 2 debate, one we are happy to continue with those 3 representing the families as these proceedings continue, 4 but for today's purposes that is our submission. 5 THE CORONER: Yes, thank you. 6 MR O'CONNOR: Madam -- 7 THE CORONER: I think we can then go on to the next topic. 8 MR CLARK: Madam, I'm sorry to ask but may I very briefly 9 reply to three matters that have come up? I will do it 10 very, very briefly. 11 THE CORONER: Yes. 12 MR CLARK: Thank you very much indeed, ma'am. 13 First, in respect of my learned friend Mr Skelton's 14 Queen's Counsel's submission, for the avoidance of 15 doubt, and I am ever so sorry if my submissions were not 16 clear or were misleading, we don't suggest that you 17 conduct a public Inquiry into the national coronial 18 service. What we suggest is that an article 2 19 investigation is carried out in respect of the 20 circumstances of these deaths. I am ever so sorry if 21 I suggested otherwise. 22 Belatedly, and this goes back to how much weight to 23 attribute to competing understandings of evidence at 24 this stage, if understandings are to be offered, is in 25 an article 2 inquest the family are meant to be at the</p> <p style="text-align: center;">Page 51</p>
<p>1 disclosed to interested persons if we have it, and that 2 is something we can take away. 3 The files clearly are evidence of what happened and 4 they need to be disclosed. 5 We also have -- this is the material, madam, much of 6 which we referred to in our written submissions and 7 which you have referred to in the course of argument 8 today. We also have a volume of emails and other 9 documents which were obtained from the 10 Metropolitan Police in the course of the IOPC 11 investigations. Those, we say, paint a very full 12 picture of what actually happened. Placed alongside as 13 we know the transcripts of the actual inquest hearings 14 which took place into the deaths of Mr Kovari and 15 Mr Whitworth. 16 That all leads, madam, to the submission we made 17 which, as we have said in our written submission, with 18 the one caveat that I have mentioned, there is a full 19 body of documentary evidence within scope about what the 20 coroner's office did in relation to these deaths. 21 It remains our submission that insofar as it is 22 suggested for example that witness statements about why 23 decisions were made and as far as it is suggested that 24 such witness statements should be taken, they are 25 outside scope and should not be taken.</p> <p style="text-align: center;">Page 50</p>	<p>1 centre of that. We ask that the appropriate onus is 2 placed on their perspective on the evidence. 3 Third, and very briefly, in response to learned 4 counsel to the inquest's submission, we note what was 5 said about relevance and about scope, and what was 6 decided. I think this is what was said, that factual 7 matters about the coronial investigation are within 8 scope. Pausing there, that clearly is in line with the 9 parts and other parts of the ruling that I read out. 10 My learned friend then went on to say, "... but not 11 the merits of the investigation". 12 Ma'am, for the avoidance of any doubt, the position 13 in all inquests formally, respectfully(?), is that 14 inquests are factual matters that don't involve 15 attributing blame or determining liability. When we use 16 the word "merits" we are talking about the preclusion on 17 doing that, that is not in any way different from the 18 normal position in any inquest. 19 The effect of the article 2 investigative duty which 20 is triggered in this case, and again for the avoidance 21 of any doubt is being disparaged in the case law that 22 you can have the article 2 investigative duty triggered 23 for only part of the scope of an inquest, and once it is 24 in it is in. 25 That being so, the effect of the article 2</p> <p style="text-align: center;">Page 52</p>

<p>1 investigative duty is to allow for critical findings in 2 respect of factual matters. It means that the factual 3 findings of an inquest include critical language. That 4 doesn't in any way undermine the position about 5 an inquest as a fact-finding process.</p> <p>6 It may be that the point that I am driving at here 7 is clear, but to go back to what we have said before, 8 the nature, the legal relevance, the bite of the ruling 9 was on what is and what is not a judicial act. The 10 ruling includes the coronial investigation as being 11 within scope, and so the submissions that I have already 12 made in my submissions are to be sustained.</p> <p>13 Finally, and to be absolutely clear, and we want to 14 avoid any doubt about this at all, our alternative 15 position is one that we stand by just because it doesn't 16 require as much argumentation. It doesn't mean that it 17 is any less strongly felt. In the alternative, if you 18 are not with us on those matters, we respectfully 19 request reconsideration of our submissions made in 20 respect of the non-existence of an extant judicial act 21 and in any event the fact that the article 2 22 investigative duty requires consideration of the 23 activities of an investigating judiciary.</p> <p>24 We have already made those submissions. 25 I effectively repeat them for these purposes and request</p> <p style="text-align: center;">Page 53</p>	<p>1 One of those was that the legal issue at stake was 2 one of, well, interested person status in part but also 3 scope.</p> <p>4 As I hope I have indicated, whilst in any inquest 5 the different categories of legal issues that come up in 6 a pre-inquest review can be seen to merge. It is 7 important to maintain some sort of clarity. Our 8 submissions are not about interested person status, nor 9 are they about scope. They are about what is needed 10 actually in order to fulfil the scope which has been 11 identified and they are about disclosure. Moreover, as 12 has been seen from our written submissions, they arise 13 specifically from evidence that has been disclosed, 14 whereas as we all know, the argument in respect of 15 interested person status and scope last year was 16 a strictly legal matter that didn't touch on those 17 questions.</p> <p>18 The motivation from the families' point of view at 19 that stage was concern about what may have been missed 20 as straightforwardly as a consequence of potential 21 failures in the coronial process.</p> <p>22 Here, the issue arises because of the indivisible 23 nature of the two investigative processes and in our 24 submission, as a matter of the relevance of the 25 disclosure sought, the fact that it necessarily leads</p> <p style="text-align: center;">Page 55</p>
<p>1 that, if you are not with us on the remainder of our 2 submissions, that that notion be revisited.</p> <p>3 Sorry to have detained you for that, ma'am. Thank 4 you.</p> <p>5 THE CORONER: That is all right.</p> <p>6 Can I just understand what you are suggesting, 7 because the audio is slightly difficult to hear at 8 times, Mr Clark, and I don't want to misunderstand you.</p> <p>9 You are suggesting that I should reconsider the decision 10 I made on 15 July?</p> <p>11 MR CLARK: Yes, ma'am, but only if you are in disagreement 12 with our submissions that effectively you don't need to, 13 because our primary submission is that our disclosure 14 request, and particular requests for witness evidence, 15 of course once witness statements are provided, the 16 question of who should or should not be on the witness 17 list arises. Our submission is you don't need to 18 reconsider your position, because for all the reasons 19 I have outlined, everything we are asking for is 20 entirely compatible with it, but if you don't agree with 21 that, we wish to formally request that reconsideration.</p> <p>22 THE CORONER: Even though you didn't pursue the judicial 23 review of my decision?</p> <p>24 MR CLARK: Ma'am, the issue arose in a different context for 25 a number of reasons.</p> <p style="text-align: center;">Page 54</p>	<p>1 into a need to consider the reasoning that comes from 2 the coronial side, where aspects of the police decision 3 making refer to it as an (Inaudible). It is not in our 4 submission appropriate to attribute how much weight 5 a given officer may have given to the outcome of 6 a particular inquest at the time. That of course would 7 be a matter for the final inquest hearing.</p> <p>8 Briefly, and as was alluded to in our written 9 submissions and as I hope we are well aware, regrettably 10 the non-pursuit of the judicial review was not because 11 of a change in position by the family at all. I well 12 appreciate that that point is a difficult one but I hope 13 that, given the sympathy that ought to be felt for 14 bereaved families in the coronial process, that the 15 formal consequences of making that observation are not 16 pushed too high, particularly since it is the last in 17 a long line of considerations as regards the position 18 now, as compared to the position when that judicial 19 review was withdrawn.</p> <p>20 THE CORONER: Mr Clark, there is absolutely no criticism of 21 any of the families, and I want to make that quite 22 clear.</p> <p>23 MR CLARK: I am grateful, ma'am, thank you.</p> <p>24 THE CORONER: Yes.</p> <p>25 Mr O'Connor, where do we go from there?</p> <p style="text-align: center;">Page 56</p>

<p>1 MR O'CONNOR: Madam, I start my submissions as you observed, 2 that nothing that I say is any criticism of the 3 families. I know that you and my team share with the 4 families the desire to proceed with these inquests and 5 to have as full a process as is possible, consistent 6 with the law. That is what we are all trying to do. 7 But, madam, I mention consistency with the law for 8 the obvious reason that the matter on which you ruled 9 in July last year was all about a question as to what 10 you were legally entitled to investigate and on the 11 other hand what you were not legally entitled to 12 investigate. 13 It was identified at an early stage as a hard-edged 14 question of law which was appropriate for you to rule on 15 at that very early stage, precisely because it would 16 have an effect on a number of procedural decisions that 17 you would have to make as the inquests progressed. 18 Scope was one, disclosure, the calling of witnesses, was 19 clearly other issues. 20 Madam, with the greatest of respect to Mr Clark, my 21 submission is that the points he has made to you are 22 without any merit whatsoever. That is a question that 23 you have heard full argument on, that you have ruled on, 24 and, as far as these proceedings are concerned, the 25 matter is closed. The only available route that the</p> <p style="text-align: center;">Page 57</p>	<p>1 submissions, the witnesses involved are in the main 2 either borough commanders or what we have referred to as 3 HAT officers. Those involved will understand that "HAT" 4 is an acronym standing for the homicide assessment team. 5 In other words, these are all Metropolitan Police 6 officers and what they have in common is that statements 7 were not taken from them by the IOPC. So whereas in 8 other cases we are able -- we rely with gratitude on the 9 work that the IOPC have done, in the case of these 10 officers we don't have statements, so we have asked for 11 them. In the first instance we have asked the Met to 12 provide statements from those officers and, as we have 13 indicated in our submissions, the identities of those 14 officers are there to be seen in the dramatis personae 15 that we served with our first submissions. 16 The process of taking those extra statements is 17 underway. I should highlight, madam, a point which we 18 will come back to, which is that that very process, in 19 other words contacting those officers for statements, 20 has identified problems regarding conflicts of interest. 21 As a result of those problems being identified, 22 a number of Metropolitan Police officers, including 23 several from whom we have requested further statements, 24 are now to be separately represented. As a result of 25 that, there will no doubt be some delay in the provision</p> <p style="text-align: center;">Page 59</p>
<p>1 families had was to judicially review your decision, and 2 I say without any criticism of them, or anyone else, 3 that that route was not followed. 4 As a matter of very basic law, madam, the ruling 5 that you have made stands in these proceedings. I have 6 already made submissions to you about the consequences 7 and the impact of that ruling on the question that you 8 are addressing today, which is disclosure. 9 In my submission, it is not appropriate for Mr Clark 10 to invite you to revisit that decision for no better 11 reason than we have come across another of the 12 procedural questions to which it relates. 13 The decision has been made and we must all follow it 14 as these inquests progress. 15 THE CORONER: Yes, thank you. 16 The next topic on your list is witness evidence, 17 shall we proceed to that now? 18 MR O'CONNOR: Sorry, madam, I think I muted myself. I hope 19 you can hear me now? 20 THE CORONER: I can. 21 MR O'CONNOR: I will turn to that next point. 22 The question of witness evidence I can take shortly. 23 We referred at paragraph 17 of our initial submissions 24 to the fact that we have requested a number of further 25 witness statements. As we mentioned in those</p> <p style="text-align: center;">Page 58</p>	<p>1 of their witness statements, but we have done what we 2 can and we know that the Metropolitan Police have taken 3 considerable steps too to accelerate this process. It 4 will not be possible today to identify a date when those 5 statements will be available, but we are certainly 6 working on the basis that those statements should be 7 available before the next hearing. 8 Again, I don't think it is possible to give 9 an absolute guarantee of that because some of the 10 officers have still either not been contacted or are at 11 the very early stages of providing instructions but if 12 I can give an indication of roughly where we are, that 13 is it. 14 Madam, that was all I wanted to say, just on the 15 subject of further witness evidence. It may be sensible 16 if I turn on to the next topic before you invite further 17 submissions, since I doubt there are many submissions on 18 what I have just said. 19 The next topic is the witness list. Madam, you will 20 have seen that we annexed to our initial submissions 21 a full list of witnesses who we, at a very early stage, 22 were proposing should be called. In some cases their 23 statements should be read at the substantive inquests in 24 the hearings early next year. 25 We invited comments from interested persons on that</p> <p style="text-align: center;">Page 60</p>

<p>1 list and we are grateful for the comments that we have 2 had. We have annexed to our supplementary submissions 3 an updated list which reflects the further submissions 4 that have been made. Going down that list you can see 5 that in the case of many of the witnesses the position 6 is agreed. In respect of some of them, there is some 7 debate to be had perhaps as to whether they should be 8 called or not, or whether their statements can be read 9 in the alternative.</p> <p>10 Madam, as a general observation, I would submit that 11 we are now -- six months or so before the start of the 12 substantive inquests -- well advanced in this process of 13 discussion about the witness list. We are grateful, as 14 I have said, to interested persons for their comments so 15 far. We are not inviting you today to make any final 16 decisions as to which witnesses should be called or 17 read. It seems to us premature for you to do that, 18 particularly given that, as I have said, there are more 19 statements to come from those Metropolitan Police 20 officers I have already mentioned and also the expert 21 report.</p> <p>22 In light of those matters, it seems to us that the 23 right time to have a detailed discussion about that 24 witness list and for you to make rulings on who is and 25 is not to be called will be the hearing in September,</p> <p style="text-align: center;">Page 61</p>	<p>1 that we have reflected that.</p> <p>2 We have also seen the submissions from 3 Mr van Dellen, that Mr Waumsley would seek to give his 4 evidence of that nature at the outset of the chapter 5 relating to the investigation into Mr Whitworth's death 6 and we have, in a similar manner, reflected that desire 7 in the amended witness list.</p> <p>8 Madam, the second issue I want to address is the 9 question of the chapter of evidence relating to 10 Mr Taylor's death. You will recall that there is 11 an issue here about the extent to which, if at all, 12 I think it is fair to say, you should hear evidence 13 relating to the investigation into Mr Taylor's death.</p> <p>14 The point being, unlike the investigations into the 15 first three deaths, the shortcomings, if there were any, 16 in the investigation into Mr Taylor's death cannot be 17 said to have a direct causative relevance to any of the 18 deaths you are investigating. Madam, we have always 19 submitted that you should hear evidence about the 20 investigation into Mr Taylor's death. We maintain the 21 position that we have adopted in the past, which is that 22 it is appropriate for you to hear evidence and indeed 23 oral evidence about that investigation.</p> <p>24 We say that for two reasons.</p> <p>25 The first being that there were features of the</p> <p style="text-align: center;">Page 63</p>
<p>1 which will still provide plenty of time for any work 2 arising out of that decision to take place.</p> <p>3 As I have said, this is not the moment to have 4 a detailed debate about the list, but having said that, 5 there are a few points arising out of the submissions 6 which I would suggest are worthy of discussion today. 7 I have identified in my document four issues which 8 I will go through and then invite you to hear 9 submissions from others about.</p> <p>10 The first of those issues is the question of pen 11 portraits. We, in our submissions, floated two 12 possibilities as to the timing of that evidence.</p> <p>13 First of all, at the very outset of the inquests all 14 of the family evidence of that nature could be heard.</p> <p>15 We also suggested a possibility that it could be 16 heard at the beginning of each of the chapters, as we 17 have called them, of evidence relating to each 18 individual there.</p> <p>19 We see the submissions from the families, that they 20 would prefer all of their pen portrait evidence to be 21 heard at the outset of the inquest, and we are, for our 22 part, very happy to proceed in that way. In fact, we 23 were really waiting to hear their preference to 24 determine how the matter should proceed.</p> <p>25 So you will see that in the amended witness list,</p> <p style="text-align: center;">Page 62</p>	<p>1 investigation into Mr Taylor's death that will 2 highlight, we say, possible failings in the earlier 3 investigations. So there is that link and that hearing 4 evidence about the investigation into Mr Taylor's death 5 will assist the jury to understand the evidence that 6 they have heard about the earlier investigations. That 7 is the first point.</p> <p>8 The second point is that evidence you hear about 9 Mr Taylor's death, or rather the investigation into 10 Mr Taylor's death, may be relevant to any report on 11 future deaths that you choose to make at the conclusion 12 of these proceedings.</p> <p>13 That is our position, madam. You will have seen 14 from the written submission that there is, or rather 15 there remains, a debate between the interested persons 16 about this issue. I will invite you in due course to 17 hear from them, so I won't go into the detail of that 18 debate.</p> <p>19 Perhaps the last thing I will say about this, madam, 20 is that we don't invite you to make a final decision on 21 this matter today. As I have already indicated, we 22 suggest that September will be the time for you to make 23 final rulings on which witnesses should and should not 24 be called and that applies to this issue, as well as to 25 any others.</p> <p style="text-align: center;">Page 64</p>

<p>1 Given the importance of this we do submit that it 2 would be of assistance if you could give a provisional 3 indication as to whether you are minded to hear some 4 oral evidence relating to the Taylor investigation at 5 this stage. 6 Madam, that is all for the moment I am going to say 7 about the second issue, which is the Taylor 8 investigation evidence. 9 The last two issues I can take more shortly. 10 The first of those, the third issue, relates to the 11 evidence of DI Richards. You will recall, madam, that 12 our proposal, and you will have seen it in the witness 13 list that DI Richards gives evidence to the jury 14 essentially about what Operation Lilford, which 15 I realise I have referred to several times but for 16 anyone who is not familiar with this case, that was the 17 Metropolitan Police investigation into Stephen Port 18 which commenced after, if you like, the investigation 19 into Mr Taylor's death and the other investigations, 20 which led to his prosecution and conviction, Mr Port's 21 prosecution and conviction, that is. 22 DI Richards is intended to give evidence about what 23 Operation Lilford subsequently discovered about 24 Mr Port's activities relating to these various deaths, 25 to help the jury understand what it was that was there</p> <p style="text-align: center;">Page 65</p>	<p>1 points which there is probably no answer at the back of 2 the book, there is no correct answer, it is just 3 a question of what is going to be most effective and of 4 most use to the jury when we come to the hearing. 5 The point is we have suggested that DI Richards is 6 called and recalled on a number of occasions to give 7 evidence relating to each of the individual deaths and 8 the investigation into those deaths. 9 One can see the argument that the jury would be 10 assisted by that because it would help them to keep the 11 facts clear in their minds. Mr Skelton in his 12 submission has made the contrary argument, that it would 13 be better for him to be called at one go, as it were, to 14 give this evidence. One argument that tells in favour 15 of that would be the interests of DI Richards himself, 16 it might be rather oppressive, it might be suggested, 17 for him to be required to give evidence on a large 18 number of different occasions. 19 That, madam, is the debate. As we say in our 20 written submissions, we would be assisted if other 21 interested persons could give some thought to this 22 point. Of course they will be able to do so that much 23 better when DI Richards's statement is disclosed, which 24 should be disclosed in the fairly near future. Perhaps 25 this is a point we can pick up when we come back to it</p> <p style="text-align: center;">Page 67</p>
<p>1 to be discovered at the time of the initial 2 investigations. 3 There are two particular procedural issues which 4 relate to his evidence. We address those at 5 paragraph 12a of our supplementary submissions. Neither 6 of them I think call for a ruling from you at this 7 stage, but just to explain what the issues are. 8 First of all, there is the question about the scope 9 of his evidence. For our part we would emphasise that 10 what is intended is that DI Richards gives factual 11 evidence about what Operation Lilford was able to 12 uncover relating to Mr Port and the various activities 13 relating to the (Inaudible) deceased that you are 14 addressing. 15 I emphasise factual evidence. There will be other 16 Metropolitan Police witnesses who will be questioned 17 about whether there were failings in the initial 18 investigations. We feel it is important to put down the 19 marker that DI Richards will not be expected to offer 20 what would from him at least in effect be opinion 21 evidence about any such failings. That is the first 22 point. 23 The second point is simply a question of timing, it 24 is about when he should be called. This is a point that 25 we have given some thought to ourselves, one of those</p> <p style="text-align: center;">Page 66</p>	<p>1 at the hearing in September. 2 That was the third issue. 3 The final of these issues relating to the witness 4 list, the fourth issue, I think is a point Mr Gibbs 5 referred to earlier and it is about the 6 Metropolitan Police policies and procedures. We deal 7 with it at paragraph 12b of our submissions. As we say 8 there, madam, it is our intention that a senior officer 9 from the Metropolitan Police -- this a witness who 10 Mr Gibbs referred to as witness 2 -- should give 11 evidence about Metropolitan Police policies and 12 procedures. 13 The intention is that this officer will be able to 14 introduce those policies and procedures to the jury at 15 an early stage of the proceedings, so that they will, if 16 you like, form a factual context within which the jury 17 can then hear evidence about what in fact took place. 18 That is our proposal. 19 Mr Gibbs, in his submissions, has suggested this 20 evidence could be given by Ms Mackay, the expert 21 witness. We submit it would be better for the 22 Metropolitan Police to give this evidence. These are, 23 after all, Metropolitan Police policies and procedures 24 and so we submit that this Metropolitan Police witness 25 is best placed to give that evidence. The other factor,</p> <p style="text-align: center;">Page 68</p>

<p>1 we submit, that weighs in this regard is that at least 2 our current proposal is that Ms Mackay should give 3 evidence at the very end of the inquest, so she 4 therefore would not be able to perform that role of 5 introducing the policies to the jury. 6 I should emphasise of course that when Ms Mackay 7 does give evidence, part of her evidence will no doubt 8 be in relation to those policies and procedures. She 9 may take the view that there were shortcomings in the 10 policies or procedures themselves. She may take the 11 view that there were shortcomings in the way those 12 policies or procedures were applied in these 13 investigations. That will be a matter for her, of 14 course. 15 What we are talking about here is simply the 16 question of the earlier stage when they are introduced 17 to the jury and I have made my submission about that. 18 Madam, those then were the four particular issues 19 relating to the witness list that you may be assisted by 20 hearing some further submissions about today. As I have 21 said, now more than once, with the caveat that we submit 22 final positions on these matters could helpfully be 23 reserved until September. 24 THE CORONER: Yes, thank you. 25 Mr Thomas, Mr Clark, on behalf of the families, as</p> <p style="text-align: center;">Page 69</p>	<p>1 THE CORONER: Did you say is or is not? 2 MR SKELTON: It is not yet clear. 3 The relevance issue from the MPS's perspective is 4 yet to be demonstrated satisfactorily, but 5 notwithstanding that we support the suggestions as 6 presently articulated in annex B of your counsel's 7 submissions. 8 The second point really is, as it were, scrolling 9 ahead towards the end of the inquests. This is picking 10 up a point again that Mr O'Connor has made, but also to 11 some extent the point that Mr Clark made about what the 12 jury ultimately will be asked to consider in their 13 conclusions. Obviously we are a very long way away from 14 that, but I think to be clear the jury should not be 15 making findings in respect of failings in respect of the 16 Taylor investigation, in the sense that they cannot 17 obviously have been causative of any of the four deaths. 18 I do appreciate that what your counsel Mr O'Connor 19 said about the preventing future deaths report, there 20 may be some relevant material or evidence within the 21 Taylor investigation that may affect your view, madam, 22 ultimately as to whether or not it is necessary to write 23 such a report. 24 We are obviously a long way away from that. Thank 25 you.</p> <p style="text-align: center;">Page 71</p>
<p>1 far as pen portraits are concerned, you wished and I am 2 quite happy to agree, to the proposal that the pen 3 portraits are all given at the outset of the inquest. 4 Do you want to add anything in relation to the pen 5 portraits? 6 MR THOMAS: No, madam. 7 THE CORONER: Thank you. 8 Then do either of you want to say anything about 9 what has been termed the "Taylor chapter" or should 10 I turn to Mr Gibbs and Mr Skelton on that topic? 11 MR THOMAS: You can turn to Mr Gibbs and Mr Skelton on that 12 topic. 13 THE CORONER: Thank you. 14 Mr Skelton? 15 MR SKELTON: Madam, thank you. 16 Yes, on that topic, I think really just two general 17 points. One is in respect of the particular witnesses, 18 you will have seen that the MPS for the most part 19 endorses your counsel's suggestions in their annex B, 20 but in our written submissions we make two overarching 21 points in effect. 22 One is it is yet clear to us from the evidence we 23 have seen that the analysis of the Taylor investigation 24 will inform or enlighten the analysis of the earlier 25 investigations.</p> <p style="text-align: center;">Page 70</p>	<p>1 THE CORONER: Thank you. 2 Mr Gibbs? 3 MR GIBBS: You will appreciate, madam, that I will not 4 intend to go over old ground, particularly ground on 5 which you have already ruled. We understand my learned 6 friend Mr O'Connor's proposal at his paragraph 23f and 7 his supplementary paragraph 10. We have nothing to add 8 here to our submissions as set out in writing at our 9 paragraph 5. 10 THE CORONER: Thank you very much indeed. 11 Then in relation to the evidence of DI Richards, the 12 position seems to now be clear that he is to be treated 13 as a witness of fact. Then there is a residual question 14 about the timing of his evidence, which can clearly be 15 determined at or before the next hearing and does not 16 need to be determined today, unless anyone seeks to 17 argue to the contrary? 18 Thank you. 19 Then the final heading is the question of who should 20 give evidence about the Metropolitan Police policies and 21 procedures. That is something that I think, Mr Gibbs, 22 you wanted to come back about? 23 MR GIBBS: Yes, please. It is the thing, actually in this 24 entire agenda about which I would most like to be heard. 25 It is the one point really of disagreement potentially</p> <p style="text-align: center;">Page 72</p>

<p>1 between ourselves and counsel to the inquest. 2 To begin at the purpose of the witness, what is he 3 or she going to do? Is she going to merely exhibit the 4 documents, is she a producer? Or is she going at the 5 outset and before the jury hears any of the facts to 6 explain them to the jury? If she is going to explain 7 them, how can she do it without some gloss at least, 8 unless it be nearly to read out their word-by-word text? 9 Although all the policies will be written down, not 10 all necessarily of the procedures and practices which 11 were relevant in this police service, in this borough, 12 at that time will be. 13 On behalf of whom would the witness be speaking? 14 By whom would the witness be chosen? 15 What is the status of the witness? 16 The answer to each of those questions, in my 17 submission, should be that the witness should be 18 entirely disinterested in the facts which are to follow 19 and should be visibly disinterested, should have 20 a status which by definition makes her disinterested. 21 That is one of the simple reasons why it cannot be, 22 in my submission, a witness from or chosen by the 23 Metropolitan Police Service in circumstances where the 24 Metropolitan Police Service is an interested person in 25 the inquests and, from what we have just recently been</p> <p style="text-align: center;">Page 73</p>	<p>1 should be disinterested and cross-examinable, it is the 2 wrong word, obviously, in a coronial context, but should 3 be neutral and available for questioning by each of the 4 interested persons. Of course the family, who might 5 themselves rather hear that relevance opined upon by 6 an independent expert than by an officer of the 7 Metropolitan Police Service, but also by the 8 Metropolitan Police Service itself. 9 The same applies, in my submission, and I mentioned 10 this earlier on, to the two categories of evidence which 11 my learned friend Mr O'Connor identified in his 12 supplementary submissions at paragraph 7f, that is the 13 way coronial-police exchange works or worked, and 14 paragraph 7n, that is the way prosecutorial-police 15 exchange works or worked. 16 I don't for a moment suggest that the MPS will pick 17 a witness that is going to say what might suit some of 18 the officers at the MPS that he or she say, of course 19 they wouldn't do that, but the possibility that it might 20 by somebody later be said that that is what had happened 21 would be avoided if a neutral, disinterested and 22 independent expert were the person who gave that 23 evidence, that witness 2. 24 He is going to have to give the evidence anyway -- 25 I apologise, you may have had a clock. I apologise if</p> <p style="text-align: center;">Page 75</p>
<p>1 told by my learned friend Mr O'Connor, has a conflict of 2 interest with, and different conflicts of interest, 3 perhaps, a number of its serving officers. 4 My submission is that if it is a MPS witness, there 5 is plenty of opportunity for confusion and if it is 6 a disinterested expert, there is not. 7 The very first lines of the instructions which were 8 issued at that time, I think, to a potential witness 9 called Stride, but now the witness Mackay, are, and I am 10 looking at the amended list of questions, and I am going 11 to ask you, madam, in your own time to look both at that 12 amended list and back at the suggested outlined 13 instructions which my learned friend Mr Skelton and 14 Ms Dobbin and I proffered to your counsel right back at 15 the time when instructions were being given to the 16 expert. 17 The very first four lines are: 18 "You are instructed to consider the following 19 questions: for each question, where there is a relevant 20 [I underline the word] policy, guidance or training 21 document which informs your answer, please set out the 22 relevant [I underline the word again] passage for 23 cross-referencing if the passage is extensive." 24 Whose determination will relevance be? The 25 witness's. That witness -- I repeat myself -- therefore</p> <p style="text-align: center;">Page 74</p>	<p>1 you did ... is going to have to give the evidence anyway 2 and the time for her to give it in my submission is up 3 front. She wouldn't be overtly giving opinion at that 4 point. And she would have to come back again, rather 5 like other witnesses in the case, at the moment when she 6 would comment upon the facts, but the first paragraph of 7 her, or the first section of her expert report must, if 8 she is true to her instructions and would have to, for 9 her to produce any kind of worthwhile report, set out 10 what those policies and procedures in her view were 11 anyway. 12 THE CORONER: Can I just ask you two questions, Mr Gibbs, 13 arising out of what you have said. 14 If it is not just exhibiting the documents, then you 15 went on to say is the witness to explain them? How 16 could a non-Metropolitan Police officer explain 17 Metropolitan Police policies and procedures? 18 Secondly, going on to your point about they might 19 not all be written down, and how could -- I know you are 20 indicating that this could be Ms Mackay, how could she 21 comment on practices and procedures that were not 22 written down? 23 MR GIBBS: May I answer your Ladyship with a question? The 24 question is how could she give opinion about all of the 25 other things about which she is instructed to give</p> <p style="text-align: center;">Page 76</p>

<p>1 an opinion? All of which are to do with what 2 Metropolitan Police officers of one branch or another 3 should have, could have, might best have done at that 4 time on these facts, unless she had made herself 5 an expert in Metropolitan Police Service policy and 6 procedure. 7 That is, no doubt, why her letter of instruction 8 began with the need for her to do so, and to describe 9 how she had done so. 10 THE CORONER: Sorry, you froze very briefly, you said 11 something about the beginning of the inquest, were you 12 indicating that if it were Ms Mackay she wouldn't have 13 to give this aspect of her evidence at the end of the 14 inquest, she could do so at the beginning. Is that what 15 you submitted? 16 MR GIBBS: My submission is it would be helpful for the jury 17 to hear the evidence described as witness 2's evidence 18 at the moment when witness 2 is booked to give evidence. 19 It wouldn't help the jury, of course, I understand that, 20 we all agree about that, for her to start giving her 21 opinions about what happened before the jury had heard 22 the facts of what happened, but if someone is to give 23 this evidence, I concede it would be helpful for the 24 jury to know something about the policies and 25 procedures, so that they could use that as the framework</p> <p style="text-align: center;">Page 77</p>	<p>1 produce those documents via a witness statement. 2 The question then is: what will the jury be asked to 3 consider? First of all, they are going to be asked to 4 consider as a matter of generality, how do or should the 5 police respond, both in terms of uniformed officers and 6 detectives, to sudden unexpected deaths such as those of 7 the four victims in this case. 8 Those are the standards, effectively, that the jury 9 will be asked to apply when considering whether the 10 officers' responses were appropriate and reasonable. 11 When one has an expert giving evidence about that 12 qualitative response, the convention is that the expert 13 explains the standards and then applies them. So she 14 will say, "I am a professional practising or experienced 15 in this area", in this case murder investigations. 16 She will say: 17 "When one comes across bodies in this sort of 18 situation, this is what should happen. The uniformed 19 officers do X, the detectives do Y. At some point 20 a decision needs to be made if these deaths are 21 suspicious and a homicide investigation initiated or 22 not." 23 Those are the critical issues, I would say, for the 24 jury in this case. Should these investigations have 25 been turned into formal homicide investigations and if</p> <p style="text-align: center;">Page 79</p>
<p>1 into which to slot what they are then going to hear on 2 the facts. The question really is simply: who should 3 give that evidence? For the reasons which I have 4 articulated, in my submission, it actually must be her, 5 in my submission. 6 THE CORONER: Thank you. 7 Mr Skelton, do you want to add anything to that or 8 do you support that? 9 MR SKELTON: Madam, yes, the MPS does support Mr Gibbs's 10 submission. I think for a number of reasons, if I may. 11 First, of course, unlike civil trials, inquests are 12 for the most part based on oral evidence rather than 13 written evidence. Documents only really come to have 14 any resonance with a jury when they are explained by 15 a witness and applied to the circumstances under 16 consideration. 17 The documents need to be adduced as a matter of 18 fact, and they are Metropolitan Police documents and it 19 is appropriate for the Metropolitan Police to adduce 20 them for your purposes, because we are, as it were, the 21 document producers, we have ownership of the policies 22 and procedures that govern sudden and unexpected deaths 23 and the police response that should then be 24 precipitated. 25 We have agreed, a number of months ago now, to</p> <p style="text-align: center;">Page 78</p>	<p>1 so when and with what consequence? 2 That is squarely the remit of the expert in this 3 case, Ms Mackay, so she needs to tell the jury what the 4 standards are. And she needs to tell the jury whether 5 they have been met. As Mr Gibbs rightly points out, 6 there is a danger, I think, that the Metropolitan Police 7 witness, who is effectively just offering up neutrally 8 a number of toolkits and written documents which would 9 have been applicable in 2014/2015 and so on. That they 10 aren't going to be in a position to say precisely which 11 bits of those toolkits were applicable and they are 12 certainly not going to be in a position to explain 13 whether or not they were properly applied and followed. 14 Madam, I would suggest that there is some relevance 15 or some benefit to the inquest in having those documents 16 adduced, because a witness needs to adduce them as 17 a matter of procedural practicality, but that it is for 18 Ms Mackay really to explain the policies that are 19 applied and at the end, having heard the evidence, to 20 explain whether or not she is satisfied that they have 21 or haven't been properly followed. 22 Madam, a long-winded support for Mr Gibbs's 23 position. Thank you. 24 THE CORONER: When you say a witness needs to produce the 25 documents, you mean a Metropolitan Police witness needs</p> <p style="text-align: center;">Page 80</p>

20 (Pages 77 to 80)

<p>1 to produce the documents and then that is the end of it, 2 as far as that witness is concerned? 3 MR SKELTON: Madam, I think picking up on Mr Gibbs's point, 4 but indeed recognising that the Metropolitan Police have 5 their own toolkits and procedures, and that Ms Mackay is 6 not a Metropolitan Police officer for obvious reasons, 7 that it would be sensible for the material evidence to 8 be adduced neutrally, but then effectively explained and 9 commented upon by the expert. 10 THE CORONER: Yes, thank you very much. 11 MR SKELTON: Thank you. 12 THE CORONER: Mr Thomas and Dr van Dellen, do you want to 13 say anything about this aspect or not? 14 MR CLARK: Mr Thomas wished to pass on his apologies, he has 15 had to excuse himself with regret. We do not have any 16 submissions on this issue at this stage, thank you. 17 THE CORONER: Thank you. 18 Dr van Dellen? 19 DR VAN DELLEN: No submissions, madam, thank you. 20 THE CORONER: Thank you. 21 Mr O'Connor, do you want to come back on that topic 22 then, please? 23 I can't hear you, Mr O'Connor. 24 MR O'CONNOR: Can you hear me now, madam? 25 THE CORONER: Yes.</p> <p style="text-align: center;">Page 81</p>	<p>1 indeed everyone else can reflect on the submissions that 2 have been made today, which essentially, I don't mean to 3 undersell them by describing them as stage management 4 points, they are important points, and of course it is 5 critical that the jury receive this evidence in the 6 right way, but that is what we are talking about, we are 7 not talking about whether this evidence is needed, we 8 all agree it is, it is simply a question, an important 9 question, of how that evidence is presented to the jury. 10 May I suggest that we come back -- I will be accused 11 of putting everything off until September but I think 12 this has been a helpful exercise in flushing out this 13 issue. I think that the final determination of it would 14 be best made in September, once we have the documents to 15 which I have referred in front of us. It may well be 16 that by that point an agreement as to the best way 17 forward can be reached. 18 THE CORONER: Yes. 19 MR O'CONNOR: I said I would come back -- the statement of 20 the Metropolitan Police witness who will adduce, as 21 Mr Skelton has said, the policy documents, and also in 22 my submission it would be appropriate for the same 23 witness to deal, as we have already touched on, with 24 that high-level description of the working relationship 25 between the police and the CPS, and the coronial</p> <p style="text-align: center;">Page 83</p>
<p>1 MR O'CONNOR: I'm sorry, I think I was probably muting and 2 unmuting myself several times there, I was too 3 impatient. 4 Madam, on that point, may I say first of all that 5 I am grateful to Mr Gibbs for the submissions he has 6 made. We have always been conscious that Mr Gibbs has 7 a concern in this area, but I say without disrespect to 8 him that I think I now understand it better than I had 9 previously. Much of what he says, of course, makes 10 a lot of sense. 11 One difficulty we have at the moment is that this 12 debate is being conducted somewhat in a vacuum because 13 we don't have yet Ms Mackay's report, nor do we have the 14 statement from the Metropolitan Police witness who has 15 been described as witness 2. 16 I wonder if the best way of proceeding would be in 17 stages, and so for today's purposes we simply note the 18 points made by Mr Gibbs and Mr Skelton, and as I have 19 already said Ms Mackay's statement or report is due to 20 be served fairly soon. 21 We also anticipate, we certainly hope, that the 22 Metropolitan Police statement that has been described as 23 witness 2's statement will be provided fairly soon. 24 That is the point I might come back to. 25 That once those two steps have been taken, we and</p> <p style="text-align: center;">Page 82</p>	<p>1 officers, as well -- I am aware that there are a number 2 of other things that have been noted for inclusion in 3 that statement, we will need to get that statement in 4 good time before the September hearing if my proposed 5 way forward is to work. 6 I don't think there is actually a date that has been 7 set for the provision of that statement. 8 I don't want to ambush Mr Skelton, he may not be in 9 a position to give you a date sitting here now, when 10 that statement is going to be provided but I would 11 invite at the very least you to indicate that it will be 12 of great assistance if that statement can be provided in 13 good time before the September hearing, to enable this 14 debate to be continued at that point. 15 THE CORONER: I understood Mr Gibbs to be submitting that it 16 should not be a Metropolitan Police officer who made the 17 statement in relation to the relationship between the 18 police and the coroner and the police and the CPS. 19 Mr Skelton, do you accept that it could or should 20 be? 21 MR SKELTON: Madam, I do accept that that relationship in 22 the way that Mr O'Connor describes it, describes its 23 relevance as it were, if it were a high-level, neutral, 24 jury-friendly account could be done by the MPS. 25 THE CORONER: All right, thank you very much.</p> <p style="text-align: center;">Page 84</p>

<p>1 The next question is timing of that statement, 2 together with the statement, if it is the same 3 statement, adducing the relevant policy and procedure 4 documents. 5 MR SKELTON: On that, I am afraid I am, as Mr O'Connor says, 6 going to have to dodge giving an answer, simply because 7 I am going to have to take instructions and this form of 8 hearing unfortunately is not amenable to me huddling and 9 doing so very readily, but we will endeavour as always 10 to produce it as swiftly as we can reasonably do. 11 THE CORONER: It was anticipated by Mr O'Connor that 12 I should direct that other matters should be dealt with 13 by 28 August. Does that sound feasible, Mr Skelton? 14 MR SKELTON: Madam, yes, I had understood that in respect of 15 the additional witness statements and possibly the 16 outstanding disclosure. It may be that Mr O'Connor 17 corrects me on that, but I would need to go back to his 18 submissions for that date but, as I understood it, that 19 was a feasible date. 20 MR O'CONNOR: Madam, you are right that we have used for 21 a date for other directions. It has become something of 22 a backstop. If the Metropolitan Police were able to 23 produce the statement we are now discussing earlier than 24 that, of course that would be appreciated and it would 25 allow it to be disseminated, you know, well in advance</p> <p style="text-align: center;">Page 85</p>	<p>1 a proper means of engaging with it. For that reason, we 2 certainly concur with what Dr van Dellen has said to the 3 extent that it should not be dealt with you in detail 4 today, but we would add that if it is a matter which he 5 or anyone else wishes to raise, they ought to do it 6 addressing the necessary detail as to the circumstances 7 in which it is submitted any criminal proceedings might 8 take place and addressing the case law on the subject, 9 so that we are able to have a proper discussion about it 10 at the hearing in September. 11 The one thing we want to avoid, madam, is issues 12 like this coming out of the woodwork late in the day 13 with the risk that that upsets the procedure. 14 I should emphasise, I am not suggesting that that is 15 where we are now. I mean Dr van Dellen has raised this 16 well in advance of the substantive hearings, but we need 17 to deal with it properly in September, and so we invite 18 you to direct that full submissions on this issue should 19 be made by anyone wishing to make them in advance of the 20 hearing in September. 21 The other issue, the last issue on my list, madam, 22 was the question of further applications for interested 23 person status. I have already referred to the fact that 24 a number of Metropolitan Police officers are now to be 25 separately represented. It is at least foreseeable that</p> <p style="text-align: center;">Page 87</p>
<p>1 rather than just in advance of any hearing in September, 2 but I am not sure we can take that matter much further 3 sitting here now. 4 MR SKELTON: Madam, may I just say this, it should be 5 possible to produce a draft for review by your team 6 within that timeframe, with a view then to finalising it 7 in any way which they require over the subsequent days. 8 I hope that is a helpful, at least assurance I can 9 give. 10 THE CORONER: Yes. Thank you. 11 Does that deal with everything before we get to 12 rule 22 on your list, Mr O'Connor? 13 MR O'CONNOR: It does, madam, and in fact I think I can 14 safely deal with the last two substantive matters on my 15 list together, because they are both short. 16 As you say, the first of those is rule 22. This is 17 an issue that was raised by Dr van Dellen, in his 18 written submissions ... which he raised it were brief 19 and in fact he said that it might be a matter that could 20 properly be dealt with in September. 21 Madam, we submit this is clearly, at least 22 potentially, a very serious matter. It could have 23 serious impact on the way in which the hearings are run. 24 For those reasons, if this issue is to be raised, it 25 should be raised in detail so that those involved have</p> <p style="text-align: center;">Page 86</p>	<p>1 they or some of them at least will wish to make 2 applications for interested person status. 3 That is not a matter that you can deal with today, 4 no applications have been made and indeed legal teams 5 for those officers have only been instructed very 6 recently indeed. 7 We do though invite you to give an indication that 8 this matter must be progressed with some speed. I have 9 already referred to rule 22. This is another issue 10 which at least has the potential to interfere with the 11 timetable going forward, if it is not dealt with 12 properly at the outset. 13 We have put in our written submissions a suggestion 14 which we repeat now, that you give a direction, madam, 15 that any further applications for interested person 16 status are to be made by 14 August, and we would add, 17 "at the latest". 18 Madam, that is all I wish to say about those final 19 two issues. 20 THE CORONER: Dr van Dellen, the rule 22 issue is a point 21 you raised but I understand that you contacted the 22 solicitor to the inquest and indicated you didn't want 23 to pursue that today, is that right? 24 DR VAN DELLEN: That's correct, madam. I am most grateful. 25 The genesis behind it was we are obviously aware</p> <p style="text-align: center;">Page 88</p>

22 (Pages 85 to 88)

<p>1 that a number of officers declined, in fairness to them, 2 provided a statement but declined to answer questions 3 when those questions were asked by the IOPC. 4 Essentially what I am attempting to do is to ensure that 5 that isn't repeated during the currency of any inquest. 6 The actual wording of rule 22 says that the warning is 7 given when the question is asked, but rather than bring 8 the inquest to a crashing halt with detailed legal 9 submission at that point, in my respectful submission, 10 it would be helpful to at least delineate that if any 11 witness anticipates that they may wish -- sorry, let me 12 start again. 13 If any witness is minded to invoke their privilege, 14 if they are entitled to it, and essentially decline to 15 answer any questions, that we best flush that out before 16 the inquest, rather than have a day or two of legal 17 submissions in the middle of the inquest. Because, 18 madam, the prospect of that is obviously deeply 19 unattractive. I entirely agree with my learned friend 20 Mr O'Connor of Queen's Counsel with regard to the need 21 for that to be done with full written submissions. 22 I am also grateful to my learned friend Mr Gibbs of 23 Queen's Counsel also for agreeing in correspondence that 24 it is premature to discuss it at this PIR as well. 25 Unless I can assist any further?</p> <p style="text-align: center;">Page 89</p>	<p>1 raise the question of whether it might be a good idea to 2 hear it all at the beginning. 3 THE CORONER: Yes, I thought that was in effect the agreed 4 position now. 5 MR GIBBS: I may have misunderstood it but I think -- 6 I suspect that it may be that emails or submissions may 7 have crossed. I don't know whether it is still the 8 position that Mr Waumsley would wish to reserve his 9 commemorative evidence until later and if that was his 10 present thinking, no doubt he will have a chance to 11 reflect on that before September. I don't seek to 12 influence that at all, but Mr Waumsley is also a witness 13 of fact who will give evidence which might be relevant 14 to the jury's considerations as well as the 15 commemorative evidence. 16 THE CORONER: Yes, I think we can revisit that in September. 17 As far as the others are concerned, I think there has 18 been agreement, broad agreement, that it should be at 19 the beginning. 20 Thank you very much. 21 Does anybody else want to say anything before we 22 conclude the hearing? 23 MR CLARK: Ma'am, if I may, just very briefly, and just for 24 the avoidance of doubt, because the focus of the 25 submissions and argument around the issue of the</p> <p style="text-align: center;">Page 91</p>
<p>1 THE CORONER: No, thank you. 2 Does anybody want to say anything in relation to 3 Mr O'Connor's proposals in relation to any future 4 applications for interested party status? No. All 5 right. 6 Then we are down to any other business. 7 Any other business from you, Mr O'Connor? 8 Anybody else? 9 Mr Gibbs has his hand up. 10 MR GIBBS: May I come back on one thing, and submissions 11 I think were not invited from everybody at that stage, 12 it is the subject of the memorial evidence, the 13 commemorative evidence of those that had died and the 14 question about when it might be. 15 THE CORONER: Yes, sorry. 16 MR GIBBS: We all know that not least for reasons of the 17 importance that it holds for the families and the 18 priority with which most coroners address it, that the 19 front of the inquest, the very beginning of the inquest 20 is usually when that is heard. 21 The other reason, perhaps, why it is sometimes heard 22 then, in my submission, is so that the jury is not 23 confused as to its status by mixing it in with evidence 24 which might be relevant to the jury's findings. It is 25 in that context that I just, as sensitively as I can,</p> <p style="text-align: center;">Page 90</p>	<p>1 previous coronial investigation, that was what the focus 2 of that particular issue became, I just wanted to 3 emphasise that we maintain our submissions, which we did 4 touch on, which deal with the Crown Prosecution Service. 5 To the extent that there is a dispute as to relevance in 6 that regard, I didn't want to because of my lack of 7 emphasis to it, for that to go missed or unnoticed. 8 THE CORONER: No. 9 MR CLARK: That was my point, thank you very much. 10 THE CORONER: Can I just come back to Mr O'Connor on the 11 question of the date of the next hearing. 12 Is the proposal that I suggest a date and we see if 13 that can accommodate everybody or what? I was thinking 14 of 11 September. 15 MR O'CONNOR: Yes, I don't want to speak out of turn, madam, 16 I know that those whose job it is to arrange these 17 things have got close to finding a date. I think you 18 are right that 11 September is the date they were 19 looking at. You will probably be prodded by Mr Carlyon, 20 because he is closer to you than I am, but I think the 21 current position is we are close to but not quite at the 22 stage of identifying that as the date on which the 23 hearing is going to take place and as and when we get to 24 that point, Mr Carlyon will inform interested persons. 25 THE CORONER: All right, thank you very much. I will say</p> <p style="text-align: center;">Page 92</p>

1 nothing about that now then.
2 Thank you all very much. I am not going to give my
3 formal directions or rulings on the matters which have
4 been raised now. Clearly a lot of matters have been
5 raised and I need to give them further consideration,
6 but I will do so and I will ensure that my team notify
7 all of you when my written rulings are available.
8 Thank you all very much.
9 (4.31 pm)
10 (The hearing concluded)
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