

<p>1 Thursday, 24 September 2020 2 (10.30 am) 3 Opening remarks 4 THE CORONER: Good morning, everybody. I hope everybody can 5 hear me. Would you use a raised hand to indicate if 6 there is any difficulty with hearing me? 7 Mr O'Connor, can you hear me? 8 MR O'CONNOR: I can hear you, madam, yes. 9 THE CORONER: Thank you very much. 10 This is the fourth pre-inquest review held in 11 connection with the inquests into the deaths of 12 Anthony Walgate, Gabriel Kovari, Daniel Whitworth and 13 Jack Taylor. 14 As you will all know, due to the restrictions in 15 place as a result of the coronavirus epidemic, 16 I considered that this pre-inquest review should take 17 place by way of a partially remote hearing via the CVP 18 platform. 19 This is the second pre-inquest review that I have 20 conducted in this way. I am sitting in Court 14 at the 21 Central Criminal Court but Mr O'Connor, counsel to the 22 inquests, interested persons and their legal 23 representatives are participating remotely. 24 Ms Hayward, junior counsel to the inquest, is 25 present in court. Ms Dobbin, who together with Mr Gibbs</p> <p style="text-align: center;">Page 1</p>	<p>1 make or broadcast these proceedings. 2 In a moment I shall hand over to Mr O'Connor. 3 I know that the solicitors to the inquests have provided 4 all interested persons with some guidance as to how this 5 hearing is to be conducted, together with an agenda. 6 There are a few things that I would like to reiterate to 7 ensure that this hearing takes place smoothly for us 8 all. 9 Firstly, a transcript will be published on the 10 inquest's website later today. 11 Secondly, would all participants ensure that their 12 microphone is muted unless they are speaking, and all 13 those who do not have a speaking part should keep their 14 microphones and cameras off throughout the proceedings. 15 That is to limit feedback. 16 Thirdly, please try to pause before you start 17 speaking, in order to ensure that the previous speaker 18 has finished and there is no speaking over the top of 19 one another. 20 Finally, if there is any problem with the videolink 21 or with the audio, please, as I say, raise a hand and we 22 will try to deal with that. You all have Mr Carlyon's 23 email address. He's present in court with me here and 24 will be able to deal with anything if you want to notify 25 him of any difficulty by email.</p> <p style="text-align: center;">Page 3</p>
<p>1 represents a number of police officers designated as 2 interested persons is also present in court. That is 3 because she's involved in an ongoing case here at the 4 Central Criminal Court. 5 Mr Gibbs is unable to attend today's hearing. It 6 was only possible to facilitate Ms Dobbin's attendance 7 if she was able to be present here. It goes without 8 saying that whether any advocate is present physically 9 in court, such as Ms Dobbin, or remotely will not affect 10 any determination I make about the issues that arise or 11 any conclusion that I come to. 12 The proceedings will be recorded. Representatives 13 of the press are in court. Can I assume that all 14 consent to the hearing being conducted in this format? 15 I will just pause. 16 If I hear nothing, I will assume that everybody 17 consents. 18 As this hearing is being conducted as a partially 19 remote hearing, it is necessary for me formally to state 20 at the outset that I give permission for the use of live 21 video to enable participants to access these court 22 proceedings. I should emphasise that it is a contempt 23 of court to record, play, dispose off or publish any 24 recording or transcript of these proceedings. This 25 means it is a criminal offence to make or attempt to</p> <p style="text-align: center;">Page 2</p>	<p>1 In terms of advocate I understand that we have 2 present on the TV link: Mr Clark and Ms Favata for the 3 families of Mr Walgate, Mr Kovari, Mr Whitworth and 4 Mr Taylor; Dr van Dellen for Mr Waumsley; Mr Skelton and 5 Mr Berry on behalf of the Metropolitan Police Service; 6 Mr Moloney on behalf of the IOPC; Mr Shaw on behalf of 7 DS Sweetman; Mr Atchley on behalf of DI Tony Kirk; and 8 Mr Morley on behalf of John Sweeney. 9 As I have already indicated, Ms Dobbin is present in 10 court representing the 14 officers who are represented 11 by Reynolds Dawson solicitors. 12 I will now hand over to Mr O'Connor to go through 13 the agenda for today's hearing. 14 MR O'CONNOR: I am grateful, madam. 15 As you have indicated, an agenda for this hearing 16 was circulated a week or so ago now. More recently than 17 that, I think yesterday, Mr Carlyon circulated 18 a slightly more detailed version of the same agenda. 19 The proposal is that we should follow that more detailed 20 version. The hope is that if we follow it quite 21 carefully it will facilitate the video nature of this 22 hearing. 23 The first item on the agenda, madam, is that of 24 applications for interested person status. As you know, 25 since the last hearing in July, you have granted two</p> <p style="text-align: center;">Page 4</p>

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1 further applications for interested person status. That
 2 of Mr Sweeney, who is represented today by Mr Morley,
 3 and that of Detective Inspector Kirk, who is represented
 4 by Mr Atchley.
 5 There were a number of other applications made at
 6 the same time that you have refused. There was
 7 a possibility that one or most of those applications
 8 might have been renewed before you today, but as we
 9 understand it, that is not going to happen. As things
 10 stand, madam, there is nothing more to be said on
 11 applications for interested person status.
 12 The only further matter I would raise with you is
 13 that we are aware that there are a number of persons who
 14 are still considering the possibility of either
 15 an application or perhaps a renewed application for
 16 interested person status. We would invite you, madam,
 17 to indicate that any such application really now does
 18 need to be made with some urgency if the hearings are to
 19 proceed smoothly at the beginning of next year. We
 20 would invite you to give the date of 15 October as the
 21 date when, other than in the most exceptional
 22 circumstances, any further applications are to be made.
 23 THE CORONER: Yes. Thank you.
 24 MR O'CONNOR: Madam, I don't believe anyone else will have
 25 anything to say on interested person status, so I will

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1 move on to the question of disclosure.
 2 Madam, may I say at the outset that in terms of the
 3 disclosure made by your team to interested persons, the
 4 bulk of disclosure has been complete for some time now.
 5 The bulk of that material really consisted of the
 6 documents and witness statements that were obtained and
 7 prepared by the IOPC in the course of their
 8 investigation. That material was made available to
 9 interested persons some months ago at the beginning of
 10 this year. Since then, a smaller amount of material has
 11 been disclosed by the same means.
 12 There are really only a few items outstanding. The
 13 families, in their submissions before you today, have
 14 raised the question of disciplinary records. That is
 15 paragraph 13 of their submissions.
 16 May I say by way of introduction to that point that
 17 our approach has been to request the disciplinary
 18 records from the Metropolitan Police. We have received
 19 most of the disciplinary records of the officers
 20 involved although I believe some are still outstanding.
 21 They have not been disclosed on to interested persons
 22 because we agree with the point made at paragraph 13 of
 23 the families' submissions, which is that evidence of
 24 good conduct by those officers is not relevant to these
 25 proceedings, and therefore, other than in exceptional

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1 situations, neither will the disciplinary records be
 2 admitted(?).
 3 Potentially it is in agreement with that point that
 4 the families make, about the position of the
 5 disciplinary records, although disclosed to you, have
 6 not been disclosed to interested persons.
 7 There are also now, madam, the issue of outstanding
 8 assurances. Perhaps I might pause and see if either
 9 Mr Clark or anyone else has anything to say on the
 10 subject of disciplinary records.
 11 THE CORONER: Yes, certainly.
 12 Mr Clark?
 13 We can't either see you or hear you at the moment,
 14 Mr Clark.
 15 Mr Clark, we still can't see or hear you, but we
 16 know you are on the call because you are on our list.
 17 I think attempts are being made from court to
 18 contact Mr Clark by some other means to see what the
 19 difficulty is.
 20 MR O'CONNOR: Madam, I don't know if it may be convenient
 21 for you to rise for a couple of minutes while this is
 22 sorted out?
 23 THE CORONER: Yes, certainly. I will do that.
 24 (10.46 am)
 25 (A short break)

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1 (10.59 am)
 2 THE CORONER: I see Ms Favata is on the screen now.
 3 I understand we still don't have Mr Clark.
 4 Ms Favata, can you just deal with the matter just
 5 raised in relation to with disciplinary records?
 6 MS FAVATA: Madam, yes. I can address you in respect of
 7 that. Of course we need to see what the other
 8 interested persons' position is, particularly those who
 9 are newly represented and have interested person status.
 10 Our position was made as set out in our submissions
 11 that we don't consider the (inaudible) or indeed the
 12 disciplinary records to be relevant. However, I'll
 13 await to hear what the position of the other interested
 14 persons are.
 15 THE CORONER: Right.
 16 The position, as I understand it, is that
 17 Mr O'Connor takes the view that, as it were, the good
 18 character of the officers won't be adduced, and that
 19 therefore the disciplinary records will not be disclosed
 20 or adduced either, save in exceptional circumstances.
 21 You were breaking up a bit, but as I understand it,
 22 you are saying you want to wait and see what the other
 23 interested persons say before coming back on that topic,
 24 is that right?
 25 MS FAVATA: Yes, madam.

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<p>1 THE CORONER: Thank you. 2 Mr Skelton, are you with us? 3 MR SKELTON: Yes, madam, thank you, can you hear me? 4 THE CORONER: Yes, I can, thank you very much. 5 MR SKELTON: I am grateful. As a matter of principle, the 6 MPS does not consider disciplinary records to be 7 generally relevant to the assessment of the officers' 8 conduct. Obviously there may be circumstances, 9 hypothetically, in which some officers on a case-by-case 10 basis may have relevant disciplinary records, but that 11 has not been -- so far as we are aware -- the case here. 12 As a matter of generality we would object to the 13 disclosure of these records but if you, madam, and your 14 counsel think that there may be some relevance within 15 them, then we would of course disclose them to your team 16 for a Worcestershire-style relevance review as 17 necessary. But, broadly speaking, I think we agree with 18 Mr O'Connor's position that this is not going to advance 19 your or the jury's considerations of the issues at the 20 inquest. 21 Thank you. 22 THE CORONER: Thank you. 23 Just for clarification, Mr Skelton, do you agree 24 that the references to their good character is not 25 relevant either?</p> <p style="text-align: center;">Page 9</p>	<p>1 and your counsel for consideration of relevance, which 2 as I say is not accepted as a matter of generality. 3 As far as Mr O'Connor's position about the positive 4 evidence of commendations, I think we accept that the 5 officers may on a personal level wish to demonstrate 6 that they have been commended for their work, but 7 strictly speaking the conduct in question, so far as the 8 individual deaths is concerned, will not be affected 9 negatively or positively by this sort of background 10 evidence. It will be judged on its own facts. 11 THE CORONER: Thank you very much indeed. 12 Mr Moloney, do you want to say anything on this 13 topic? 14 MR MOLONEY: The IOPC is neutral on this position. 15 THE CORONER: Thank you. 16 Ms Dobbin? 17 MS DOBBIN: My Lady, as a matter of general principle 18 I respectfully agree with Mr (inaudible) the conduct of 19 the officers is not relevant. The confidential 20 documents -- and there is normally an expectation that 21 they will be treated as such, if they are to be 22 disclosed there must be good reason for that disclosure. 23 I also respectfully agree with counsel to the 24 inquests that (inaudible) evidence of accolade or awards 25 is not the sort of evidence that would normally be</p> <p style="text-align: center;">Page 11</p>
<p>1 MR SKELTON: To some extent, madam, the statements I think 2 have been produced by others and not just by us. Some 3 officers, I think, who feel themselves defensive may 4 want to say, "In fact I have been commended for my 5 police work previously" and one can understand that on 6 a personal level. But, strictly speaking, I don't think 7 the jury is going to be particularly interested in that. 8 They are going to assess the facts of the officer's 9 particular conduct in the specific context of each of 10 the deaths under investigation. 11 MR CLARK: I am in. 12 MR SKELTON: I think Mr Clark has joined us, madam. 13 THE CORONER: Hello, Mr Clark. 14 MR CLARK: Madam, I am ever so sorry. I don't know what was 15 happening up until now. I think I am connected. 16 THE CORONER: You are. Can you hear me? 17 MR CLARK: Thank you, madam. 18 I am afraid I didn't hear anything of what just 19 happened. 20 THE CORONER: All right, Mr Skelton, can you just summarise 21 what you just said again for me, please. 22 MR SKELTON: Yes, madam. 23 As a matter of generality, the MPS's position is 24 that the disciplinary records will not be relevant but 25 on a case-by-case basis we would disclose them to you</p> <p style="text-align: center;">Page 10</p>	<p>1 adduced in chief from a witness. 2 One can see that it could possibly become relevant 3 as rebuttal evidence if a very specific allegation was 4 made against an officer, for example that he had been 5 a coward and he wished to say, "Well, I have an award 6 for bravery", something like that, but one can see that 7 that is very likely to arise in the circumstances. 8 THE CORONER: Yes. All right, thank you very much. 9 Mr Shaw? Do you want to say anything on this topic? 10 MR SHAW: Only this, Sweetman has commendations but I won't 11 be relying on them at any hearing and likewise I find it 12 almost implausible that any minor disciplinary 13 infractions (inaudible) may have been doing, could have 14 any possible relevance to his conduct in this hearing. 15 THE CORONER: Sorry, I didn't catch the last bit of what you 16 said? Did you say your submission is that any 17 disciplinary proceedings in which he's been involved are 18 not relevant to any issue that might arise, is that what 19 you said? 20 MR SHAW: Correct, almost inconceivable that it could be. 21 THE CORONER: Thank you. 22 Mr Morley? 23 MR MORLEY: Madam, only to say that I agree with the 24 position set out by Mr O'Connor. 25 THE CORONER: And Mr Atchley?</p> <p style="text-align: center;">Page 12</p>

<p>1 MR ATCHLEY: Likewise, madam, I agree with Mr O'Connor's 2 analysis. I adopt Ms Dobbin's analysis, I think that is 3 very clear. 4 THE CORONER: Right. 5 Mr Clark, having heard those submissions, do you 6 want to say anything on this topic now? 7 MR CLARK: Yes, thank you ma'am. Not very much, but 8 I respectfully agree with the analysis advanced by 9 Ms Dobbin and for the sake of practicality to the extent 10 that the issue may come up in the context of, say, 11 a rebuttal of some sort, it will be necessary for the 12 families to have the material at their disposal, just as 13 the other representatives to whom that material belongs, 14 effectively, will also have it at their disposal, in 15 order that that case-by-case decision as to relevance 16 could be made by everyone equally. 17 THE CORONER: Yes, thank you all. 18 Mr O'Connor, do you want to respond to Mr Clark or 19 anybody else? 20 MR O'CONNOR: Yes, madam. Madam, I hope you can hear me all 21 right? 22 THE CORONER: I can, thank you. 23 MR O'CONNOR: Madam, it seems that there is almost entire 24 agreement on the principle position here. These 25 documents are not currently in play. There is a remote</p> <p style="text-align: center;">Page 13</p>	<p>1 assurance -- that they had conducted reasonable and 2 proportionate searches and that all potentially relevant 3 documents had been disclosed. 4 Madam, in large part that direction has been 5 fulfilled. There are, I think, simply two points to 6 make. 7 One relates to the position for the Metropolitan 8 Police, which I will come back to in a moment. 9 The other is that there are, I think, three 10 interested persons who have yet to provide you with that 11 assurance. 12 One is Mr Sweetman, or Detective Sergeant Sweetman, 13 rather, and it may be that Mr Shaw can either provide 14 the assurance now or indicate that he will be able to do 15 so in short order. 16 Secondly, there is Detective Inspector Kirk and 17 Mr Sweeney, who of course have only very recently been 18 made interested persons. For completeness, they ought 19 to provide that assurance and we suggest that they are 20 invited to provide it by 15 October. 21 Madam, before you go to their representatives, may 22 I just sweep up the position in connection with the 23 Metropolitan Police. They, of course, are in a more 24 challenging situation given the searches that they have 25 to do. We understand that they are having some</p> <p style="text-align: center;">Page 15</p>
<p>1 possibility that they may be put into play at some 2 point. 3 The practical situation is that we have requested 4 these documents from the Metropolitan Police. 5 I understand that we have received most of them. For 6 the reasons of principle on which we are all agreed they 7 have not been disclosed to interested persons to date 8 because they are not relevant. 9 I don't, with respect, accept Mr Clark's submission 10 that they ought to be disclosed somehow de bene esse. 11 They are not, as things stand, relevant, and as 12 Ms Dobbin has observed they are documents that have 13 a confidential nature. In my submission, the position 14 should rest as it is at present. If these documents 15 become relevant, they can be disclosed as the hearing 16 progresses. 17 THE CORONER: All right. Thank you. I have everybody's 18 submissions on that topic, so we can go on to the next 19 matter on the agenda. 20 MR O'CONNOR: Thank you, madam. 21 The next item on the agenda, still under the broad 22 heading of "disclosure", is the question of assurances. 23 Madam, you will recall that at the last hearing you 24 made a direction that all interested persons should 25 provide an assurance -- essentially a disclosure</p> <p style="text-align: center;">Page 14</p>	<p>1 technical difficulties in finalising their searches, 2 which perhaps it is not necessary to go into today. 3 We understand that the assurance will be forthcoming 4 and it may be of assistance if you clarify with 5 Mr Skelton the up-to-date position. Thank you, madam. 6 THE CORONER: I will deal with those matters in the order 7 that they were raised. 8 Mr Shaw, first of all. By when can you give the 9 appropriate assurance, please? 10 MR SHAW: I am just checking my emails. I thought we had 11 done that. I have explicit instructions from 12 Mr Sweetman that he's conducted that exercise and so 13 have I. There is nothing retained by Mr Sweetman that 14 needs to be disclosed that has not already been 15 disclosed. 16 My apologies if that message has not got through to 17 Mr O'Connor's team, I will re-send the email now to his 18 junior and to those conducting proceedings. 19 THE CORONER: Thank you. 20 Mr Morley? 21 MR MORLEY: Madam, Mr Sweeney would have no difficulty in 22 providing such an assurance by 15 October at the latest. 23 Probably much sooner than that. 24 THE CORONER: Thank you. 25 Mr Atchley?</p> <p style="text-align: center;">Page 16</p>

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<p>1 MR ATCHLEY: We are in a slightly difficult position because 2 we are not yet in funds, madam. But having said that, 3 everybody seems to be quite happy to work pro bono at 4 the moment, and I think, like Mr Morley, we will be in 5 a position by 15 October to offer that reassurance. 6 THE CORONER: Thank you very much. 7 Then, Mr Skelton, the position of the Metropolitan 8 Police, please. 9 MR SKELTON: Madam, we have been in correspondence 10 throughout this period since the last PIR with your 11 team. Mr O'Connor adverts to technical issues with the 12 way that searches have been conducted, and what we call 13 de-duplication have meant that we have not felt we have 14 quite reached the moment where we could sign off on the 15 assurance having done all the checks. 16 So I think in liaison with your team, Mr Carlyon and 17 your counsel team, the plan is that we will discuss how 18 the final checks should be done and then hopefully once 19 that process has been agreed, outlined and put into 20 place, we will be in a position to give the assurance 21 sought. 22 I should say, of course, as a matter of generality 23 again, the disclosure has for the most part been 24 completed. It is simply a question of getting to the 25 point where the assurance can be given that you have</p> <p style="text-align: center;">Page 17</p>	<p>1 DR VAN DELLEN: I am most grateful, madam. Thank you for 2 rising briefly. 3 It wasn't very clear from Mr Skelton's submissions 4 whether in fact the disciplinary records had been 5 disclosed to the solicitors to the inquest for 6 a Worcestershire process to take place or not. If they 7 hadn't, I would commend that course of action to you, 8 madam. 9 THE CORONER: Mr O'Connor, can you just clarify that for 10 Dr van Dellen, please? 11 MR O'CONNOR: Yes. 12 The position is that they have been. I believe that 13 not all of them have been, because some are still in the 14 process of being provided, but as a matter of principle 15 they are documents that we are requesting. 16 DR VAN DELLEN: Thank you, madam, I am grateful. 17 THE CORONER: That deals with that topic. 18 Mr Clark, do you want to say anything in relation to 19 the assurances topic? 20 MR CLARK: Sorry, ma'am, can I just clarify. When we say 21 "assurances" are we referring to the assurances as to 22 disclosure or paragraphs 9 to 12 of our submissions? 23 THE CORONER: The disclosure. 24 MR CLARK: Thank you. 25 No, thank you, ma'am.</p> <p style="text-align: center;">Page 19</p>
<p>1 directed us to give. 2 THE CORONER: All right, thank you. 3 Yes, I am so sorry, in relation to the earlier 4 discussion I missed out Dr van Dellen, I think. 5 I didn't intend to do so, so can I just return to item 6 2A, and the disciplinary records. 7 Dr van Dellen, do you want to add anything about 8 that? 9 DR VAN DELLEN: (Inaudible). 10 THE CORONER: We cannot see or hear you at the moment. 11 DR VAN DELLEN: Madam? 12 THE CORONER: I understand he's disconnected for the moment. 13 We will pause again. 14 (Pause) 15 I will rise against until Dr van Dellen is here. 16 DR VAN DELLEN: Can you hear me now? 17 (11.18 am) 18 (A short break) 19 (11.21 am) 20 THE CORONER: Right, Dr van Dellen you are back. Welcome 21 back. Can I reassure you nothing was said in your 22 absence. I rose in order to wait to see if we could get 23 you back. 24 Did you want to say anything on the topic of 25 disciplinary records, first of all?</p> <p style="text-align: center;">Page 18</p>	<p>1 THE CORONER: Dr van Dellen? 2 DR VAN DELLEN: No thank you, madam. 3 THE CORONER: Thank you. I assume nothing else has anything 4 else in that regard because I have already dealt with 5 the officers for whom assurances are outstanding. 6 Mr O'Connor, does that lead us on to item 3 on the 7 agenda? 8 MR O'CONNOR: It does, madam. Which is listing and hearing 9 arrangements. There are three subparagraphs, but 10 I propose to say something about all of them, and then 11 perhaps you may see if anyone has any submissions to 12 make. 13 Madam, as to the first, it is proposed that there 14 will be one more pre-inquest review before the 15 substantive hearings commence. It is very likely that 16 that further hearing will be listed on Friday, 17 20 November, the solicitors to the inquests will confirm 18 that date to interested persons in due course. 19 As to the venue for the substantive hearings, madam, 20 as everyone will now have seen things have moved on from 21 the last hearing. At the last hearing in July it was 22 still our expectation that the substantive hearings 23 would be held at the Central Criminal Court, but of 24 course there was uncertainty in that regard given all of 25 the implications of the virus.</p> <p style="text-align: center;">Page 20</p>

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<p>1 Madam, we said at the last hearing that this matter 2 would be kept under review, and that a note on venue 3 would be provided in advance of this hearing. That is 4 what has happened. Mr Carlyon has provided a note to 5 interested persons which explains why it is that you 6 have made a provisional decision that the substantive 7 hearings will not take place in the Old Bailey, but will 8 rather take place at Barking Town Hall.</p> <p>9 I won't go into the detailed reasoning behind that 10 decision, madam, save to say in very short summary that 11 the view was taken that given the number of people now 12 certainly involved in these hearings, the Old Bailey 13 simply would not be able to provide sufficient 14 accommodation or at least could not be relied upon to 15 provide sufficient accommodation. That in part, being 16 due to the fact that such court space as there is 17 available at the Old Bailey is, for obvious reasons, 18 required for urgent custody cases to be tried.</p> <p>19 For that reason, a number of other venues were 20 explored. Barking Town Hall has accommodation that is 21 available and suitable and for that reason, as I say, 22 madam, you have taken a provisional decision that that 23 is where the hearings will be held.</p> <p>24 There is some detail in the note on venue as to the 25 particular accommodation within the Town Hall that will</p> <p style="text-align: center;">Page 21</p>	<p>1 and hearing arrangements.</p> <p>2 THE CORONER: Could you just deal, as best you can -- 3 bearing in mind the position we are at -- with 4 a provisional time estimate?</p> <p>5 MR O'CONNOR: Madam, as you will have seen from our 6 submissions -- in particular we have annex C, the 7 running order which has a number of days on it. The 8 running tally of days at annex C to our running order 9 takes that up to Day 38, which indicates just short of 10 eight sitting weeks. Our provisional time estimate, 11 building in some provision for the inevitable delays in 12 any jury action is something in the order of eight to 13 nine weeks, madam.</p> <p>14 THE CORONER: Thank you very much.</p> <p>15 Mr Clark, I will come to you first. Do you have any 16 submissions to make either about the further pre-inquest 17 review, the venue, the start date or the time estimate?</p> <p>18 MR CLARK: No, thank you, ma'am.</p> <p>19 I wonder whether there will be an opportunity to 20 consider availability in respect of the families, noting 21 that many of them have been unable to make it today and 22 also perhaps given that it is the last pre-inquest 23 review, may I suggest that particular importance may be 24 placed on ensuring their attendance if they want to 25 attend.</p> <p style="text-align: center;">Page 23</p>
<p>1 be provided.</p> <p>2 Madam, a number of IPs have raised some practical 3 queries about that accommodation in their written 4 submissions. Most have also indicated that these are 5 matters that they are happy to pursue with us, and we 6 would encourage them to do that. We are very happy to 7 have informal discussions with the parties in the next 8 few weeks and months about precisely how arrangements 9 will be made for the hearings to be conducted.</p> <p>10 Madam, of course we would have wished that these 11 hearings should have taken place at the Old Bailey. 12 These are times when we all have to make compromises. 13 We know that the families' desire is that these hearings 14 should take place rather than be delayed again, and 15 really the only practicable way in which that can happen 16 is if they are moved to Barking. And we are sure that 17 everyone involved in the hearing will be prepared to 18 make the necessary practical compromises to ensure that 19 the hearings proceed successfully.</p> <p>20 Madam, the only other matter that I will say now -- 21 this is the third subparagraph -- is that the current 22 plan is that we should start by empanelling the jury on 23 Thursday, 7 January.</p> <p>24 Madam, unless I can assist further on that point, 25 that is all I wanted to say on the question of listing</p> <p style="text-align: center;">Page 22</p>	<p>1 THE CORONER: Well, yes. But it has always been anticipated 2 that these inquests would take place in January of next 3 year. So they have known that date, haven't they, for 4 some time?</p> <p>5 MR CLARK: Yes, ma'am, I am not suggesting for a second that 6 that is a problem. All I am suggesting is that in terms 7 of the listing of the last pre-inquest review, that 8 an opportunity may be afforded the families -- 9 particularly given that most have been unable to join 10 today -- to ensure that if they wish to, they are able 11 to join that pre-inquest review.</p> <p>12 THE CORONER: Yes, certainly.</p> <p>13 It is highly likely it will be conducted in the same 14 format as today's hearing.</p> <p>15 MR CLARK: Yes, thank you very much, ma'am.</p> <p>16 THE CORONER: Thank you.</p> <p>17 Dr van Dellen, anything from you on any of those 18 four topics?</p> <p>19 DR VAN DELLEN: No, madam.</p> <p>20 Just to reiterate my learned friend Mr O'Connor's 21 point about the importance of the inquest proceeding in 22 January 2021 without any further delay. Also to commend 23 the solicitors to the inquest for locating the 24 alternative venue.</p> <p>25 THE CORONER: Right, thank you very much.</p> <p style="text-align: center;">Page 24</p>

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1 Mr Moloney?
 2 MR MOLONEY: Thank you, madam, no further submissions. The
 3 IOPC is keen to follow the progress of the inquest and
 4 it doesn't necessarily mean that we need to take up
 5 a great deal of space at the venue.
 6 THE CORONER: Ms Dobbin?
 7 Mr Shaw?
 8 I can't see or hear you, Mr Shaw, at the moment.
 9 Mr Morley? I will come to you first, then.
 10 MR MORLEY: Madam, thank you. No submissions. We recognise
 11 the hard work that has gone into arranging the
 12 alternative venue and we are very grateful for that.
 13 THE CORONER: Mr Atchley?
 14 MR ATCHLEY: No further submissions, thank you, madam.
 15 THE CORONER: Mr O'Connor, Mr Shaw seems to have left us.
 16 I am going to assume that he would not have --
 17 MR SHAW: I am back.
 18 THE CORONER: You are back?
 19 MR SHAW: I have no objection, thank you, madam.
 20 THE CORONER: Thank you very much.
 21 All right, thank you.
 22 We can move to agenda item 4.
 23 MR O'CONNOR: Thank you, madam. That agenda item is
 24 a question of jury and jury questions. There are one or
 25 two issues here madam, but again I think I can take

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1 them, as it were, compendiously.
 2 As far as the number of jurors is concerned, I think
 3 at an earlier stage of these proceedings we did float
 4 the possibility of starting with fewer than 11 jurors,
 5 the reason being to try and squeeze into a smaller
 6 amount of space. Just to be clear, now that we have
 7 alternative accommodation and, in any event, we agree
 8 that it would be much preferable to start with the full
 9 tally of 11 jurors, and that is indeed the proposal.
 10 Picking up on something that I think is mentioned in
 11 the families' submissions, we certainly intend to have
 12 a pool of, I think, quite -- something quite in excess
 13 of 20, from which to select those 11 jurors.
 14 Several of the interested persons have mentioned the
 15 question of so-called shadow jurors. It is our proposal
 16 that we should start with two extra shadow jurors who
 17 would be in place for the opening in case, having
 18 commenced the opening, any of the 11 realise at that
 19 stage that there is a difficulty with their
 20 participation. But, to be clear, we do not propose, in
 21 keeping with the practice in the Crown Court, that the
 22 shadow jurors should remain in place once the evidence
 23 has started.
 24 Madam, that then leaves the question of jury
 25 questions. There is broad agreement amongst the

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1 interested persons to the question that we set out in
 2 our submissions. Mr Gibbs and Ms Dobbin suggested that
 3 our questions A to F could usefully be extended so that
 4 they are asked by reference not only to the potential
 5 jurors themselves, but also any member of their
 6 immediate family, simply as a means of flushing out any
 7 matters that may need to be considered.
 8 We respectfully agree. Madam, there is one other
 9 issue which is a submission made by Mr Clark and
 10 Ms Favata at paragraph 6 of their submissions, which is
 11 that a question might be asked of potential jurors
 12 relating to their beliefs or attitudes via complex(?)
 13 relative.
 14 Madam, whilst one understands the concern that
 15 underlies Mr Clark's submission, one must also have in
 16 mind the very limited extent to which it is appropriate
 17 or indeed legal for a judge to influence the overall
 18 composition of the jury.
 19 Madam, I know that Mr Skelton has some submissions
 20 to make on this issue. My suggestion is that it may be
 21 appropriate for you to hear any preliminary submissions
 22 on that point today, but not to resolve it. And that we
 23 might rather return to it at the next hearing, perhaps
 24 having given it further thought and indeed consideration
 25 by reference to the case law.

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1 Madam, that is all the submissions I wished to make
 2 on this agenda item.
 3 THE CORONER: Thank you.
 4 Right, Mr Clark, then, 11 jurors with two reserves
 5 or shadow jurors until the end of the opening.
 6 Jury questions as per Mr O'Connor's proposals, with
 7 the amendment suggested by Mr Gibbs and Ms Dobbin.
 8 Then I have noted that you want a question asked in
 9 relation to beliefs or moral attitudes. Do you want to
 10 add anything to that, or say anything about the number
 11 of jurors or reserves?
 12 Mr Clark, we understand you are on the link.
 13 I don't know quite what the difficulty is.
 14 Ms Favata, can you help?
 15 MR CLARK: Can you hear me?
 16 THE CORONER: Oh, he's here.
 17 Yes, I can.
 18 MR CLARK: It looks like I was not heard in terms of what
 19 I just said. May I first thank the learn counsel to the
 20 inquest for consideration of the issue of shadow jurors
 21 and jury pool. May we endorse the suggestion made,
 22 I think by Ms Dobbin, in respect of the slight amendment
 23 to most of the questions.
 24 I will be very brief in terms of a preliminary legal
 25 submission in support of the additional question that we

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<p>1 propose. I note and anticipate an alignment between the 2 question that we propose and the issue of free speech 3 and freedom of thought generally.</p> <p>4 In my submission, that would be the wrong frame. 5 The correct frame, rather, is the Equality Act and the 6 effect that that has upon issues around the application 7 of opinions in the context of public service.</p> <p>8 More specifically, one of the issues that is core to 9 this inquest we would respectfully submit is the 10 question of whether there are unjustified material 11 differences in treatment between gay people and others 12 by police officers.</p> <p>13 In the context of a jury member who may have views 14 in which differences of that kind -- material 15 differences in treatment -- may well be more likely to 16 be ignored, in my submission having a question which 17 limits that possibility in terms of jury composition is 18 relevant to ensuring that the inquest properly examines 19 the question of equality as per the Equality Act, rather 20 than seeking to argue that the jury should be limited in 21 terms of the range of permissible opinions, or limiting 22 free speech.</p> <p>23 THE CORONER: All right.</p> <p>24 MR CLARK: Madam, that is all I will say on that point at 25 the moment, thank you.</p> <p style="text-align: center;">Page 29</p>	<p>1 England and Wales been a matter of challenge or concern 2 for the courts, whether in the context of the criminal 3 courts or the coronial courts, as we understand it.</p> <p>4 As Lord Justice Leveson said in the Court of Appeal 5 case of KC(?) in 2009, the right of (inaudible) to 6 challenge has long since been lost in this jurisdiction.</p> <p>7 On that basis, madam, our preliminary view, subject 8 to development of further arguments for and against, and 9 indeed seeing your counsels' considered view on this 10 issue, is to object to it. We see this as setting 11 an unnecessary precedent for inquests and indeed for 12 court proceedings more generally.</p> <p>13 Thank you.</p> <p>14 THE CORONER: Thank you.</p> <p>15 Mr Moloney, anything from you on this topic?</p> <p>16 MR MOLONEY: No, thank you, madam.</p> <p>17 THE CORONER: Ms Dobbin?</p> <p>18 MS DOBBIN: We don't think it is an appropriate question.</p> <p>19 Second, insofar as the Equality Act may 20 theoretically apply to juries. It may apply so as to 21 ensure that all people have access to being a juror, but 22 I am not aware of any circumstances in which it is used 23 to limit the composition of a jury. That may be 24 a matter that needs further development.</p> <p>25 THE CORONER: Yes, thank you very much.</p> <p style="text-align: center;">Page 31</p>
<p>1 THE CORONER: Thank you.</p> <p>2 Dr van Dellen?</p> <p>3 DR VAN DELLEN: Thank you, madam. I would endorse 4 everything my learned friend Mr Clark said. It may be 5 that I may wish to put in further written submissions on 6 this issue. There is some learning and case law in 7 relation to jury selection. In addition to the points 8 raised by my learned friend Mr Clark, there is also the 9 issue of real or apparent bias as well, which is also 10 referenced in Dorries. But, madam, this is, in my 11 submission, more appropriate for detailed written 12 submissions.</p> <p>13 THE CORONER: Yes, thank you.</p> <p>14 Mr Skelton?</p> <p>15 MR SKELTON: Thank you, madam, while recognising that 16 Mr O'Connor said that this matter may best be dealt with 17 on full argument at the next PIR, the MPS's preliminary 18 position is to object to such a question being put to 19 potential jurors. As far as the MPS is concerned, there 20 is no general precedent for such questions to be put, 21 unlike, of course, the list of questions that are going 22 to be put, which are entirely appropriate and are 23 designed to elicit objective conflicts and potential 24 bias or the appearance of bias amongst jurors. But the 25 subjective opinion of jurors has not historically in</p> <p style="text-align: center;">Page 30</p>	<p>1 Mr Shaw, anything from you?</p> <p>2 MR SHAW: No, thank you, madam.</p> <p>3 THE CORONER: Mr Morley?</p> <p>4 MR MORLEY: Madam, only to put on record that we are minded 5 to object to the question. We don't have my previous 6 experience of having questions like that put before 7 a jury, and we would welcome the opportunity to put in 8 some written submissions on the point.</p> <p>9 THE CORONER: Finally, Mr Atchley?</p> <p>10 MR ATCHLEY: Nothing to add to what you have already heard, 11 madam, via Mr Morley and Ms Dobbin.</p> <p>12 Thank you.</p> <p>13 THE CORONER: Thank you.</p> <p>14 Mr O'Connor, anything in response?</p> <p>15 MR O'CONNOR: Nothing of substance, madam, only to say that 16 the submissions you have heard this morning underline 17 that this is an important and sensitive issue and it is 18 clear that we must strive to make the right decision in 19 respect of it. It therefore does seem appropriate that 20 it is a matter that should you reserve to the next 21 hearing and for parties who wish to develop argument 22 before you on that occasion to put in written 23 submissions in advance.</p> <p>24 No doubt you can give directions for that in due 25 course.</p> <p style="text-align: center;">Page 32</p>

1 THE CORONER: Yes. Thank you.
 2 We can go on to item 5.
 3 MR O'CONNOR: Madam, yes. That is headed "Witness issues",
 4 and there are a number of sub-issues which I think it
 5 will be helpful to take in turn on this occasion.
 6 The first is outstanding witness statements. You
 7 will have seen from Mr Clark and Ms Favata's submissions
 8 that they have indicated they will serve the pen
 9 portrait statements from the families by 30 October.
 10 That is welcomed.
 11 The other outstanding statements all relate in one
 12 degree or another to the Metropolitan Police. There are
 13 three categories, as it were.
 14 The first and most pressing is the policies and
 15 procedures statement, which has been outstanding for
 16 some time now. I should say immediately that a draft of
 17 the statement was actually provided to the inquest team
 18 I think earlier this week, and it is an almost final
 19 draft. We have made some small comments in relation
 20 to it.
 21 We had hoped that that statement would be finalised
 22 and served within a very short period of time. In fact
 23 we had hoped that it would be served before this
 24 hearing. That has not proved possible.
 25 I know from conversation with Mr Skelton that there

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1 are some delays and that it is not going to be possible
 2 to serve it within a day or so.
 3 I would invite you, madam, to direct that that
 4 statement is now served by Friday, 2 October.
 5 It is one part of the jigsaw, madam. Until that
 6 statement has been served there are other things that
 7 cannot happen. So really it is important that this
 8 statement -- which we requested from the Metropolitan
 9 Police in March of this year -- is now finalised with
 10 expedition, and therefore we invite you to direct that
 11 it is served by that date, Friday, 2 October.
 12 I said there were three categories.
 13 The second is the statement that we know that the
 14 Metropolitan Police are preparing in relation to changes
 15 to their policies with a view to any prevention of
 16 future death report that you might wish to make. You
 17 have not so far issued a direction for the provision of
 18 that statement. We think it would be helpful for you to
 19 do that now, and we suggest Friday, 23 October for that
 20 statement.
 21 The third category is outstanding statement from
 22 officers.
 23 There are two such statements. One from
 24 Superintendent Jones, and, secondly, from Mr Lyons(?).
 25 We invite you to direct that those two statements, which

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1 we understand are well on their way to be completed, are
 2 served by Friday, 2 October.
 3 Madam, it has been a feature of this case -- because
 4 of the listing -- that there has been plenty of time
 5 over the last few months for these steps to be taken.
 6 One understands of course that they have been very
 7 unusual times and the Metropolitan Police's priorities
 8 have been pulled in many directions. But we do
 9 emphasise that we are now in the final run in to the
 10 hearing in January, there are some procedural steps that
 11 need to be taken and these matters really now do need to
 12 be dealt with with expedition.
 13 Madam, that is all I wish to say about this first
 14 issue of outstanding witness statements. It may be
 15 helpful to hear from others on that before we move on.
 16 THE CORONER: Yes. I think it would be convenient if I hear
 17 from Mr Skelton first on this topic.
 18 Mr Skelton, in paragraph 17 of your submissions you
 19 refer to three separate witnesses in relation to
 20 Metropolitan Police policies and procedures. Is that
 21 right? Is it one statement or three?
 22 MR SKELTON: Madam, the position is at the moment it is
 23 a single document with three principal authors. The
 24 reason being is that the -- we call it the 30 questions
 25 statement, covers such a huge variety of policies and

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1 procedures that no single officer could properly speak
 2 to them with authority.
 3 Therefore, to some extent it is a composite. It is
 4 yet to be determined whether or not any of those
 5 officers need to be called, because I think all of them
 6 would be necessary if one wanted to investigate every
 7 aspect of the statement. But I think you will hear from
 8 your counsel, madam, that in fact it may be that he and
 9 his colleague will lead in the evidence in fact to the
 10 jury, so it will not be necessary to hear from those
 11 witnesses at all.
 12 As far as the timing is concerned, madam, a very
 13 long and detailed draft has obviously gone to your legal
 14 team already, accompanied by a vast amount of material
 15 in terms of the underlying documentation, and
 16 appendices. It has taken many months to get to the
 17 point where that document has been produced.
 18 What we now need to do, I think, is take on board
 19 the comments of your counsel on the draft version but we
 20 also need access to our most senior client, Deputy
 21 Assistant Commissioner Cundy, who will have effective
 22 signoff on the overall statement, not least because the
 23 MPS's position so far as past policies are concerned is
 24 clearly relevant to your consideration of present
 25 policies and the determination by you at the end of the

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1 inquest as to whether a PFD report is required.
 2 Therefore, madam, bearing in mind how many months we
 3 are away from the start of the inquests, I would ask for
 4 one further week than Mr O'Connor has asked for, and ask
 5 for 9 October, rather than 2nd. Which I hope will not
 6 of prejudice your ongoing work.
 7 THE CORONER: Thank you.
 8 In relation to the changes to policy document, the
 9 suggested date was 23 October. Do you have any
 10 observations about that?
 11 MR SKELTON: Madam, I think that may be satisfactory.
 12 Madam, I am instructed I may have misled you on the
 13 number of statements. It may be in fact there are more
 14 than one statement ultimately from the officers in
 15 response to the policies and procedures, rather than
 16 a single one. I am sorry for that.
 17 THE CORONER: The other two outstanding statements from
 18 Messrs Jones and Lyons? The suggestion is 2 October for
 19 those.
 20 MR SKELTON: May I again, madam, ask for 9 October, which is
 21 a more realistic deadline as far as my team is
 22 concerned.
 23 THE CORONER: Yes. In due course I will consider those
 24 submissions but I will now ask if others have any
 25 submissions to make on this topic.

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1 Mr Clark, first of all?
 2 MR CLARK: No, thank you, ma'am.
 3 THE CORONER: Dr van Dellen?
 4 DR VAN DELLEN: No, thank you, ma'am.
 5 THE CORONER: Mr Moloney?
 6 MR MOLONEY: No, thank you, madam.
 7 THE CORONER: Ms Dobbin?
 8 Mr Shaw?
 9 MR SHAW: No, thank you, madam. No, thank you.
 10 THE CORONER: Mr Morley?
 11 MR MORLEY: No, thank you, madam.
 12 THE CORONER: And Mr Atchley.
 13 MR ATCHLEY: No, thank you, madam.
 14 THE CORONER: All right. Thank you all very much.
 15 Then, Mr O'Connor, we are on item 5B and the witness
 16 list.
 17 MR O'CONNOR: Yes, madam. You will recall, madam, that at
 18 the last hearing we provided -- or in advance of the
 19 last hearing -- an annex to our submissions which we
 20 called annex B, which listed the proposed witnesses and
 21 set out our suggestion as to whether they should be
 22 called or read or whether indeed their evidence was
 23 required at all.
 24 At the last hearing, we agreed that the submissions
 25 or determination on those issues should be put off to

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1 this hearing. We have updated annex B so that it now
 2 contains a record of our submissions on these matters
 3 for all of the witnesses whose statements have now been
 4 served.
 5 In our submission, that we served a week or two ago,
 6 we invited interested persons to set out their views in
 7 response to ours, as it were. I believe there was some
 8 confusion as to whether those written submissions should
 9 be made before or after this hearing. But be that as it
 10 may, madam, our suggestion as things stand today is that
 11 rather than spend time during this hearing going through
 12 the relatively small number of witnesses where there is
 13 not agreement as to how we should proceed, that is
 14 a matter that you should determine in writing after
 15 today's hearing. The procedure that we have proposed --
 16 interested persons are aware that this is our
 17 proposal -- is that following this hearing they should
 18 have, as it were, one last chance to put in any written
 19 submissions that they want to make.
 20 Of course, they have already put in some written
 21 submissions but if they want to either address more
 22 witnesses or develop their submissions in any way, they
 23 have that opportunity. We should then have a right to
 24 respond to that in writing, and thereafter you can make
 25 a decision in writing as to the way in which witnesses

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1 will be dealt with.
 2 I say no more about, that other than to say that
 3 some of the written submissions we have received so far
 4 simply indicate that, for example, there are questions
 5 that interested persons wish to put to witnesses. We
 6 respectfully submit that you will be assisted by rather
 7 more detail as to what the questions are and why they
 8 need to be put than that in making your decision.
 9 Madam, as far as the timing of that process is
 10 concerned, we envisage it to be a brisk one. The reason
 11 for that being that we do now need a decision as to
 12 which witnesses are to be called so that we can contact
 13 them and give them some indication of when it is they
 14 will be needed. This is part of the difficulty
 15 regarding the policies and procedures statement, because
 16 it seems to us that it at least may be the case -- it
 17 may well be the case -- that interested persons will
 18 wish to see that policies and procedures statement
 19 before they put in their final submissions on which of
 20 the witnesses of fact should be called.
 21 We had intended -- and we do -- propose that if you
 22 are in agreement with us that the dates for the policies
 23 and procedures statement should be Friday, 2 October,
 24 then we propose that interested persons, for their final
 25 written submissions on witnesses, should have until

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<p>1 8 October.</p> <p>2 Clearly they will be able to -- as I said, to some</p> <p>3 extent they already have addressed these matters. They</p> <p>4 can do further work before seeing the policies and</p> <p>5 procedures statement, but if we set the date of</p> <p>6 8 October, that will give them a few more working days</p> <p>7 to consider that statement and see if their submissions</p> <p>8 need to be altered. Madam, we would then envisage our</p> <p>9 own response a week later on 15 October.</p> <p>10 Clearly, madam, if the date for the policies and</p> <p>11 procedures statement goes back as Mr Skelton has asked,</p> <p>12 then the date for this process will need to go back</p> <p>13 also. That will mean a further delay in contacting</p> <p>14 witnesses which, as I have said, madam is undesirable.</p> <p>15 Madam, that is -- perhaps I might simply -- I am</p> <p>16 just looking. The running order point, there is</p> <p>17 relatively little to say about, so perhaps I will cover</p> <p>18 that as well before I invite to you hear from others.</p> <p>19 There was an issue about when and with what</p> <p>20 frequency DI Richards should be called. We have</p> <p>21 suggested a slightly different arrangement and as we</p> <p>22 understand it the Metropolitan Police are content with</p> <p>23 that.</p> <p>24 Beyond that, the suggested running order is now set</p> <p>25 out in annex C to our submissions. That's the annex</p> <p style="text-align: center;">Page 41</p>	<p>1 Mr O'Connor suggested, then I would absolutely have no</p> <p>2 objection to that of course.</p> <p>3 THE CORONER: I think, Mr Clark, it would certainly assist</p> <p>4 me if I had it all in writing. Thank you very much.</p> <p>5 MR CLARK: Certainly, ma'am. Of course, thank you.</p> <p>6 THE CORONER: Dr van Dellen, anything from you on these</p> <p>7 topics?</p> <p>8 DR VAN DELLEN: No, madam. I would endorse my learned</p> <p>9 friend Mr O'Connor's submissions.</p> <p>10 THE CORONER: All right, Mr Skelton?</p> <p>11 MR SKELTON: Madam, the MPS also endorses the choreography</p> <p>12 of submissions that Mr O'Connor has outlined with, of</p> <p>13 course, the caveat that I requested on behalf of the MPS</p> <p>14 a week's extension of time. I hope that will not</p> <p>15 inconvenience you or your team in any significant way.</p> <p>16 I take Mr O'Connor's point about warning witnesses, but</p> <p>17 one would hope that with over three months to go that</p> <p>18 a one-week extension would not significantly compromise</p> <p>19 witness diaries into 2021.</p> <p>20 THE CORONER: Yes, thank you.</p> <p>21 Mr Moloney, anything from you on this topic?</p> <p>22 I assume not.</p> <p>23 MR MOLONEY: No, thank you, madam.</p> <p>24 THE CORONER: Ms Dobbin?</p> <p>25 Mr Shaw?</p> <p style="text-align: center;">Page 43</p>
<p>1 with the daily running indication as to how many days</p> <p>2 this hearing is going to take. We ask you, madam, to</p> <p>3 make a direction that any observations on that running</p> <p>4 order -- by interested persons -- should be made by 15</p> <p>5 October, the same date as our submissions on the</p> <p>6 witnesses, if that is the line you take. Again, so that</p> <p>7 the witnesses can be informed of the likely date on</p> <p>8 which they will be called.</p> <p>9 Madam, I might pause there, because there is</p> <p>10 a little to be said about the next issue.</p> <p>11 THE CORONER: Yes, all right.</p> <p>12 Mr Clark, anything you want to say about</p> <p>13 Mr O'Connor's proposals?</p> <p>14 MR CLARK: Thank you very much, madam.</p> <p>15 I would respectfully agree wholeheartedly with it.</p> <p>16 In case it would assist, I could offer some limited</p> <p>17 brief submissions now in a very specific category, only</p> <p>18 if it would assist at this stage. That would be of</p> <p>19 those witnesses that are currently listed to be read,</p> <p>20 I could indicate along with reasons those that we can</p> <p>21 definitely say now we would respectfully ask they be</p> <p>22 called.</p> <p>23 I can give brief reasons for that.</p> <p>24 If, on the other hand, it would not assist for that</p> <p>25 to be done and for the whole process to be organised as</p> <p style="text-align: center;">Page 42</p>	<p>1 MR SHAW: Nothing to add, thank you, madam.</p> <p>2 THE CORONER: Mr Morley?</p> <p>3 MR MORLEY: Thank you, madam, nothing from me.</p> <p>4 THE CORONER: And Mr Atchley?</p> <p>5 MR ATCHLEY: No, nothing from me, thank you, madam.</p> <p>6 THE CORONER: All right, thank you very much.</p> <p>7 I don't think there will be anything from you in</p> <p>8 response to Mr Clark, Mr O'Connor.</p> <p>9 We can move to item D under item 5?</p> <p>10 MR O'CONNOR: Yes, madam. You will recall that this was</p> <p>11 a matter on which you heard submissions from Mr Gibbs at</p> <p>12 the last hearing. It, of course, relates to the</p> <p>13 policies and procedure statement or statements which</p> <p>14 have yet to be served, as we have discussed. The issue,</p> <p>15 though, was how these policies and procedures were to be</p> <p>16 introduced to the jury.</p> <p>17 Our initial proposal was to call the witness, or one</p> <p>18 of those witnesses, to undertake that task. Mr Gibbs,</p> <p>19 you will recall, made submissions suggesting that was</p> <p>20 not an appropriate course.</p> <p>21 As you will have seen, we have considered the matter</p> <p>22 and our proposal now -- which I think commands more or</p> <p>23 less unanimous agreement -- is that that is something</p> <p>24 that we can and should do in our opening.</p> <p>25 I emphasise, madam, that this is not a question of</p> <p style="text-align: center;">Page 44</p>

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<p>1 calling evidence at that point of the hearing. It is 2 simply really, as with other elements of the opening, to 3 give the jury a general idea of the territory to which 4 the evidence will relate. We are well aware of the 5 concerns of Mr Gibbs about how we handle any contentious 6 elements of the policies and procedures evidence, and we 7 will be careful of course in that regard.</p> <p>8 But that is our current proposal. Ie that this is 9 a matter that we deal with in our opening and, for 10 completeness, that the proposal thereafter would be that 11 the evidence relating to policies and procedures is 12 dealt with through the police officer witnesses. In 13 other words, we will ask them about their understanding 14 of the policies. We can put to them the master 15 statement as it were, as we go.</p> <p>16 As Mr Skelton suggests, we suggest fairly, 17 a decision can be taken towards the end of the hearing 18 as to whether at that point it is in fact necessary to 19 call the makers of that master statement or whether in 20 fact sufficient evidence by that stage of the policies 21 and procedures has already been adduced. That is our 22 proposal.</p> <p>23 Madam, the only other point I wanted to make is that 24 it would assist us in considering exactly what we can 25 and should say about these matters in opening if,</p> <p style="text-align: center;">Page 45</p>	<p>1 from what he said today and indeed from speaking to him 2 previously, is aware of that. The solution, as he puts 3 it, is that in fact the actual evidence on the policies 4 will be adduced primarily by the witnesses themselves by 5 reference to the general submission that he will have 6 made prior to that.</p> <p>7 It may be that that is the appropriate way to 8 proceed. That may well, as he envisages, obviate the 9 need to call the witnesses themselves towards the end of 10 the inquest, which we are of course willing to do as 11 necessary.</p> <p>12 THE CORONER: Thank you very much.</p> <p>13 MR SKELTON: Thank you.</p> <p>14 THE CORONER: Mr Moloney, anything from you on that topic?</p> <p>15 MR MOLONEY: No, thank you, madam.</p> <p>16 THE CORONER: Ms Dobbin?</p> <p>17 MS DOBBIN: Madam, you have our written submissions on this 18 and indeed you have heard Mr Gibbs on the same point. 19 I don't think there is anything to be gained from me 20 adding to it.</p> <p>21 THE CORONER: Thank you very much indeed. 22 Mr Shaw?</p> <p>23 MR SHAW: No, we will wait to see what the document contains 24 before we make any observations, thank you.</p> <p>25 THE CORONER: Mr Morley?</p> <p style="text-align: center;">Page 47</p>
<p>1 following the service of the policies and procedures 2 evidence, IPs indicate to us the extent to which, if at 3 all, its contents are contentious.</p> <p>4 That is something that we would invite you to order 5 should be done. 30 October is the date that we had in 6 mind. Clearly if the date for the service of the 7 policies and procedures evidence goes back, then that 8 date would go back as well.</p> <p>9 Madam, that is all I have to say on that issue.</p> <p>10 THE CORONER: Can you just give me the date again? 11 MR O'CONNOR: End of the October, the 30th.</p> <p>12 THE CORONER: Yes. Thank you very much.</p> <p>13 Mr Clark, anything from you on behalf of the 14 families on that topic?</p> <p>15 MR CLARK: No, thank you, ma'am.</p> <p>16 THE CORONER: Dr van Dellen?</p> <p>17 DR VAN DELLEN: No, thank you, ma'am.</p> <p>18 THE CORONER: Mr Skelton?</p> <p>19 DR VAN DELLEN: Madam, we are grateful for your counsel's 20 very helpful suggestion in that regard. As you will 21 have seen from the MPS's written submissions, we have 22 a residual concern about the evidential status of 23 leading in evidence before the jury by way of a speech, 24 as one might make in a court hearing, in a civil court 25 or indeed a public inquiry. But I think Mr O'Connor,</p> <p style="text-align: center;">Page 46</p>	<p>1 MR MORLEY: Madam, I am content with Mr O'Connor's 2 suggestion, thank you.</p> <p>3 THE CORONER: And Mr Atchley?</p> <p>4 MR ATCHLEY: I am in agreement with Ms Dobbins and Mr Gibbs, 5 thank you, madam.</p> <p>6 THE CORONER: All right, thank you very much. 7 Can we move to item 6?</p> <p>8 MR O'CONNOR: Yes, madam. I think this is one we can take 9 very shortly. Ms Mackay's statement has been disclosed 10 and I know the interested persons have had a chance to 11 consider it.</p> <p>12 The next steps we have proposed are that interested 13 persons should file any points of clarification that 14 they request Ms Mackay to make by a date, and that 15 thereafter she should prepare the single further 16 supplementary report which will also enable her to 17 consider evidence that has been served since the date of 18 her report, which will include importantly the policies 19 and procedures evidence that we already discussed.</p> <p>20 Madam, we invite you to order that interested 21 persons serve such points of clarification by 22 15 October.</p> <p>23 THE CORONER: Yes, thank you.</p> <p>24 Mr Clark, any observations on those proposals?</p> <p>25 MR CLARK: No, thank you, ma'am.</p> <p style="text-align: center;">Page 48</p>

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<p>1 THE CORONER: Dr van Dellen? 2 DR VAN DELLEN: No, thank you, ma'am. 3 THE CORONER: Mr Skelton? 4 MR SKELTON: Yes, madam, thank you, briefly. 5 I am grateful for your counsels' indication that 6 a supplementary report will be disclosed, and that is 7 very helpful. I think the other point that the MPS made 8 in our submissions is whether or not Ms Mackay will in 9 due course deal with the existing policies, and their 10 perceived adequacy or inadequacy as it may bear upon 11 your consideration of a PFD report. 12 At the moment, obviously, her report is rather 13 backward looking necessarily. It is commenting on the 14 various investigations that preceded Mr Port's arrest 15 and imprisonment. At some stage, no doubt, she may be 16 asked questions about the existing policies and 17 procedures with a view to assisting you in your 18 consideration of that issue. 19 Were she to do so in writing, that would clearly be 20 helpful for all interested persons, including the MPS, 21 to understand any perceived inadequacies so we can 22 tailor our evidence and answer those questions 23 accordingly. But clarification as to that issue is 24 sought, if I may. 25 THE CORONER: By existing, do you mean current as at 2020.</p> <p style="text-align: center;">Page 49</p>	<p>1 Mr Skelton's query about current policies and whether 2 Ms Mackay is going to deal with those? 3 MR O'CONNOR: Yes, madam. 4 Of course that is not why Ms Mackay was instructed 5 in the first place. The view you took was that you, and 6 more importantly the jury, would be assisted by expert 7 evidence as Mr Skelton described "backward-looking 8 expert evidence" to assist the jury in assessing the 9 conduct of the investigations, and whether things could 10 or should have been done differently. Whether 11 opportunities were missed and so on. 12 That, of course, is very much the stuff of the 13 report that Ms Mackay has prepared. 14 Ultimately, madam, it is a matter for your as to 15 whether you think you would be assisted by expert 16 evidence in that very different question as to whether 17 the current policies are suitable and sufficient, or 18 whether there are further matters or further changes 19 that you think should be made. 20 Mr Skelton is right to say that it is a completely 21 different issue, and there is some force in what he says 22 that if you were envisaging Ms Mackay to give oral 23 evidence on those matter then, no doubt, it would be of 24 assistance for her to prepare a report. 25 But, madam, our provisional view is that there is</p> <p style="text-align: center;">Page 51</p>
<p>1 MR SKELTON: Yes, that's exactly what I mean. 2 THE CORONER: I will come back to Mr O'Connor on that in 3 a moment after I have dealt with everybody else. 4 Mr Moloney, on the topic of expert evidence, 5 anything from you? 6 MR MOLONEY: No. 7 THE CORONER: Ms Dobbin? 8 Mr Shaw? 9 MR SHAW: Only to say that the date is a little tight. 10 Could I ask for an additional week? Because it may well 11 affect Sweetman in particular. The 15th is a Friday, 12 the following Friday is the 23rd. 13 THE CORONER: Yes, I will consider that in due course. 14 Mr Morley? 15 MR MORLEY: Madam, only to raise the same concern. 16 15 October seems a little tight, particularly seeing as 17 I understand Mr Skelton is asking for a little bit of 18 extra time before the policy statement is disclosed to 19 us. I simply note we would need realistically at least 20 two weeks after receipt of that statement before we are 21 able to make representations about that. 22 THE CORONER: Mr Atchley? 23 MR ATCHLEY: Madam, I support Mr Morley and Mr Shaw. 24 I agree with their position. 25 THE CORONER: Mr O'Connor, can I come back to you then on</p> <p style="text-align: center;">Page 50</p>	<p>1 little to be gained, perhaps, from Ms Mackay addressing 2 those matters. And that it is likely, given the 3 detailed evidence no doubt that you will have and 4 submissions from interested persons, that on this very 5 different topic you may well not require expert 6 evidence. 7 But, madam, Mr Skelton was right to raise it at this 8 stage. It is a decision for you. If you take the view 9 that you will be assisted by her evidence then we agree 10 that it would be helpful, perhaps, for a report, but it 11 is a decision for you. 12 THE CORONER: Thank you very much. I note from paragraph 17 13 of Mr Skelton's written submissions that there will be 14 a statement, I think, from Deputy Assistant Commissioner 15 Cundy setting out the changes that have been made to 16 policies and procedures, so that will be in evidence. 17 MR O'CONNOR: Madam, that will be in evidence, and we 18 anticipate that Mr Cundy will be called to give 19 evidence. He will be questioned and he will have all 20 that material available for you. 21 THE CORONER: Yes, all right. 22 MR SKELTON: Madam, may I just respond briefly what 23 Mr O'Connor has said, just to clarify one point? 24 THE CORONER: Yes. 25 MR SKELTON: It is not the MPS's position that you should</p> <p style="text-align: center;">Page 52</p>

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<p>1 require Ms Mackay to produce this evidence or indeed 2 that you indeed need it. It is more a question of if 3 she is going to do it, it would be helpful to have 4 something in writing beforehand because obviously the 5 MPS will then have time to consider it and tailor 6 Mr Cundy's evidence accordingly so that he's prepared to 7 assist you in every way he can.</p> <p>8 As it stands, Mr O'Connor's suggestion, which is 9 that you will be able to elicit that evidence during the 10 course of the inquest and then examine Mr Cundy 11 effectively without such evidence, we acknowledge may 12 well be the better course.</p> <p>13 THE CORONER: That is very helpful, thank you, Mr Skelton.</p> <p>14 All right, then we can move on item 7, which is the 15 rule 22 point made by Dr van Dellen.</p> <p>16 MR O'CONNOR: Yes, madam.</p> <p>17 Before we move any further, I am told that we are 18 approaching that time when we might think about rising 19 to allow the transcriber a break. It may be that these 20 last two items can be dealt with very shortly. 21 I certainly have little to say about either of them. It 22 may be the case that if others intend to address you at 23 length, it would be necessary to take a break, madam.</p> <p>24 THE CORONER: All right.</p> <p>25 Why don't we deal with it in this way. If you</p> <p style="text-align: center;">Page 53</p>	<p>1 relation to a question as to whether further evidence by 2 way of witness statement or disclosure should be 3 obtained from the Coroner's office. Mr Clark 4 articulated a concern that officers might seek to blame 5 the conduct of the Coroner, or Coroner's office -- he 6 made a similar point about the CPS -- for shortcomings 7 in the investigation.</p> <p>8 His submission to you then was that if they did 9 that, but you did not have evidence from the Coroner's 10 office, then that would lead to an evidential dead end.</p> <p>11 Madam, I have looked back this morning at Mr Clark's 12 written submissions for the last hearing. At 13 paragraph 17 -- I will just read a couple of lines, 14 I don't ask you to turn it up -- he summarised his 15 position this way:</p> <p>16 "The current danger in these inquests is that 17 criticism is going to be made of the actions of 18 Ms Persaud, the Coroner, by officers, yet no 19 determination of the merit of these criticisms by the 20 jury will be permitted under the scope of these 21 inquests. Such an approach will afford the officers the 22 advantage of directing all blame -- certainly for the 23 death of Mr Taylor -- at the feet of Ms Persaud."</p> <p>24 Madam, that was the context in which you invited 25 Mr Skelton and Mr Gibbs to give a indication as to</p> <p style="text-align: center;">Page 55</p>
<p>1 articulate your submissions on, if it is possible, both 2 topics, 7 and 8, then I will ask how long others 3 anticipate they will be in reply.</p> <p>4 MR O'CONNOR: Yes. Madam, I can certainly do that.</p> <p>5 As far as point 7 and the self-incrimination point 6 is concerned, you have our written submission. I have 7 very little to add. We thank Dr van Dellen for raising 8 the point and the detail that he has set out. That is 9 useful to you to have in mind as we proceed, but our 10 position is that it is not necessary and indeed it would 11 not be appropriate for you to make any ruling on this 12 matter until we get to the hearings and indeed until 13 Mr Schamberger is about to give evidence.</p> <p>14 That's all I wish to say on that matter.</p> <p>15 As far as the other matter is concerned, we headed 16 it "Scope" in the agenda, and indeed that is the 17 subtitle that it has -- or part of the subtitle that it 18 has in Mr Clark's written submission.</p> <p>19 The first point I would make is that that is not 20 what this issue is about. There was a question as to 21 whether the coronial investigation was within the scope 22 of your investigation. You have ruled on that. And, as 23 you made clear in your ruling following the last 24 hearing, that was a final ruling, the matter is closed.</p> <p>25 This issue arose at the last hearing in July in</p> <p style="text-align: center;">Page 54</p>	<p>1 whether it was in fact the intention of the officers who 2 they represented to cast blame in that way. They both 3 gave you an indication, which you recorded in your 4 ruling, that they were not intending to cast blame in 5 that way.</p> <p>6 The decision for you at your last hearing was 7 whether to order further evidence by way of disclosure 8 or witness evidence. In light of that indication, you 9 decided not to do so.</p> <p>10 Madam, that was the limit of it. Mr Clark has now 11 put the matter in a slightly different way.</p> <p>12 We do not accept either that further assurances, as 13 he puts it the wider assurances, are needed or that they 14 are in fact needed from any other interested persons.</p> <p>15 As to the wider assurances, Mr Clark suggests that 16 some form of indication should be forthcoming to the 17 effect that officers will not in fact even refer to the 18 fact of the coronial investigation. Madam, as we have 19 always made clear, the facts of what happened are 20 certainly in play. There is evidence that will be 21 called about them, for example the transcripts of the 22 inquests.</p> <p>23 So, clearly no such indication would be appropriate.</p> <p>24 As far as the other officers are concerned, that is 25 DI Kirk and Mr Sweeney, madam, it seems to us that they</p> <p style="text-align: center;">Page 56</p>

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<p>1 were not the officers who were charged with the day to 2 day conduct of the investigation and it seems most 3 unlikely to us that they would be making such blame, or 4 casting such blame. In those circumstances, it doesn't 5 seem that it is necessary for you to invite them to give 6 any such indication.</p> <p>7 Madam, those are my submissions on those two issues. 8 THE CORONER: Yes, thank you.</p> <p>9 I will come to Mr Clark first.</p> <p>10 Mr Clark, how long do you think you need for any 11 oral submissions that you want to make on these topics, 12 while I consider whether I rise to give those recording 13 the matter a break.</p> <p>14 MR CLARK: Madam, I am so sorry, I muted myself. I do 15 apologise. I had muted myself.</p> <p>16 I should think I can be very brief. Less than five 17 minutes.</p> <p>18 THE CORONER: Thank you. Would you like to go ahead then, 19 please.</p> <p>20 MR CLARK: Yes, thank you, ma'am.</p> <p>21 First, learned counsel to the inquest refers to the 22 context in which the issue arose. He's absolutely 23 correct. It arose in the context of whether or not 24 certain matters, certain further evidence, should be 25 disclosed. That's why it remains relevant.</p> <p style="text-align: center;">Page 57</p>	<p>1 your function. The point is that the same submission as 2 we made on the last occasion is better characterised -- 3 again I accept responsibility for the loose wording of 4 our submission on the last occasion -- in the way we do 5 it now, which is that we would seek assurances that 6 there is not an effort to account for or to justify acts 7 or omissions which may be seen as problematic by 8 reliance upon the previous coronial investigation.</p> <p>9 The reason why those assurances were sought last 10 time was to address that very point. In our submission, 11 it remains valid and it remains important. If that 12 assurance were not to be provided then our submission in 13 respect of disclosure as to the previous coronial 14 investigation would arise again. But it has been 15 answered by those assurances. All that we are asking is 16 that it is effectively answered by assurances which are 17 phrased in the correct way.</p> <p>18 Those are our submission, ma'am, thank you.</p> <p>19 THE CORONER: Did you want to say anything about the rule 22 20 point?</p> <p>21 I assume not, Mr Clark.</p> <p>22 MR CLARK: No, other than to the extent that we have 23 a position we endorse Dr van Dellen's submissions.</p> <p>24 THE CORONER: Thank you.</p> <p>25 Dr van Dellen?</p> <p style="text-align: center;">Page 59</p>
<p>1 The next point, ma'am, is that I would respectfully 2 submit that the way that our submission was 3 characterised was not quite right. We are not asking 4 for an assurance that no one will even refer to the fact 5 of the previous coronial inquest or the previous 6 investigation, clearly that would be absurd.</p> <p>7 Rather, we are asking for assurance that no one will 8 seek to account for their own actions or omissions by 9 reference to aspects of the previous coronial 10 investigation.</p> <p>11 What I am really getting at here, ma'am, is that -- 12 I accept that it may well be that we were wrong to use 13 the words "criticism" here, on the last occasion. The 14 reason for that is that as no doubt is to be repeatedly 15 emphasised in any inquest, the process is not about 16 blame, nor is it about the determination of anything 17 which looks like civil liability. The difficult tension 18 that we are always dealing with is that mere factual 19 findings as a result of article 2 involve critical 20 language.</p> <p>21 There is an important distinction here, the point 22 being that the notion of criticism is an evaluative 23 exercise, and if a particular officer were to give 24 evidence to you offering what would effectively be 25 expert evidence on who was to blame, that would displace</p> <p style="text-align: center;">Page 58</p>	<p>1 DR VAN DELLEN: Thank you, madam. I will be about 2 ten minutes, if that gives an indication whether you 3 wish to rise momentarily or not.</p> <p>4 THE CORONER: I think I will rise and give them a break in 5 those circumstances. Thank you.</p> <p>6 We will try to resume at 12.35 pm.</p> <p>7 DR VAN DELLEN: Thank you, madam. 8 (12.22 pm)</p> <p>9 (A short break)</p> <p>10 (12.36 pm)</p> <p>11 THE CORONER: Thank you.</p> <p>12 Dr van Dellen?</p> <p>13 DR VAN DELLEN: Thank you, madam.</p> <p>14 Starting firstly with agenda item 8, I endorse my 15 learned friend Mr Clark's submissions on that issue.</p> <p>16 Turning to Mr Waumsley's application for 17 a determination in relation to a rule 22 warning for 18 DI Schamberger. Madam, I won't take you laboriously 19 through my written submissions and my learned friend 20 Mr O'Connor's written submissions, but if I may pick up 21 matters raised by him in paragraph 36 of his 22 submissions, it is on page 13, madam.</p> <p>23 My learned friend begins by of course drawing the 24 court's attention to wilful neglect of duty, underlining 25 the word "wilful". Madam, of course you will be very</p> <p style="text-align: center;">Page 60</p>

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<p>1 familiar with this offence. It is not only acts of 2 commission, but also acts of omission that may amount to 3 wilful neglect of duty.</p> <p>4 Taking his subparagraphs in turn, at (a) my learned 5 friend makes point that Dr Swift in the final post 6 mortem report strongly recommended further examination 7 of the bedsheet. I of course concede that there is no 8 reference to examination of the outside of the brown 9 bottle. But the point really is the point made by my 10 learned friend, that this was a strong recommendation 11 from a forensic Home Office pathologist conducting 12 a special post mortem.</p> <p>13 Turning over the page to page 14, at (c) my learned 14 friend refers to acting Detective Inspector Schamberger 15 being in that position on an acting basis, that he had 16 no specialist training to fulfil that role, had not been 17 on the detective inspector's course and had never been 18 on an investigating officer's course or a senior 19 investigating officer's course and this was the first 20 ever post mortem that he had attended.</p> <p>21 My understanding is that that is raised as grounds 22 for why the offence is made out. In fact my submission 23 is that those matters make it all the more a wilful 24 neglect of his duty, given his evident lack of training 25 and inexperience, when a forensic Home Office</p> <p style="text-align: center;">Page 61</p>	<p>1 the pathologist recommended further examination of the 2 bedsheet and asks him directly was that something that 3 was done. For DI Schamberger to suggest that he didn't 4 recall seeing the report of Dr Swift prior to the 5 original inquest, and doesn't recall reading Dr Swift's 6 comments, is at its lowest highly disingenuous given 7 that that was directly asked of him by the learned 8 Coroner.</p> <p>9 I continue at paragraphs 31, where again the issue 10 of third party involvement was directly asked of 11 DI Schamberger, with bruising noted below both arms, 12 continued around the front of the chest wall. He 13 commented, "This is an unusual distribution to have been 14 caused accidentally and may have occurred as a result of 15 manual handling of the deceased, most likely prior to 16 death".</p> <p>17 Even if DI Schamberger had been in a state of wilful 18 ignorance, rather than wilful neglect of duty, by the 19 conclusion of that inquest, there can but have been no 20 question in his mind of at least two things.</p> <p>21 The first is third party involvement, or the 22 likelihood of third party involvement prior to the 23 death.</p> <p>24 The second is that the pathologist had recommended 25 the testing of the bedsheet.</p> <p style="text-align: center;">Page 63</p>
<p>1 pathologist suggests -- strongly recommends -- that the 2 bedsheet be analysed, you would have thought that 3 an officer who appears to be swimming around untrained 4 would pay heed to such a strong recommendation. So 5 I consider that a factor which goes towards the offence 6 being made out.</p> <p>7 Then (e) is the lack of a note made by Detective 8 Inspector Schamberger about a bedsheet at the time of 9 the post mortem. I will return to that, because the 10 lack of notes is a matter again that I would 11 respectfully submit goes towards the offence being made 12 out, or real and appreciable risk of the offence being 13 made out.</p> <p>14 Then, further in (e), the last sentence, acting 15 Detective Inspector Schamberger says he also does not 16 recall seeing the report of Dr Swift prior to the 17 original inquest. In particular, he does not recall 18 reading Dr Swift's comments about the bedsheet at 19 paragraph 8 of that report.</p> <p>20 Whilst it may be technically correct, he cannot 21 possibly say that that was not drawn to his attention. 22 In my submissions, madam, I lay out at length the 23 interaction between the learned Coroner and 24 DI Schamberger. At paragraph 29 of my submissions, on 25 page 9, the learned Coroner draws to his attention that</p> <p style="text-align: center;">Page 62</p>	<p>1 One of the advantages, madam, of this application 2 being heard on this day is you also have the advantage 3 of what Ms Mackay says about this. You don't have to 4 take my word for it, madam, or my learned friend's word 5 for it, or DI Schamberger's word for it, because 6 Ms Mackay has very carefully gone through these issues 7 in her report, madam, page 26.</p> <p>8 THE CORONER: Yes.</p> <p>9 MR VAN DELLEN: Paragraph 106, she addresses the issue of 10 the bedsheet and she says:</p> <p>11 "I would have expected the forensic recovery of the 12 clothing and the bedsheet."</p> <p>13 She then carries on to paragraph 108, at the bottom 14 of page 26, the second sentence:</p> <p>15 "A forensic review should still discuss all 16 exhibits, examination of the clothing and the bedsheet 17 would have to be with a specific focus and rationale in 18 mind, including screening for blood, screening for 19 semen, examination of fibres."</p> <p>20 She then continues on page 28, madam, at 21 paragraph 119, which again in terms of wilfulness is 22 a key paragraph, and this is what she says about the 23 briefing document initially prepared before the post 24 mortem. She notes that it is reviewed after the post 25 mortem, fails to mention any of the bruising to</p> <p style="text-align: center;">Page 64</p>

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<p>1 Mr Whitworth, demonstrating that its significance had 2 not been recognised, and after the post mortem acting 3 Detective Inspector Schamberger stated that the post 4 mortem is not conclusive and that there are some minor 5 issues, but does not elaborate any further.</p> <p>6 Well, they are more than minor issues. They are 7 some pretty major issues. There is involvement of 8 a third party and there is a recommendation by 9 a pathologist to DI Schamberger's characterisation, 10 an inexperienced untrained officer, recommending -- 11 strongly recommending in Dr Swift's words -- analysis of 12 the bedsheet.</p> <p>13 Ms Mackay concludes, at paragraph 119, by saying: 14 "If the bruising had been considered with the 15 position of the clothing, it should have increased 16 suspicion ..."</p> <p>17 She's quite clear about that, not "may have 18 increased suspicion", "was likely to have increased 19 suspicion." She's quite adamant in her wording "should 20 have increased suspicion".</p> <p>21 She used the similar language in the following page 22 at paragraph 121, madam, where she talks about the 23 manhandling of Mr Whitworth. She refers to active 24 Detective Inspector Schamberger, present at the special 25 post mortem, and she says:</p> <p style="text-align: center;">Page 65</p>	<p>1 Again, paragraph 127, for the wilful conduct of 2 a police officer, it is difficult to imagine a more 3 damning statement being made than paragraph 127: 4 "There are comments on the CRIS ..."</p> <p>5 Madam, you are very familiar with CRIS. For the 6 members of the family, it is the criminal electronic 7 system used to record actions in an investigation: 8 "There are comments on CRIS from as early as 9 November 2014 stating that all actions were complete, 10 when in fact they had not been. This is a pattern of 11 conduct on the part of DI Schamberger."</p> <p>12 The final sentence, middle of paragraph 128, the 13 third sentence: 14 "The borough CID did not do an in-depth 15 investigation."</p> <p>16 Why is this significant? It is significant because 17 of the elephant in the room, which is bias and 18 discrimination. It is significant because if 19 DI Schamberger had done what he was strongly recommended 20 to do, Stephen Port would have been caught and I made my 21 submission as high as I do "he would have been caught", 22 and Jack Taylor's death, in my respectful submission, 23 could have been avoided.</p> <p>24 His seniority, he may have been an acting detective 25 inspector, but he was nevertheless an inspector acting</p> <p style="text-align: center;">Page 67</p>
<p>1 "So in turn the bruising was known to the 2 investigation team, reiterated in Dr Swift's statement." 3 The final sentence, again expressed in very clear 4 language: 5 "There is no evidence that the presence of this 6 bruising gave any cause for concern, when it should have 7 done."</p> <p>8 Paragraph 122, the next paragraph: 9 "The recommendation of Dr Swift to examine the 10 bedsheet was also either ignored or discounted." 11 Then a very telling statement in parenthesis: 12 "There is no recorded rationale for decisions made." 13 If there is an issue of wilfulness it is this lack 14 of documentation. It is all very well for 15 DI Schamberger to say, "Well, I don't recall this" and, 16 "I don't recall that", but it is just not documented.</p> <p>17 Over the page, top of page 30, Ms Mackay's opinion 18 about the closure of the investigation: 19 "I do not consider it was appropriate to close the 20 investigation into the death of Mr Whitworth on 21 22 January 2015." 22 The middle of that paragraph: 23 "The person Mr Whitworth had been with the previous 24 evening had not been identified. The swabs which may 25 have assisted were not submitted."</p> <p style="text-align: center;">Page 66</p>	<p>1 at inspector rank.</p> <p>2 Madam, it may be surprising following those 3 submissions that I make my next submission, which is if 4 you are minded to agree with my learned friend 5 Mr O'Connor, and say that there isn't an appreciable 6 risk of this offence being prosecuted. I would be quite 7 satisfied with that, because the purpose of this is to 8 avoid what happened in the IOPC questioning of 9 DI Schamberger when he refused to answer questions.</p> <p>10 Madam, if you make a declaration that on the 11 material currently before the court there is not a real 12 and appreciable risk, Mr Waumsley would be quite 13 satisfied with that, because that would mean that 14 Mr Schamberger would not decline to answer questions 15 before you.</p> <p>16 The final point to make, madam -- it is made quite 17 rightly by most of my learned friends -- that the issue 18 should be reviewed or revisited at the time that 19 DI Schamberger gives his evidence, I am absolutely in 20 accordance with that.</p> <p>21 My submission is slightly different, which is that 22 on the material currently before the courts, you are 23 able to make a determination that there is a real and 24 appreciable risk of prosecution of misconduct in public 25 office.</p> <p style="text-align: center;">Page 68</p>

17 (Pages 65 to 68)

<p>1 Madam, I have gone on for longer than I intended. 2 I am very conscious of the time. But unless I can 3 assist any further, I would respectfully invite you to 4 make a determination either that rule 22 is engaged, or 5 that on the material currently before the court that it 6 is not engaged. 7 That may well assist with short circuiting any 8 submissions before DI Schamberger gives evidence, 9 because you can purely consider the material which has 10 come to light, or the evidence which has come to light, 11 since this material, if you are of the view that this 12 material does not disclose a real and appreciable risk 13 of prosecution. 14 Unless I can assist any further? 15 THE CORONER: No, thank you very much. 16 I will just go through everybody else to see if they 17 have submissions on either these two topics. 18 Mr Skelton? 19 MR SKELTON: Madam, no submissions on the prohibition issue 20 which Dr van Dellen has articulated. We agree with your 21 counsel in that regard. 22 Very brief submissions, if I may, on the issue of 23 the former Coroner. I appreciate, madam, that you have 24 received many submissions on this over the course of 25 this investigation and have made a definitive ruling on</p> <p style="text-align: center;">Page 69</p>	<p>1 MPS's position on that issue. 2 THE CORONER: Yes, thank you, Mr Skelton. 3 Mr Moloney, anything from you on behalf of the IOPC 4 on either of these topics? 5 MR MOLONEY: No, thank you, madam. 6 THE CORONER: Thank you. 7 Ms Dobbin? 8 MS DOBBIN: Madam, first on Dr van Dellen's point, I won't 9 address on the facts because resolution of them is not 10 necessary. As regards this issue, we have set out the 11 principled position at paragraph 17, whether any 12 individual is entitled to rely upon the privilege 13 against self incrimination is a fact-sensitive 14 assessment to be carried out at the time that a question 15 is asked. We respectfully agree with counsel to the 16 inquest that it is not a matter for preemptive ruling. 17 THE CORONER: Thank you. 18 MS DOBBIN: As regards to the second issue, I simply repeat 19 what we said on the last occasion that there was not any 20 intention on the part of our clients to cast blame, and 21 we would respectfully submit that we could go no further 22 and could not give the sort of assurance that would be 23 sought because it would be to fetter, as your counsel 24 recognises, the giving of relevant evidence in these 25 inquests.</p> <p style="text-align: center;">Page 71</p>
<p>1 the scope of that issue. The MPS's position, to be 2 clear, remains that it does not seek to criticise the 3 Coroner for her service. 4 Against that background, it is important to 5 recognise that first the facts pertaining to some 6 individual officers' involvement with the coronial 7 service may be relevant to your investigation, as they 8 may say in their evidence that it influenced the 9 decisions that they made. 10 I understand Mr O'Connor to accept that position. 11 Secondly, it is not of course possible to prohibit 12 witnesses from seeking to blame other people for their 13 actions when they are giving their evidence. Although, 14 of course, you are obliged to foreclose irrelevant 15 questions and irrelevant answers and one would 16 anticipate that -- given your ruling on the scope and 17 the decision on relevance of that issue -- that would be 18 the case were such blame to be cast. 19 It is, in effect irrelevant. 20 What matters, madam, ultimately for the jury is that 21 they are able to consider the decisions made by the 22 police officers in question by reference to their own 23 independent professional obligations, which may or may 24 not have been influenced by the actions of others but 25 ultimately are their own. That, in summary, is the</p> <p style="text-align: center;">Page 70</p>	<p>1 Unless I can -- 2 THE CORONER: Thank you very much. 3 Mr Shaw? 4 MR SHAW: Only to say this, Sergeant Sweetman will not be 5 blaming anybody for his actions, and certainly not the 6 Coroner. 7 THE CORONER: Mr Morley? 8 MR MORLEY: Madam, only to say that we respectfully support 9 the submissions made by your counsel, Mr O'Connor. 10 THE CORONER: And Mr Atchley? 11 MR ATCHLEY: The same. We support Mr O'Connor's position. 12 Thank you, madam. 13 THE CORONER: Thank you very much. 14 Mr O'Connor, do you want to respond to anything that 15 was said by Dr van Dellen? 16 We can't see or hear you, Mr O'Connor. 17 MR O'CONNOR: I am sorry, madam. I had put myself on mute. 18 Can you see and hear me now? 19 THE CORONER: Yes, thank you. 20 MR O'CONNOR: I am sorry. I said, first of all, that 21 I didn't have anything to say in reply to Dr van Dellen. 22 Secondly, that I wasn't aware of any further matters 23 for you to hear argument on today. I don't know if 24 anyone else has any other matters to raise. 25 THE CORONER: Right. Rather than go through everybody</p> <p style="text-align: center;">Page 72</p>

<p>1 individually, would people speak up, please, if they 2 have any matters to raise. 3 I will just pause to wait to see if that applies to 4 anybody. 5 MR CLARK: Yes, please, ma'am? 6 THE CORONER: Dr van Dellen or Mr Clark? 7 MR CLARK: That was me, ma'am, Paul Clark, yes. 8 THE CORONER: Mr Clark, you do have something to raise? 9 MR CLARK: Yes, very briefly, following Dr van Dellen's 10 submissions. 11 First, an observation. Dr van Dellen, as 12 I understand it, asks you to do no more than that 13 alluded to by Ms Dobbin, to make a judgment on the 14 issue, on the evidence as it is presented to you at 15 present in the fact-sensitive way that she suggested. 16 Second, returning to the question of assurances. In 17 my submission, the assurance -- again this alludes to 18 Ms Dobbin's submissions -- doesn't fetter your role or 19 fetter the court's role. It rather, if the word is to 20 be "fetter", it is to apply an indication of the 21 evidence that is to be given by police officers. To the 22 extent that one person's evidence is fettered by other 23 evidence that they have given, it should be seen in that 24 context. 25 The reason for that fetter, if it is to be called</p> <p style="text-align: center;">Page 73</p>	<p>1 the issue of hearing arrangements. I did not pop up, 2 I think, during that bit of the agenda today, but may 3 I just reiterate the points made in the written 4 submissions that we have put before you about the need 5 for space to be able to accommodate a client within 6 court, bearing in mind the centrality of the MPS's role 7 within this inquest. 8 THE CORONER: Yes. 9 MR SKELTON: Beyond, that nothing, thank you. 10 THE CORONER: Thank you. 11 Anybody else? 12 No, all right. 13 Thank you very much, everybody. I am going to 14 conclude the hearing now. I hope that by the end of 15 tomorrow at the very latest you will have my decisions 16 on matters which involve dates. In fact almost 17 certainly by the end of play today. Together with my 18 more detailed reasons very shortly thereafter. 19 Thank you very much, everyone, for attending today. 20 We will now conclude the hearing. 21 (1.05 pm) 22 (The pre-inquest review concluded) 23 24 25</p> <p style="text-align: center;">Page 75</p>
<p>1 a fetter, is precisely to avoid the difficulties that 2 gave rise to the assurances at the last hearing. Those 3 difficulties reappear in the absence of those assurances 4 and that, in my submission, is exactly why your decision 5 made reference to them. 6 Third, as regards the assurance given in submissions 7 in response to mine, the assurance given again referred 8 to "blame". I repeat my submission that the judgment 9 made on blame by a particular officer of a coroner or 10 anyone else is of no consequence. They are witnesses of 11 fact, hence the submission that the assurance should be 12 phrased differently. 13 A last final matter, ma'am, just to mention 14 something which was addressed in our written 15 submissions, which I think is to be addressed in the 16 context of the written submissions on the witness list. 17 I don't propose to address you in substance on it, but 18 just to ensure that it is not overlooked. That is the 19 reference to the need for evidence from Dr Tully. We 20 will address that further in written submissions as has 21 been indicated, thank you. 22 THE CORONER: Yes, thank you. 23 All right, does anybody else want to raise anything 24 else today before I conclude the hearing? 25 MR SKELTON: Madam, it is Peter Skelton again, only to raise</p> <p style="text-align: center;">Page 74</p>	

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