

<p>1 Wednesday, 6 September 2023 2 (10.30 am) 3 PRELIMINARY HEARING 4 THE CHAIR: Good morning. Thank you all very much for 5 coming, whether in person or in some cases I know 6 remotely. Welcome to the family of Ms Sturgess, who 7 I know are attending remotely. If you have any 8 difficulty in hearing, let those who are monitoring your 9 end know, please. 10 This is a further preliminary hearing. Its object 11 is to progress a critical stage in this inquiry, which 12 is to address the question of which material can be 13 considered in public and which, because of the risk that 14 it would otherwise pose either to national security or 15 to the workings of policing, will have to be heard in 16 closed hearings. 17 The starting point is that it is a public hearing 18 and everything is in public unless there is a necessity 19 for it not to be. But given what is alleged to have 20 happened, it will not be a surprise to anybody that 21 there is inevitably going to be some material, and 22 perhaps quite a lot, which falls into the closed 23 material category. 24 The object of this preliminary hearing is to 25 investigate that question and that question will also</p> <p style="text-align: center;">Page 1</p>	<p>1 notes I had from a previous occasion when Mr Bunting 2 wasn't here, so I do apologise to him. 3 I should add that you have received a number of very 4 short written submissions from a number of other 5 parties, core participants, who have explained that they 6 will not be attending. 7 THE CHAIR: I am very grateful to people for putting things 8 in writing and it will I think accelerate proceedings 9 today. It means I can take the applications not as read 10 but at least I understand what they are and we can start 11 with that. 12 MR O'CONNOR: I will start, if I may, with just a few 13 housekeeping points. So as you have said, this is 14 a further open directions hearing in the inquiry, it is 15 in fact the fifth directions hearing in the inquiry. 16 The previous hearing took place on 24 March of this 17 year. 18 This is a hybrid hearing, so as you have already 19 noted, all the advocates, as I have said, are here in 20 court, but there are some observers from a range of core 21 participants, including, again as you have noted, family 22 members who are following on the link. There are in 23 fact, as with the previous hearing, two links: one live 24 link and one link that has a delay in it -- I will come 25 back to that point in a moment and. So may I simply</p> <p style="text-align: center;">Page 3</p>
<p>1 have to be investigated in some detail, I suspect by me 2 in closed hearings, to follow this quite shortly. 3 Right, Mr O'Connor. 4 Submissions by MR O'CONNOR 5 MR O'CONNOR: Sir, I appear this morning with my learned 6 friends Ms Whitelaw King's Counsel and Ms Pottle as 7 counsel to the inquiry. Mr Mansfield, King's Counsel, 8 Mr Straw, King's Counsel and Mr Nicholls are here 9 representing the family of Dawn Sturgess, and also 10 Charlie Rowley. Ms McGahey, King's Counsel, Mr Watson, 11 King's Counsel, and Ms Woolff are here acting for the 12 Home Secretary and also a number of other government 13 departments and agencies. Operation Verbasco is 14 represented this morning by my learned friend 15 Ms Giovannetti, King's Counsel, who is instructed by the 16 Metropolitan Police; and also Ms Shrimpton, and also 17 Mr Goss, who is in fact instructed by Thames Valley 18 Police. 19 THE CHAIR: Okay. 20 MR O'CONNOR: Finally for today's purposes, Mr Berry is here 21 for the Chief Constable of Wiltshire Police. 22 THE CHAIR: Yes, and there is Mr Bunting for the media. 23 MR O'CONNOR: Sorry, yes. Mr Bunting. 24 THE CHAIR: Not overlooked, Mr Bunting, don't worry. 25 MR O'CONNOR: I am guilty of having cut and pasted some</p> <p style="text-align: center;">Page 2</p>	<p>1 echo your remarks at this stage that if anyone who is on 2 the link has any difficulties with following 3 proceedings, then please if they could make touch with 4 the inquiry team, perhaps in the first instance emailing 5 Mr Smith. That is the appropriate process. 6 So second, returning to the point about the 7 different links. You have adopted a protocol on 8 security measures for preliminary hearings. It has been 9 published on the inquiry website, it is in the bundle, 10 and we don't need to look at it now but it is at tab 48. 11 In summary, the public and the media who are following 12 this hearing remotely will do so by means of the delayed 13 link, which is delayed by five minutes. CPs, core 14 participants that is, and legal representatives who are 15 following remotely have the other link, the live link. 16 During the hearing, members of the public and media who 17 are present in the hearing room may not communicate with 18 anyone outside the hearing room by phone, email, instant 19 messaging or other electronic means. That is the effect 20 of the protocol you have issued, sir. 21 THE CHAIR: Yes. 22 MR O'CONNOR: The purpose of it, briefly, is to accommodate 23 a situation where something is said which shouldn't have 24 been said and we will hope that doesn't happen. If 25 does, we will take the appropriate steps.</p> <p style="text-align: center;">Page 4</p>

<p>1 THE CHAIR: Yes.</p> <p>2 MR O'CONNOR: Sir, third housekeeping point. You have your</p> <p>3 bundle, in fact it is quite a sizeable bundle for this</p> <p>4 hearing, perhaps the two critical documents, or the</p> <p>5 starting points at any rate, are the two open</p> <p>6 restriction order application documents from Operation</p> <p>7 Verbasco and HMG. They are at tabs 4 and 5 of your</p> <p>8 bundle. You then have a series of written submissions</p> <p>9 which have been prepared first of all by us, and then by</p> <p>10 core participants for the purpose of this hearing,</p> <p>11 including HMG and Operation Verbasco. Those are at tabs</p> <p>12 8 to 14 of your bundle.</p> <p>13 As with previously hearings, we do propose to</p> <p>14 publish the documents to which I have referred, that is</p> <p>15 the application documents and also the written</p> <p>16 submissions, on the inquiry website at the end of the</p> <p>17 hearing. But if there is any objection to that taken by</p> <p>18 any core participant, then I invite them to raise that</p> <p>19 with you in the course of the hearing when they come to</p> <p>20 make their oral submissions.</p> <p>21 For completeness, sir, as core participants are</p> <p>22 aware, you also have available to you in your bundle</p> <p>23 a range of submissions from previous hearings in case</p> <p>24 they become relevant.</p> <p>25 THE CHAIR: Yes.</p> <p style="text-align: center;">Page 5</p>	<p>1 help me to hear from them first today.</p> <p>2 MR O'CONNOR: Yes, sir.</p> <p>3 THE CHAIR: It is not completely impossible that one might</p> <p>4 have to come back to them later on today, but I would</p> <p>5 avoid that if possible. But does anybody want to</p> <p>6 contend that Mr O'Connor's running order ought to be</p> <p>7 abandoned?</p> <p>8 MR MANSFIELD: No, thank you.</p> <p>9 THE CHAIR: Mr Bunting?</p> <p>10 MR BUNTING: No, thank you.</p> <p>11 MR O'CONNOR: I did have an opportunity to discuss with</p> <p>12 Mr Mansfield and Mr Bunting before you came in and as</p> <p>13 I understood it, they are --</p> <p>14 THE CHAIR: Then that is what we will do.</p> <p>15 MR O'CONNOR: Then I will start, as I say, with a short</p> <p>16 update in terms of procedural matters.</p> <p>17 THE CHAIR: Yes.</p> <p>18 MR O'CONNOR: Sir, I am glad to say a great deal of work has</p> <p>19 been undertaken by all those involved since the last</p> <p>20 hearing earlier this year. Much of that work has been</p> <p>21 steered by the directions you made at the conclusion of</p> <p>22 the last hearing. Those directions -- I will not repeat</p> <p>23 them now but they are on the inquiry website and they</p> <p>24 are also set out in our written submissions.</p> <p>25 THE CHAIR: No. It may be worth saying that it must be</p> <p style="text-align: center;">Page 7</p>
<p>1 MR O'CONNOR: Sir, fourth point, briefly. As you have</p> <p>2 already indicated, arrangements have been made to</p> <p>3 conduct a further closed hearing following this one.</p> <p>4 I think it is perhaps obvious, but your intention is to</p> <p>5 rule on these applications once both this hearing and</p> <p>6 the closed hearing have taken place.</p> <p>7 THE CHAIR: Yes, at present, that is right.</p> <p>8 MR O'CONNOR: Finally, sir, in terms of the oral submissions</p> <p>9 this morning, I will address you briefly first of all</p> <p>10 a short procedural update, then some submissions on the</p> <p>11 restriction order applications, and then a few points</p> <p>12 about other linked procedural matters.</p> <p>13 The running order to follow, it is of course for</p> <p>14 Operation Verbasco and HMG to make their applications</p> <p>15 before you. But since they have already, as it were,</p> <p>16 started that process in writing, it seemed to us the</p> <p>17 sensible order would be for the family and for the media</p> <p>18 to make their oral submissions to you, and I think</p> <p>19 Mr Berry has a short submission he would wish to make as</p> <p>20 well. That to happen first and then for Operation</p> <p>21 Verbasco and HMG to make their oral submissions, having</p> <p>22 heard what --</p> <p>23 THE CHAIR: I have thought about that, Mr O'Connor, and</p> <p>24 unless there are submissions that either the family or</p> <p>25 the media want to make to the contrary, I think it would</p> <p style="text-align: center;">Page 6</p>	<p>1 frustrating for people who come only to the open</p> <p>2 hearings, but I ought to record that there has been</p> <p>3 an immense amount of very detailed work done in support</p> <p>4 of an expansion of the restriction order applications</p> <p>5 that are made this morning, with a view to consideration</p> <p>6 in due course in closed hearings. So I am aware that</p> <p>7 there are great lists of individual documents which</p> <p>8 I shall have to plough through in due course.</p> <p>9 MR O'CONNOR: Yes. Sir, picking up again, I am pleased to</p> <p>10 say that stage 1 of the disclosure exercise, that is the</p> <p>11 process of document -- those who hold documents</p> <p>12 principally -- not entirely but principally HMG and</p> <p>13 Operation Verbasco providing us with potentially</p> <p>14 relevant documents for review and us then indicating,</p> <p>15 having reviewed them, whether the documents are or are</p> <p>16 not relevant. That process is essentially complete.</p> <p>17 THE CHAIR: Yes.</p> <p>18 MR O'CONNOR: It has been a very considerable task indeed,</p> <p>19 tens of thousands of documents have been reviewed. We</p> <p>20 had set ourselves the object of completing this exercise</p> <p>21 by the end of June and we did indeed manage to review</p> <p>22 all of the material with which we have been provided by</p> <p>23 that date.</p> <p>24 Inevitably, sir, there are some small sets of</p> <p>25 documents that we have been provided with subsequently.</p> <p style="text-align: center;">Page 8</p>

2 (Pages 5 to 8)

<p>1 A process like this is never truly finished and there is 2 a little bit more detail about that in written 3 submissions. 4 But the headline point, sir, is that stage 1 is now 5 substantially complete and that means we can now focus 6 on stage 2 of the process; in other words, disclosing to 7 core participants those documents we have identified as 8 being relevant, and that of course takes us right away 9 to the restriction order process which we are dealing 10 with today. 11 THE CHAIR: Yes. 12 MR O'CONNOR: Of course this was all envisaged at the last 13 hearing earlier this year. We knew we were coming 14 towards the end of the stage 1 process and you gave 15 directions for the first round of restriction order 16 applications to be made. And those applications, the 17 ones we are concerned with today, were indeed made by 18 HMG and Operation Verbasco on 14 July this year, 19 pursuant to the directions you had made. 20 As you have said, we -- that is your team -- we have 21 liaised closely with both HMG and Operation Verbasco in 22 preparation of their applications, including, for 23 example, in terms of the selection of the sample 24 documents that are the subject of these applications. 25 We reviewed the applications when they were made, issued</p> <p style="text-align: center;">Page 9</p>	<p>1 is a small overlap between them. The content of those 2 samples is something that was debated at the previous 3 hearing before you and, as I have said, those particular 4 documents that are the subject of the applications which 5 cannot be displayed in open, they are marked up showing 6 which parts of them are contended to be sensitive, and 7 that is a task of considering whether or not those 8 redactions should or should not be made, in the end. 9 That is a task you will be involved with at the closed 10 hearing. 11 Looking ahead, it is intended that the ruling you 12 give on these sample documents, these applications, will 13 assist in determining subsequent restriction order 14 applications in respect of remaining documents, and it 15 is very much part of our intention that we will build on 16 your ruling and be able to adopt a streamlined approach 17 in respect of subsequent material. 18 THE CHAIR: Yes, assist but not determine in advance. 19 MR O'CONNOR: That's right. 20 THE CHAIR: Yes. 21 MR O'CONNOR: So of course, it is for Ms Giovannetti and 22 Ms McGahey to advance their applications and as I have 23 said, we propose that they will address you after you 24 have heard from the family and the media and Mr Berry. 25 We have made some fairly detailed observations on the</p> <p style="text-align: center;">Page 11</p>
<p>1 in July, and having done that, and you having considered 2 the matter, you concluded that the hearing we had 3 provisionally listed in July did not need to go ahead. 4 Then, since the applications have been issued, we 5 have commenced the task of probing and challenging the 6 detail of those applications as part of the closed 7 process. 8 THE CHAIR: Yes. 9 MR O'CONNOR: Today you will consider the open issues 10 relating to the applications and, as we have said, there 11 will subsequently be a closed hearing to consider the 12 detailed issues of sensitivity relating to individual 13 documents and parts of documents that cannot be debated 14 in open. 15 The open elements of the applications are in the 16 bundle. As I think I have already mentioned, the open 17 applications are at tabs 4 and 5 of the bundle. In the 18 main part, they address issues relating to the legal 19 test you will have to adopt, and also the categories of 20 harm. Both HMG and Operation Verbasco have filed 21 further written submissions, which include responses to 22 points we had made in our earlier written submissions, 23 and those you will find at tabs 10 and 11 of the bundle. 24 Each of the two applications are made in respect of 25 samples of documents. The samples are different, there</p> <p style="text-align: center;">Page 10</p>	<p>1 applications in our own written submissions which I know 2 you have read, I am not going to repeat those. I will 3 simply limit myself to a few short introductory 4 submissions. 5 First of all, the law. We don't understand there to 6 be any real dispute about the legal test or the legal 7 approach you will be required to adopt. 8 THE CHAIR: No. 9 MR O'CONNOR: At tab 43 of the bundle -- and perhaps I will 10 ask you to turn this up -- is the ruling you gave on 11 an earlier more limited restriction order application 12 in August of last year. 13 THE CHAIR: Yes. 14 MR O'CONNOR: At paragraphs 7 to 10 of that ruling, you 15 summarised the legal approach to a restriction order 16 application under section 19 of the Act. Sir, as I say, 17 I think we will find this is common ground, that 18 essentially no one challenges the approach you 19 identified there. 20 Sir, you have received for the purposes of this 21 hearing some fairly wide-ranging submissions on the law 22 drawing, for example, on case law relating to public 23 interest immunity, and also common law principles of 24 open justice. Of course there is much in that case law 25 that is of assistance by analogy in this process. In</p> <p style="text-align: center;">Page 12</p>

<p>1 fact, in the passages to which I have just taken you to, 2 you refer to some of the PII case law.</p> <p>3 Ultimately, of course, your task is to undertake the 4 section 19 process. It is a statutory test and in fact 5 it is a fairly detailed test that is set out in the Act 6 that you must follow. As we said, our starting point is 7 that you have correctly identified in those paragraphs 8 the approach to take.</p> <p>9 Sir, everyone is agreed that the determination of 10 these applications is of fundamental importance to the 11 work of this inquiry. The balancing exercises that you 12 must conduct will bear directly on your ability to 13 conduct a full investigation into the circumstances of 14 Dawn Sturgess's death and the related aim of allaying 15 public concern about those matters. Precisely because 16 of the importance of this stage of the process, the 17 written submissions you have received stress that this 18 exercise must be conducted thoroughly and carefully and 19 also as transparently as possible.</p> <p>20 There is, of course, a tension between those 21 imperatives. It is inherent in applications of this 22 nature that issues can only be addressed at a level of 23 generality in open. To go further would risk causing 24 the damage that the whole process is designed to avoid. 25 But no one should be in any doubt that you will be</p> <p style="text-align: center;">Page 13</p>	<p>1 that the people who are only attending the open hearings 2 only have a partial view of the --</p> <p>3 THE CHAIR: It is intensely frustrating, Mr O'Connor, for 4 anybody who can only attend the open hearings. But that 5 is the function I have to discharge. All right.</p> <p>6 MR O'CONNOR: Another way of making this point, the way we 7 might put it, is that the identification of these harm 8 category is an essential starting point in the 9 restriction order process, but it is only that. Even if 10 a document or part of a document does fall into 11 a category of recognised harm, you will still conduct 12 a balancing exercise and may reject the application.</p> <p>13 THE CHAIR: Document by document, or at least group of 14 documents by group of documents, or class of -- kind 15 of -- where there are common considerations, then no 16 doubt documents can be considered in groups. But 17 basically, as I understand it, document by document.</p> <p>18 MR O'CONNOR: Sir, yes. That document by document 19 consideration is a process which of course must be 20 confined to the closed hearings. It is very much part 21 of our role as counsel to the inquiry to assist you in 22 that exercise. As I have already mentioned, we have 23 been engaging with the HMG and Operation Verbasco teams 24 for some time now in respect of these applications. 25 That process, which has already led to the applications</p> <p style="text-align: center;">Page 15</p>
<p>1 conducting a searching examination of the justification 2 for the restriction orders that are sought in the closed 3 hearings.</p> <p>4 For example, the fact that the species of harm that 5 underpin the applications are expressed as categories in 6 the open documents does not mean either that you will be 7 entertaining what used to be described as class claims, 8 or that you will not review documents and sections of 9 documents that are sought to be withheld individually to 10 determine whether or not the particular applications are 11 justified.</p> <p>12 THE CHAIR: I have read the categories in both the 13 applications, Mr O'Connor, more as chapter headings than 14 as inclusive -- than as boxes.</p> <p>15 MR O'CONNOR: Yes.</p> <p>16 THE CHAIR: I think I am right in understanding the 17 responsive submissions from both Ms McGahey and 18 Ms Giovannetti to agree to that; in other words no one 19 is contending that anything which can be described as 20 falling within a category is automatically to be closed; 21 and if they are, they have a major exercise in 22 persuasion on hand.</p> <p>23 MR O'CONNOR: Sir, that is also our understanding of their 24 position. But I think in fairness, we have to -- it is 25 a point that is well worth stressing, given the fact</p> <p style="text-align: center;">Page 14</p>	<p>1 being refined, is continuing.</p> <p>2 Both Operation Verbasco and HMG have now received 3 detailed closed written submissions from us relating to 4 these applications and we anticipate that they will 5 respond with responsive submissions. Our expectation is 6 that this exchange of closed submissions will both make 7 the closed hearing more efficient and also perhaps 8 narrow the issues.</p> <p>9 In summary, sir, all involved can be assured that 10 very considerable effort is being dedicated to ensuring 11 that these applications are assessed with great 12 thoroughness in the closed part of these proceedings.</p> <p>13 THE CHAIR: Yes.</p> <p>14 MR O'CONNOR: Sir, returning to the open hearing today, 15 there has been some criticism, especially in the media 16 submissions from Mr Bunting, of the extent of the open 17 explanation and justification that has been provided. 18 You will have to hear what Mr Bunting has to say, and no 19 doubt you will consider whether any more can or should 20 be given in open.</p> <p>21 Without wishing to prejudge that issue, we would 22 observe first that the open applications do contain the 23 harm categories and at least some examples of the types 24 of material in play. Second, this has enabled those 25 acting for Ms Sturgess's family to make detailed and</p> <p style="text-align: center;">Page 16</p>

<p>1 thoughtful submissions about possible objections to 2 restriction orders or boundaries beyond which you should 3 not go. We would also note that the HMG written 4 submissions contain some further information and 5 clarification made at our suggestion.</p> <p>6 Sir, we are grateful for the written submissions 7 received, especially from Ms Sturgess's family in their 8 written submissions, and also in the accompanying 9 schedule of open source material they have provided. We 10 are of course familiar with much of the material they 11 refer to, but it is nonetheless useful to us, and we are 12 sure to you, to have the material marshaled in the way 13 they have done.</p> <p>14 If information is in the public domain, then that 15 will always be at least a powerful argument against 16 granting a restriction order in respect of it. I put it 17 no higher because depending on the detail of the 18 document and the way in which the information is 19 presented in it, there may nonetheless be grounds for 20 some restriction; for example, issues around NCND may 21 arise.</p> <p>22 But as a starting point, it is obviously important 23 that you should understand if, and the extent to which, 24 any information that is subject to a restriction order 25 application is already in the public domain.</p> <p style="text-align: center;">Page 17</p>	<p>1 Verbasco have had in mind in formulating their 2 applications. It is something we have also been 3 researching and giving thought to. But as I have said, 4 we are grateful to the family for their assistance in 5 this regard.</p> <p>6 Sir, one last matter for now. It relates to quite 7 a specific point which is raised at paragraphs 25 and 26 8 of the submissions from Dawn Sturgess's family. Perhaps 9 I could ask you to look at it. It is in tab 9 of the 10 bundle.</p> <p>11 THE CHAIR: Yes. Which paragraph did you say? 12 MR O'CONNOR: Paragraphs 25 and 26. 13 THE CHAIR: Thank you. 14 MR O'CONNOR: It is a point which is made which picks up on 15 a footnote in fact on the HMG restriction order 16 application. It may actually help if I invite to you 17 keep a finger here and I just show you that other 18 reference, first of all. So that is tab 4, the HMG 19 application, and it is on the second page of that 20 application. It's footnote 1 at the bottom of the page. 21 THE CHAIR: Yes. 22 MR O'CONNOR: In the footnote, HMG are referring to the fact 23 that we had indicated to them that certain material 24 relating to the HMG's international diplomatic 25 engagement following the Sturgess attack was unlikely to</p> <p style="text-align: center;">Page 19</p>
<p>1 THE CHAIR: That will depend at least -- I had better say so 2 now because Mr Mansfield, Mr Straw, Mr Bunting may want 3 to think about it, but it seems to me there is a clear 4 difference in asking whether something is in the public 5 domain, between an assertion or a speculation or 6 a theory on the one hand, and a fact which is stated by 7 somebody who could be expected to have knowledge of it, 8 especially if they are official, on the other. 9 Different considerations might easily apply.</p> <p>10 MR O'CONNOR: Sir, certainly. As I said, there are shades 11 in all of this. The way in which the information is 12 presented, as you say, sir, whether it is something that 13 amounts to an assertion from, for example, a government 14 source or merely speculation. These things make 15 a difference to the balancing act.</p> <p>16 THE CHAIR: Also whether assertions are evidence-based or 17 not. 18 MR O'CONNOR: Sir, yes. 19 THE CHAIR: From the very beginning in this case, there have 20 been assertions without evidence to back them. 21 MR O'CONNOR: Shades of grey in all of this. But in any 22 event, sir, we repeat it is extremely helpful to have 23 that schedule and the question of whether material is in 24 the public domain, if so, how it has been presented, we 25 submit, is a matter we are sure HMG and Operation</p> <p style="text-align: center;">Page 18</p>	<p>1 be relevant unless it went to attribution, and those 2 words I will come back to.</p> <p>3 You will see, going back to the family's 4 submissions, they have requested further information or 5 clarification on categories of information that we have 6 identified as not relevant, or unlikely to be relevant 7 during the disclosure exercise.</p> <p>8 Can I, first of all, emphasise that we have in fact 9 sought to keep the disclosure exercise as broad as 10 possible to ensure we catch all information that might 11 be relevant to the circumstances of Ms Sturgess's death. 12 We have therefore given only very limited indications to 13 material providers about categories of information we 14 regard as irrelevant or unlikely to be relevant. That 15 is precisely because we have not wished to narrow the 16 process at too early a stage.</p> <p>17 Operation Verbasco has provided us with all of its 18 material relating to Skripal and Sturgess 19 investigations, and HMG has applied low relevance 20 thresholds with the consequence, as I have said, we have 21 now reviewed tens of thousands of documents.</p> <p>22 However, the volume of material relating to some 23 issues has made it necessary for us to give a steer as 24 to likely irrelevance in some areas. Two examples being 25 first of all the cleanup operation in Salisbury, and</p> <p style="text-align: center;">Page 20</p>

<p>1 also -- and this goes back to the footnote -- HMG's 2 international/diplomatic engagement following the 3 Skripal poisoning. In both instances, however, we have 4 stressed we do wish to receive disclosure of material 5 within those categories which is of potential relevance 6 to the circumstances of Dawn Sturgess's death. 7 For example, with regard to the cleanup operation in 8 Salisbury, we have said that while we don't need to 9 receive disclosure of the voluminous documentation 10 relating to the cleanup of sites that have no relevance 11 at all to Dawn Sturgess, we do wish to receive 12 disclosure of all documents relating to the distribution 13 of the poison, for example, and also any documents 14 relating to the consideration given at the time to 15 and/or the search for possible containers used, or 16 possible discarded containers, that may have been used 17 by those responsible for the Skripal attack. 18 THE CHAIR: Right. 19 MR O'CONNOR: Similarly, and this just does bring us back to 20 the point addressed in the footnote, as far as the HMG's 21 international engagement is concerned, we did make it 22 clear that if and to the extent this material does touch 23 on the question of responsibility for the Skripal 24 poisoning, then it is relevant and must be disclosed. 25 That in fact is recorded in the footnote to which I took</p> <p style="text-align: center;">Page 21</p>	<p>1 First of all, the police report. As you will know, 2 this is intended to be, and I am sure will be, a key 3 plank in the evidence that you will consider at the 4 substantive hearings. Considerable work has been 5 undertaken both by Operation Verbasco, also our team and 6 HMG have inputted as well into the preparation of this 7 document. It has deliberately been kept in draft as the 8 disclosure process has gone forward to enable material 9 arising during that process to be included within it. 10 But as I think we said at the last hearing, the time is 11 now approaching where that document does need to be 12 finalised. 13 We welcome the indication from Operation Verbasco 14 that a final version can be provided by 31 October and 15 it will then of course need to be fed into the 16 restriction order process, although we will all note 17 that at least most of, many of the documents that 18 underpin that report, have deliberately been included in 19 this restriction order exercise so one would hope that 20 we will be well ahead by the time we get the report -- 21 THE CHAIR: Before 31 October one would hope, yes. 22 MR O'CONNOR: -- with the implications from the restriction 23 order process of the police report. 24 As we have said, one consequence of finalising the 25 police report at this stage, it may well mean there is</p> <p style="text-align: center;">Page 23</p>
<p>1 you in those words, "unless it went to attribution", 2 which you may have seen. 3 THE CHAIR: Do you want to say anything about paragraph 26 4 of the family's submission on that point, or is that -- 5 MR O'CONNOR: I hope, sir, that is really what I have done. 6 We are agreeing with the family that they -- I think the 7 general point they have made there is that if there are 8 documents within that general cohort relating to HMG's 9 international engagement which in fact go to the 10 question of responsibility -- 11 THE CHAIR: If they go to what happened or who did it. 12 MR O'CONNOR: Exactly. And I hope I have been able to give 13 some comfort that we have had that point precisely in 14 mind. That is really what is meant by those words 15 "unless it went to attribution". So we have made that 16 a caveat to our general point that we don't need to see 17 reams and reams of diplomatic correspondence. But what 18 we do want from that period is anything, as you put it, 19 going to the question of who did it. 20 Sir, that is all I was planning to say about 21 restriction orders. As I mentioned, finally, there are 22 just a forward looking procedural matters. Because they 23 to some extent overlap with the points I have already 24 made, I think it will be convenient if I deal with them 25 shortly now.</p> <p style="text-align: center;">Page 22</p>	<p>1 a supplementary report that has to be produced prior to 2 the final hearing. But that is something we will 3 address looking ahead. 4 The second point relates to the future conduct of 5 the restriction order process, something we have touched 6 on already this morning. The first step of course is 7 for you to rule on these applications that are before 8 you today and, as I have said, the intention thereafter 9 is that that ruling will enable us to adopt a more 10 streamlined approach to deal with the rest of the 11 material. 12 Sir, it is envisaged that your ruling will assist in 13 adopting a streamlined approach, but it will be likely 14 that at least one or two further hearings will be 15 necessary. Sir, it is also important to be clear that 16 in this first ruling, as I think you have indicated, you 17 will not be recognising categories of sensitivity that 18 can then be used to justify redactions on further 19 documents without the need to make any subsequent 20 restriction order applications. 21 THE CHAIR: Not automatically, no. 22 MR O'CONNOR: Exactly. I mean, redactions to further 23 documents will need to be authorised by you through 24 a restriction order process, albeit we hope that that 25 subsequent process can be expedited as a result of</p> <p style="text-align: center;">Page 24</p>

<p>1 guidance you give in the ruling following these 2 applications. 3 That may well involve you determining at least some 4 further applications on paper, rather than by means of 5 a hearing. 6 THE CHAIR: Yes. 7 MR O'CONNOR: Rolling disclosure is an issue that was 8 debated at the last hearing. There are plainly many 9 good reasons why core participants -- and we have in 10 mind in particular the team representing Ms Sturgess's 11 family -- should be provided with as many documents as 12 possible, as early as possible, in the restriction order 13 disclosure process. This is a point that has been 14 canvassed to some extent in the written submissions. 15 I know you are going to hear both from Mr Mansfield, and 16 I anticipate Ms McGahey, about it later on this morning. 17 Sir, we understand of course the concerns expressed 18 by HMG about the mosaic effect and that is something 19 that was canvassed at the last hearing. But we do say 20 we are sceptical as to whether those concerns alone can 21 justify a conclusion that the family can simply be 22 provided with nothing until the entire process is 23 complete. 24 Particularly now, stage 1 disclosure is, as I have 25 said, essentially finished and HMG is therefore in</p> <p style="text-align: center;">Page 25</p>	<p>1 that the whole disclosure process would be finished by 2 19 April and that the substantive hearings were to 3 commence in Salisbury in October. That is the timeline. 4 In order to progress this timetable, we suggest that you 5 list a directions hearing for a date in January 2024, 6 that being our suggestion as to the next hearing. That 7 hearing could consider the progress of such matters as 8 rule 9 requests: lists of issues, witness lists, 9 anonymity/special measure applications, although of 10 course work on all those matters will continue in the 11 interim. It is possible that it will be convenient to 12 consider restriction order applications at that hearing 13 as well. 14 That is our submission, sir, that the next hearing 15 after today should be in January. 16 THE CHAIR: Right. 17 MR O'CONNOR: Unless there ask anything else I can cover, 18 those are the submissions I planned to make. 19 THE CHAIR: That is very helpful, Mr O'Connor, thank you 20 very much. It maps out the territory. 21 Now, Mr Mansfield. 22 MR MANSFIELD: Sir, I wonder if Mr Straw may go first and 23 I go second. 24 THE CHAIR: Entirely up to you. 25 MR STRAW: Thank you, sir.</p> <p style="text-align: center;">Page 27</p>
<p>1 a position to understand the totality of the documents 2 that are in play. You will recall that another of the 3 directions you made at the last hearing was that 4 Operation Verbasco should prepare a hard copy set of the 5 police documents that have been identified as being 6 relevant and that is underway. Sir, particularly now 7 things are moving forward in that way, in our 8 submission, it ought to be possible to provide at least 9 some measure of rolling disclosure during the autumn and 10 into the early part of next year, rather than the 11 extreme position of waiting until all of the documents 12 have been considered for restriction before any further 13 onwards disclosure being made. 14 As I say, I anticipate you will hear further 15 submissions about this, perhaps. I am sure you will 16 hear further submissions this morning, and it may well 17 be a matter that you will need to take up further in 18 closed hearings as well. 19 THE CHAIR: Yes. 20 MR O'CONNOR: Finally from me, in terms of the next hearing, 21 you directed on the last occasion that the final open 22 restriction order hearing, where we very much hope that 23 essentially any final loose ends will be tied up, will 24 be on 15 March next year. You will recall, for the 25 record, that you also directed, following on from that,</p> <p style="text-align: center;">Page 26</p>	<p>1 Submissions by MR STRAW 2 MR STRAW: Sir, I hope to cover four issues: briefly, the 3 legal background to restriction orders; then the factors 4 weighing in favour and against restriction orders; then 5 the question of Sergei Skripal; and finally, briefly, 6 rolling disclosure. 7 First, the legal background to restriction orders. 8 The starting point is of course section 18 and 9 section 19 of the Act, and we agree with the terms in 10 which you describe those sections in your previous 11 order. I don't seek to say anything further about that. 12 THE CHAIR: Because it was based on your submissions 13 Mr Straw. But anyway, I managed to get it right, did I? 14 MR STRAW: Thank you, sir. Indeed. 15 Of course, section 19 should incorporate what is 16 sometimes called the open justice principle. That is 17 described in more detail in paragraph 4 of our written 18 submissions, where we quote not least from the case of 19 Re BBC, in which, sir, you were one of the justices. In 20 brief, given that context, the open justice principle 21 means performing a fact-specific balancing exercise 22 wherein the fundamental importance of open justice is 23 weighed into one side of the balance. That requires 24 attention to a wide range of factors which depend on the 25 specific context.</p> <p style="text-align: center;">Page 28</p>

<p>1 For the reasons in paragraph 3 of our submissions, 2 we submit that that open justice principle is applicable 3 to a public inquiry such as this. 4 THE CHAIR: Yes. 5 MR STRAW: Sir, the second issue, factors weighing in favour 6 of restriction orders first. We readily accept the 7 threat posed by Russia to the UK and to UK national 8 security and we of course accept that there will be 9 a considerable amount of information that cannot be 10 disclosed as a result of that. As to the test to be 11 applied to different public interests, at one end of the 12 spectrum, the courts take what is sometimes called the 13 hands-off approach to national security. Again, sir, 14 you summarised that in your ruling of last year, and 15 Lord Justice Goldring did in Litvinenko at paragraphs 53 16 to 61. 17 The point we would like to make, however, is what 18 approach should be taken to other interests, other 19 public interests that are relied upon, which do not 20 involve national security? In our submission, the 21 reasons for the hands-off approach in the national 22 security context do not apply to the same extent in 23 respect of all of the other interests which have been 24 identified by the applicant. 25 To take an example, the investigation of crime or</p> <p style="text-align: center;">Page 29</p>	<p>1 examples of the type of matters we would encourage you 2 to have regard to. The first is the importance of the 3 particular documents or piece of evidence in which this 4 allegedly sensitive fact appears. 5 THE CHAIR: Yes. The more relevant it is, the more cogent 6 must be the arguments for exclusion. 7 MR STRAW: Precisely. 8 THE CHAIR: Yes. 9 MR STRAW: The second example is of course the particular 10 evidence of harm of the specific fact being disclosed. 11 For example, if we are considering the location of 12 number plate recognition technology back in 2018, the 13 question arises as to whether that technology is still 14 in use now and whether those locations are still in use. 15 If they are not still operational, then that is likely 16 to be relevant to whether there is a risk of harm in 17 disclosing them. 18 THE CHAIR: Yes. 19 MR STRAW: The third example is, of course, the extent to 20 which the information is in public, or the extent to 21 which it is being disclosed to the family, in particular 22 by the original coroner in these proceedings. 23 Mr Mansfield will address you in more detail as to what 24 is already in public, but there are just two points 25 I would like to make about this topic.</p> <p style="text-align: center;">Page 31</p>
<p>1 the conservation of police resources. The reason which 2 favours a hands-off approach in the national security 3 context, for example the Home Secretary's particular 4 expertise in issues of national security or democratic 5 accountability for those issues don't necessarily apply 6 to the same degree in, for example, the location of 7 ANPR, number plate recognition technology, or to the 8 conservation of police resources. 9 THE CHAIR: Not in the same way, no. They don't have the 10 same democratic accountability, you say, and? 11 MR STRAW: And also the particular expertise that the Home 12 Secretary has to the issue of national security does not 13 necessarily apply in the same way in this context. 14 So a hands-off approach may not be appropriate in 15 respect of every other public interest. 16 THE CHAIR: Right. 17 MR STRAW: The question of categories, given what have you 18 said this morning, I will not repeat any of the reasons 19 we have given as to why a ruling that everything which 20 falls in any of the categories wouldn't be justified. 21 All I am able to say, really, is to speculate on what 22 might be within those categories and to identify some of 23 the examples of the fact-specific matters that it would 24 be appropriate to have regard to. 25 So in our submissions, we draw attention to three</p> <p style="text-align: center;">Page 30</p>	<p>1 Firstly, we agree with the point you made earlier, 2 sir, that it depends who made the statement and for that 3 reason in our schedule, we have tried to focus, at least 4 initially, on statements made by officials. So by the 5 Prime Minister, the government, the police, or evidence 6 that has been released -- 7 THE CHAIR: Some are and some are not. But if I may say so, 8 Mr Straw, I don't know who prepared it, but the schedule 9 of open source material is extremely helpful and I am 10 very grateful to whoever did it. For the most part, 11 though not always, the contents of the right-hand column 12 do enable you to work out something about the source and 13 the source is obviously critical. 14 MR STRAW: I am very glad to hear that. It is our 15 solicitors from Birnbergs who prepared the tables and we 16 are very grateful for them to have done that. 17 The only other point about this I hope to make is 18 that it is important you are satisfied that there has 19 been a scrupulous checking by those making the 20 applications, and that you have been scrupulously shown 21 any public information which may be relevant to these 22 applications. I say that relying on an authority from a 23 PII context, the Al-Sweady case, which is in footnote 6 24 of our submissions, where in that context the court said 25 it is for the applicant to scrupulously check the extent</p> <p style="text-align: center;">Page 32</p>

<p>1 to which the information relied on is already in public 2 and to draw that to the attention of the judge hearing a 3 case. 4 THE CHAIR: Yes, understood. 5 MR STRAW: Factors weighing against the restriction orders, 6 this is paragraph 19 onwards of our submissions, the 7 first factor is of course the fundamental importance of 8 open justice, or in the way it was put in the inquests 9 case in the Court of Appeal of T, the powerful 10 imperative of open justice. We submit that that 11 ordinary fundamental importance is of even greater 12 weight in this case because of the really unprecedented 13 public concern in the subject matter of the inquiry, it 14 being the first ever aggressive use of a nerve agent in 15 the EU, and one which the police indicated at one point 16 a bottle which was capable of killing 1,000 members of 17 the public. 18 THE CHAIR: If all those facts are proved, yes. 19 MR STRAW: Yes. Those are examples as to why there is 20 unprecedented public concern -- I suppose whether they 21 are true or not, it is the concern which weighs in 22 favour of openness in this case. 23 THE CHAIR: I see. 24 MR STRAW: The second factor we rely on is probably the 25 most important, and this is that the more your reasons,</p> <p style="text-align: center;">Page 33</p>	<p>1 Russian state has in spreading disinformation. 2 THE CHAIR: You are obviously right, Mr Straw, if I may say 3 so, about the general proposition that the more you can 4 say in public, the greater the public confidence in your 5 conclusions is likely to be. You have to be a little 6 bit careful at this stage when no evidence has been 7 produced at all, not simply to assume that the popular 8 supposition about what happened is accurate. That is 9 what I am here to find out. It may well be, but it may 10 not. I don't know. 11 MR STRAW: Yes, I fully accept that, of course. 12 Other factors that fall in favour of openness in 13 this inquiry are perhaps supplementary, so I will deal 14 with them relatively quickly, but they include: third, 15 the family's ability to effectively participate is of 16 course undermined by a restriction order. That is 17 an important factor, given that this inquiry was 18 intended to take the place of an inquest, and it is well 19 recognised that coronial legislation intended to put the 20 family at the heart of the inquest process. 21 A fourth factor: openness can encourage further 22 evidence to come forward, and that may be of particular 23 importance in respect of what happened in the UK in this 24 case. That is because it appears there are a very large 25 number of people who may have been involved or who may</p> <p style="text-align: center;">Page 35</p>
<p>1 your ultimate conclusions, sir, are in public, the more 2 the evidence to support them is public, the greater the 3 public confidence will be in those conclusions. We rely 4 on the Supreme Court case of Dring v Cape in support of 5 that, but I am sure it will be obvious in any event. In 6 the present context, we submit there is great importance 7 in your reasons and the evidence to support your 8 conclusions being made public. 9 We cite in our submissions a range of information, 10 not least from the Intelligence and Security Committee 11 of Parliament, which draws attention to the Russian 12 campaign of disinformation in the UK, not least about 13 this case, and explains the motives, or summarises the 14 motives, that the Russian state has in spreading 15 disinformation. Those motives are factors which can 16 cause serious risk to the UK and to the UK's national 17 security. They include the motive of undermining 18 western democratic governments. 19 Now, the more this inquiry is able to put forward 20 a convincing counter-narrative, so the more that 21 convincing reasons and evidence which support your 22 ultimate conclusions can be put in the public domain, 23 the more likely it is that this inquiry will undermine 24 that Russian disinformation campaign, and this inquiry 25 will be capable of obstructing those malign motives the</p> <p style="text-align: center;">Page 34</p>	<p>1 be able to give relevant evidence as to what happened in 2 the UK, and therefore at least a significant chance that 3 hearing evidence in public may prompt other people to 4 come forward and give evidence about it. 5 THE CHAIR: Right. 6 MR STRAW: The fifth factor is encouraging accurate 7 testimony of witnesses. 8 Sir, those are the factors we submit are against 9 restriction orders and in favour of openness. 10 The third issue I would like to cover, if I may, is 11 the question as to whether Mr Skripal was an agent of 12 the UK. 13 THE CHAIR: Right. 14 MR STRAW: The government's recent 25 August submissions 15 state at paragraph 8(3) that the government can neither 16 confirm nor deny whether he was an agent. We would 17 respectfully invite you to make an order to reject 18 a restriction order as to the question as to whether he 19 used to be an agent for the UK. 20 This is of course a question for you, sir. You 21 don't need to salute the flag, as it is sometimes put, 22 of the NCND policy. The government refers to the case 23 of Scappaticci, but that case did not come down to any 24 general principle that in every case the fact as to 25 whether a person was or was not an agent for the UK</p> <p style="text-align: center;">Page 36</p>

<p>1 should be kept secret.</p> <p>2 THE CHAIR: No, it didn't. Lord Carswell, as I understand</p> <p>3 it, expressly observed that the government submissions</p> <p>4 there being made did not amount to a suggestion that</p> <p>5 there should never be any exceptions. That is right,</p> <p>6 isn't it?</p> <p>7 MR STRAW: Yes, it was expressed.</p> <p>8 THE CHAIR: On the other hand, Scappaticci was a case in</p> <p>9 which the reason for -- sorry, let me start again. In</p> <p>10 Scappaticci, the suggested reason for abandoning neither</p> <p>11 confirm nor deny was a risk to life.</p> <p>12 MR STRAW: Yes.</p> <p>13 THE CHAIR: Which is perhaps about as grave a factor as you</p> <p>14 are likely to encounter.</p> <p>15 MR STRAW: Yes, we accept that, but on the other hand of the</p> <p>16 balance, there was specific evidence in that case that</p> <p>17 abandoning the principle would put at risk -- I think</p> <p>18 risk to life as well of a number of others.</p> <p>19 THE CHAIR: Isn't that the basis of the general proposition</p> <p>20 that such things are not normally identify confirmed or</p> <p>21 denied? It is not the risk to the individual, it is the</p> <p>22 risk to other people should there be any, isn't it?</p> <p>23 MR STRAW: Yes, it would be necessary to consider that in</p> <p>24 deciding whether the restriction order is justified.</p> <p>25 The rationale, really, for the NCND policy is that if in</p> <p style="text-align: center;">Page 37</p>	<p>1 Of course we acknowledge that in the Litvinenko</p> <p>2 case, it was not declared that he was an agent. But we</p> <p>3 have said in this case it is an exceptional case, really</p> <p>4 for two reasons. The first is it is apparently</p> <p>5 completely clear to Russia that Sergei Skripal was a UK</p> <p>6 agent, and I say that because he was tried and convicted</p> <p>7 of being a UK agent, sentenced to --</p> <p>8 THE CHAIR: That is a different question, isn't it? I am</p> <p>9 only thinking out loud, Mr Straw, which is perhaps</p> <p>10 dangerous, but insofar as what he had previously been</p> <p>11 doing is relevant, is the principal relevance what he</p> <p>12 had been done or what the Russians thought he had been</p> <p>13 doing? It goes to motive, doesn't it?</p> <p>14 MR STRAW: It does, yes, and we recognise there are shades</p> <p>15 of this as well. There is what he was doing back in the</p> <p>16 2000s, and then may be a different question as to what</p> <p>17 he was doing subsequently, so we recognise it is not</p> <p>18 a black and white question. But the reason for raising</p> <p>19 the knowledge of Russia is in terms of whether revealing</p> <p>20 for him or his family or his associates as to whether</p> <p>21 there is a risk from Russia in revealing the fact that</p> <p>22 he was an agent, we would say no, because --</p> <p>23 THE CHAIR: Yes, I understand that, but that is not the</p> <p>24 principal basis of the rationale for a general practice</p> <p>25 neither to confirm nor to deny. It is not this case in</p> <p style="text-align: center;">Page 39</p>
<p>1 all those cases where a person is not an agent, the</p> <p>2 government says they are not an agent, but refuses to</p> <p>3 answer in other cases, then by implication it can be</p> <p>4 seen --</p> <p>5 THE CHAIR: Precisely. Sooner or later you get boxed into</p> <p>6 a corner.</p> <p>7 MR STRAW: Yes, precisely. But it also follows from that as</p> <p>8 long as the question of whether someone is an agent or</p> <p>9 not is only declared in very exceptional or rare cases,</p> <p>10 no implication can be drawn and no harm therefore flows</p> <p>11 from making those exceptions.</p> <p>12 THE CHAIR: So you invite me to say that in this case,</p> <p>13 His Majesty's Government should be directed not to rely</p> <p>14 on it?</p> <p>15 MR STRAW: We would invite you to reject any application for</p> <p>16 a restriction order --</p> <p>17 THE CHAIR: Which incorporates the principle?</p> <p>18 MR STRAW: Yes.</p> <p>19 THE CHAIR: I've got it.</p> <p>20 MR STRAW: On the exceptional cases point, we have provided</p> <p>21 a few examples of other cases, the Neil Heywood inquest,</p> <p>22 the Gareth Williams inquest, the Princess Diana inquest,</p> <p>23 in which exceptions were drawn and it was expressly said</p> <p>24 the reason for that was the intense public interest, but</p> <p>25 it doesn't abandon the NCND principle.</p> <p style="text-align: center;">Page 38</p>	<p>1 any instance, it is the possibility of the repercussions</p> <p>2 for other people.</p> <p>3 MR STRAW: Yes. And turning to that --</p> <p>4 THE CHAIR: At least as I understand it, that is how it is</p> <p>5 put.</p> <p>6 MR STRAW: Yes, absolutely. That is how we understand it as</p> <p>7 well. Turning to that point, the impact on other</p> <p>8 cases --</p> <p>9 THE CHAIR: Anyway, clear to the Russians, you say, yes.</p> <p>10 MR STRAW: Yes, and whether abandoning the NCND policy in</p> <p>11 this case would allow implications in other cases. We</p> <p>12 say it wouldn't for the same reasons as were given in</p> <p>13 the Gareth Williams and Neil Heywood inquests, this is</p> <p>14 plainly exceptional. It's difficult to imagine a more</p> <p>15 exceptional case, really given the unprecedented public</p> <p>16 concern there is.</p> <p>17 THE CHAIR: All right.</p> <p>18 MR STRAW: The final question, sir, the final subject</p> <p>19 I would like to just very briefly touch upon is rolling</p> <p>20 disclosure.</p> <p>21 THE CHAIR: Yes, thank you.</p> <p>22 MR STRAW: At the last hearing, a number of reasons in</p> <p>23 favour of rolling disclosure were set out. It reduces</p> <p>24 the chances of one of the parties, particularly us,</p> <p>25 having to apply for an adjournment to the substantive</p> <p style="text-align: center;">Page 40</p>

<p>1 hearings, which of course we don't want to do.</p> <p>2 I will not repeat those reasons in favour of rolling</p> <p>3 disclosure, and Mr Mansfield is going to cover the issue</p> <p>4 in more detail, if he may, but just to briefly say we</p> <p>5 simply cannot understand how there can be no rolling</p> <p>6 disclosure at all. There are no documents, no CCTV, no</p> <p>7 other material, which at this stage it cannot be said</p> <p>8 there is no risk of significant harm, no credible risk</p> <p>9 that disclosure of those documents will cause</p> <p>10 significant harm.</p> <p>11 Therefore, we would invite a sort of twin track</p> <p>12 approach going forward, which is really a sort of case</p> <p>13 by case, document by document, approach. But in the</p> <p>14 first instance for the inquiry legal team, together with</p> <p>15 the applicants, to try to work together to identify</p> <p>16 documents or other material that can in fact be</p> <p>17 disclosed on a rolling basis, but with the backup, sir,</p> <p>18 that during the course of your restriction order,</p> <p>19 consideration of the applications, that you also bear in</p> <p>20 mind this issue and resolve any disputes that are</p> <p>21 brought before you as to not just the restriction orders</p> <p>22 themselves but also timing, so whether those documents</p> <p>23 can be disclosed now --</p> <p>24 THE CHAIR: I have to think about whether the second is</p> <p>25 practical, Mr Straw. But I have the first, certainly.</p> <p style="text-align: center;">Page 41</p>	<p>1 illustrations of that if necessary -- and possibly</p> <p>2 require/request the assistance of witnesses, witnesses</p> <p>3 who may be in Salisbury but also, more particularly,</p> <p>4 expert witnesses, and I will come to that in a moment.</p> <p>5 These are all the things that are necessary for the</p> <p>6 family to perform this role. The question is: at the</p> <p>7 moment, if matters remain as they are, there is not</p> <p>8 going to be enough time to do it, and the family don't</p> <p>9 want a delay on the October date. I think, as you</p> <p>10 accepted before, one starts at the end and works</p> <p>11 backwards. We are trying to get everything ready</p> <p>12 for October of next year. But in order to do that, we</p> <p>13 say disclosure, the process of it to the family, has to</p> <p>14 begin now. That is a year in advance. That gives us</p> <p>15 some hope of covering ground that is in fact very</p> <p>16 detailed but relevant. In relation to that issue,</p> <p>17 namely what disclosure can be made now that will assist</p> <p>18 in the progress for the family.</p> <p>19 What I've attempted to do just in the oral</p> <p>20 submissions is to categorise it in two ways. There are</p> <p>21 two groups, if I can put it, or categories of material</p> <p>22 we say can be disclosed now without any risk to anyone</p> <p>23 else, or property for that matter. One appreciates that</p> <p>24 assessing risk is often a very difficult matter but we</p> <p>25 say in these categories, it is fairly clear there can be</p> <p style="text-align: center;">Page 43</p>
<p>1 MR STRAW: Hopefully the backup of it will be sufficient to</p> <p>2 encourage the applicants to think very carefully about</p> <p>3 that question.</p> <p>4 THE CHAIR: Yes.</p> <p>5 MR STRAW: Sir, unless there is anything else, I will hand</p> <p>6 over to Mr Mansfield.</p> <p>7 THE CHAIR: I don't think so, thank you very much. I am</p> <p>8 very grateful, Mr Straw.</p> <p>9 Yes, Mr Mansfield.</p> <p>10 MR MANSFIELD: Thank you, sir.</p> <p>11 Submissions by MR MANSFIELD</p> <p>12 MR MANSFIELD: May I approach this matter in the sense of</p> <p>13 attempting to assist the inquiry for the benefit of the</p> <p>14 family, obviously. They have a central role to play,</p> <p>15 I don't need to emphasise that, but if they are going to</p> <p>16 play a meaningful role, they have to have -- we say</p> <p>17 a much better opportunity than they have at the moment</p> <p>18 to analyse the materials that relate to Dawn Sturgess's</p> <p>19 death and, as a result of the analysis, perhaps initiate</p> <p>20 further investigations.</p> <p>21 One cannot unnecessarily necessarily accept that all</p> <p>22 those have been done by those who have already, as it</p> <p>23 were, examined some of this material. There may be new</p> <p>24 avenues that have not been pursued -- I know it may be</p> <p>25 difficult to perceive that, but I can obviously give</p> <p style="text-align: center;">Page 42</p>	<p>1 either no risk or a risk that is dissipated -- either no</p> <p>2 risk, that is the first category, or a risk that is so</p> <p>3 low, it is dissipated and is not realistic.</p> <p>4 Perhaps on that, since you have just been dealing</p> <p>5 with it, I can illustrate very graphically what I would</p> <p>6 suggest is a surreal situation we are now in whereby</p> <p>7 there is this issue about the status of Mr Skripal. We</p> <p>8 say it hardly bears examination. Just that -- we say,</p> <p>9 comes in the second category, if there is a risk, it is</p> <p>10 really non-existent, because it is mentioned in the</p> <p>11 schedule, this particular book, and I know my learned</p> <p>12 friend is aware of it because it is mentioned in his</p> <p>13 submissions.</p> <p>14 THE CHAIR: Which book?</p> <p>15 MR MANSFIELD: The Skripal Files.</p> <p>16 THE CHAIR: Mr Urban's book?</p> <p>17 MR MANSFIELD: Yes.</p> <p>18 THE CHAIR: Yes, I have seen it.</p> <p>19 MR MANSFIELD: I brought it in because I realise this is the</p> <p>20 latest -- I won't say it is hot off the press but it is</p> <p>21 the latest version. The one that is mentioned in the</p> <p>22 schedule, you will see it at item 58. It has a slightly</p> <p>23 different title there, it is known there as The Skripal</p> <p>24 Files: The Life and Near Death of a Russian Spy.</p> <p>25 THE CHAIR: Yes.</p> <p style="text-align: center;">Page 44</p>

<p>1 MR MANSFIELD: It is mentioned more than once, but that is 2 just one example of where it is mentioned, item 58. 3 There you have the right-hand column that you identified 4 as being a particularly helpful description of what is 5 in the book. Item 58, I hope your copy is the same as 6 ours. 7 THE CHAIR: I am not sure mine is numbered, Mr Mansfield. 8 MR MANSFIELD: It is on the right-hand side, or it should 9 be. 10 THE CHAIR: Yes, of course it is. I know perfectly well 11 where you mean. 58, got it. 12 MR MANSFIELD: That is just an example taken from the book, 13 but there are other examples in here taken from the 14 book. That is that version -- 15 THE CHAIR: Just stop there, Mr Mansfield, because it is 16 quite a useful example of the approach. 17 MR MANSFIELD: Yes. 18 THE CHAIR: What is quoted there is a very detailed 19 assertion about something that happened to -- is said to 20 have happened to Mr Skripal. Is the source given? Is 21 the evidence identified? 22 MR MANSFIELD: This is the point I was going to make. 23 THE CHAIR: I think you will find it is. 24 MR MANSFIELD: This book is primarily sourced and based on 25 Mr Skripal's interviews.</p> <p style="text-align: center;">Page 45</p>	<p>1 this is presented to the public as based on an interview 2 with the gentleman himself. 3 MR MANSFIELD: Yes. 4 THE CHAIR: Right. 5 MR MANSFIELD: We say that is an example of where we say 6 that neither confirm nor deny is really almost 7 Alice in Wonderland, somebody standing there denying the 8 obvious. If you put on top of that, the fact is no one 9 is disputing that he was a spy, at least for Russia. 10 I don't think the British government are saying he 11 wasn't a spy, and there are a series of statements that 12 follow from that that he was a spy for Russia, that he 13 was convicted in Russia -- I take your point about, 14 well, is it what they thought he was doing or what he 15 was actually doing, I appreciate that. But he has been 16 convicted, and I leave that to one side. 17 He is then involved in a swap -- a bit odd if he is 18 not a double agent, I must say. I hope I am stating the 19 obvious really. 20 THE CHAIR: One of the difficulties of this inquiry and this 21 case, Mr Mansfield, is that everybody popularly supposes 22 that they know the answer. They may or may not be 23 right, but the purpose of the inquiry is to find out. 24 MR MANSFIELD: I accept that. All I am saying at this stage 25 is you have an actor on this stage who has actually</p> <p style="text-align: center;">Page 47</p>
<p>1 THE CHAIR: It says it is, yes. 2 MR MANSFIELD: Well, I hope it is not being disrespectful to 3 any author or anybody else: first of all, Mr Urban is 4 a very well-known, respected and renowned author plus 5 journalist in this field and he works for well-known 6 corporations, and so on, by which I mean the BBC, and so 7 on. So there has never been any question mark over his 8 credentials as a reporter. 9 At the very beginning -- I don't read it in detail, 10 I am going to summarise -- what he says at the very 11 beginning is that this book in its original version of 12 the one I have now, which is -- I have not read out the 13 title of the present one, the latest one is called 14 Putin, Poison and the New Spy War. What he says in the 15 book is he spent the summer of 2017, as you may 16 remember, if you have read the book -- and I am not 17 saying everybody has -- but that summer, not only 18 interviewing but interviewing him in his home, described 19 in detail. It is unlikely all this in any sense has 20 been fabricated and no one, absolutely no one, has 21 suggested it is fabricated, because he is fabricating 22 detail about Mr Skripal that he can only have obtained 23 from Mr Skripal. 24 THE CHAIR: I am not sure the last part is necessarily 25 right. But in any event, what you are saying is that</p> <p style="text-align: center;">Page 46</p>	<p>1 indicated that that is precisely what he was doing. The 2 only question that remains, I would submit, for the 3 government is to perhaps question what he was doing 4 after he was put up in Salisbury by the British 5 government, again another factor in all of this. 6 So there are differing versions of what he has been 7 doing since and we have put them in the schedule. I am 8 only going to look at one of them, if you kindly look at 9 the second page, item 5, is a very long -- this is not 10 from the book, this is an item in a national newspaper 11 in considerable detail about what he has been doing 12 since. If you have the same item, it says -- 13 THE CHAIR: I have, and that is all assertion without either 14 evidence or source, isn't it? 15 MR MANSFIELD: Yes, and I accept that. 16 THE CHAIR: Yes. 17 MR MANSFIELD: I accept that. All I am indicating -- 18 THE CHAIR: I simply don't know whether it is right or 19 wrong, but it is assertion without either evidence or 20 source. 21 MR MANSFIELD: Yes. We say that is very different to the, 22 we say, first hand reporting by the man himself. 23 THE CHAIR: I see. 24 MR MANSFIELD: So that is why we say this comes into what 25 I put as the second category, that there may have been</p> <p style="text-align: center;">Page 48</p>

<p>1 a potential risk but that has been dispelled entirely.</p> <p>2 And of course the daughter has been giving interviews as</p> <p>3 well. So this is a situation in which one has to look</p> <p>4 to an exceptional situation, as it has been put, in</p> <p>5 relation to the neither confirm nor deny. So we would</p> <p>6 say here that -- I think Mr Straw has already expressed</p> <p>7 that you resist a restriction order.</p> <p>8 I think on the Skripal case, as it were, I probably</p> <p>9 said as much as I need to as far as that is concerned.</p> <p>10 THE CHAIR: I have it, thank you very much. I understand</p> <p>11 it.</p> <p>12 MR MANSFIELD: That is just an example. Can I just roll the</p> <p>13 clock back a moment and deal with the two categories</p> <p>14 I have put before you; namely matters which we say</p> <p>15 cannot conceivably attract an order and those that are</p> <p>16 on the margins, category 2. As far as category 1, that</p> <p>17 is inconceivable that any risk is run here. I am afraid</p> <p>18 I am repeating something I said a year ago --</p> <p>19 THE CHAIR: Don't apologise, Mr Mansfield. Off you go.</p> <p>20 MR MANSFIELD: I am not going to do it in detail, merely at</p> <p>21 that time you were interested in this particular point</p> <p>22 and actually raised it with Mr O'Connor at that time.</p> <p>23 That is: there is basic data that could be revealed now,</p> <p>24 it is not going to endanger anybody. There are three</p> <p>25 topics, that is: the movements of the perpetrators --</p> <p style="text-align: center;">Page 49</p>	<p>1 MR BUNTING: If it helps, it is (Inaudible) to our</p> <p>2 submissions, chair.</p> <p>3 THE CHAIR: All right, I will come to it in a minute, in</p> <p>4 that case.</p> <p>5 MR MANSFIELD: I apologise it is not in here. There are one</p> <p>6 or two other matters I could mention which are not on</p> <p>7 the schedule. I think the schedule, if I may say so, is</p> <p>8 brilliant and is very, very useful. But needless to</p> <p>9 say, there are always matters that get overlooked.</p> <p>10 THE CHAIR: Yes.</p> <p>11 MR MANSFIELD: The reason I am in a position to say it is</p> <p>12 I have looked at the counterterrorism website yesterday,</p> <p>13 and in fact somebody has it up to my right here now.</p> <p>14 You can go there now and you will see it is all there.</p> <p>15 THE CHAIR: Right.</p> <p>16 MR MANSFIELD: Photographs of the suspects, roads in which</p> <p>17 they are supposed to be seen, are named, times that they</p> <p>18 walked along the roads, times they got on trains, planes</p> <p>19 coming into Gatwick. Anyway, I could go on but I won't.</p> <p>20 We say the family are being, as it were -- I will not</p> <p>21 put subjected to all this material, they are obviously</p> <p>22 interested and want to know more about this.</p> <p>23 We say the underlying data upon which this website</p> <p>24 is based, leave aside the Prime Minister because others</p> <p>25 have also said it in public, and I understand the</p> <p style="text-align: center;">Page 51</p>
<p>1 there are now three, obviously there were two -- the</p> <p>2 movements of the perpetrators have been given in public</p> <p>3 by the government, the Prime Minister herself when she</p> <p>4 first -- sorry, the second time she stood up was</p> <p>5 in September of that year, she mapped out times and</p> <p>6 dates. They have also --</p> <p>7 THE CHAIR: Forgive me, Mr Mansfield, it is another example</p> <p>8 of exactly the same problem. For reasons that</p> <p>9 I perfectly well understand, and I think I can see how</p> <p>10 it happened, those statements which were made by the</p> <p>11 Prime Minister and by other members of the government</p> <p>12 back in 2018 were all made without any evidence. Sorry,</p> <p>13 not I am sure without any evidence lying behind the fact</p> <p>14 that they were made, but without revelation of what it</p> <p>15 was.</p> <p>16 MR MANSFIELD: Well, it goes a little further than that. If</p> <p>17 you were to look today on the counterterrorism website</p> <p>18 it is all there. They have put it there. The police</p> <p>19 have put it in the public domain. There are</p> <p>20 photographs, there are times, there are roads.</p> <p>21 THE CHAIR: So where do we find that?</p> <p>22 MR MANSFIELD: I don't think the actual website -- can I</p> <p>23 just check -- has been referred to here but --</p> <p>24 THE CHAIR: I don't think it is on this very helpful</p> <p>25 schedule, is it?</p> <p style="text-align: center;">Page 50</p>	<p>1 approach you are taking to perhaps the Prime Minister</p> <p>2 and anybody else who is not an official police source,</p> <p>3 but the official police source, that particular website</p> <p>4 is about -- in fact, I have -- if it will help, I have</p> <p>5 actually photocopied, I have a copy of it here.</p> <p>6 THE CHAIR: Mr Bunting says it is attached to his</p> <p>7 submissions.</p> <p>8 MR MANSFIELD: Yes. I have a copy of it that might help you</p> <p>9 now, as it were, so you can see -- I am not going to go</p> <p>10 through it with you, but I have written on it.</p> <p>11 THE CHAIR: No, you needn't do that.</p> <p>12 MR MANSFIELD: Anyway, I have the Salisbury and Amesbury</p> <p>13 investigation, is how it is headed and it is</p> <p>14 counter-terrorism policing and it is very detailed, it</p> <p>15 is eight pages long with -- I can't show it on this copy</p> <p>16 but there are video-links to aspects that they want to</p> <p>17 develop.</p> <p>18 So we say that is a very fine example of where the</p> <p>19 family we say are now entitled to see how this has come</p> <p>20 about, that everybody within the authorities, the</p> <p>21 prosecuting authorities, have this information and are</p> <p>22 prepared to put it all out. And the reason they have</p> <p>23 put it all out and one of the photographs is relevant to</p> <p>24 another aspect of this and that is it shows the</p> <p>25 packaging of the item that was recovered in relation to</p> <p style="text-align: center;">Page 52</p>

<p>1 the Amesbury -- in other words, the false perfume box 2 and the bottle and applicator as well. We say getting 3 this data is going to be of extreme importance and time 4 consuming because we have been informed there are 5 thousands -- it won't surprise you at all -- thousands 6 of hours.</p> <p>7 Now, are the family therefore next spring to say, 8 well, the police have tracked this and that is what they 9 say and that is it? We say no, the family are entitled 10 to have a look themselves at what is shown because there 11 are aspects of this that are important. May I just 12 mention one that is not actually in here, on the 13 website, but it has been mentioned by the police because 14 it is not just the movements of the perpetrators over 15 the period that we are mostly concerned with -- that is 16 the 2nd, 3rd and 4 March 2018 -- it is the movement of 17 Mr Skripal himself.</p> <p>18 There are various sources for this, some of which 19 may fall into the category of speculation, so I don't 20 use those. But what is stated baldly by police sources 21 is that Mr Skripal was seen, or at least was observed at 22 some point by somebody, presumably CCTV, in his car 23 earlier on the same day. This is important, I think it 24 is probably obvious. On the same day, if he is out in 25 his car, when does he get back? Because the window of</p> <p style="text-align: center;">Page 53</p>	<p>1 There is really no damage going to be caused by 2 revealing what has been called everywhere a 3 gargantuan -- and this is again not speculation -- 4 a gargantuan exercise.</p> <p>5 Now we, the family, don't need to know every single 6 aspect of that; however as Mr O'Connor has quite rightly 7 said, the existence of other containers, because the bin 8 in which it was apparently found by Mr Rowley was taken 9 into custody by the police, so they have it -- it may 10 not be relevant, there may be nothing in it at all. But 11 all we say is we have nothing at all other than 12 assertions by the police.</p> <p>13 So we say -- we accord with your approach to this -- 14 we want to see the evidence that supports the assertions 15 being made by the police about what has happened in this 16 case and there is very, very little in relation to the 17 third man.</p> <p>18 So these are just examples that are in the category 19 where there can be no damage done: movements of the 20 perpetrators, movements of Mr Skripal on the day, and 21 the distribution of Novichok traces found. Because 22 again we don't know, we hear about guinea pigs being in 23 some way contaminated in the house -- in other words, 24 one has to build a pattern of where this Novichok has 25 been in Salisbury and then the question: how does it get</p> <p style="text-align: center;">Page 55</p>
<p>1 opportunity for the suspects is extraordinarily narrow, 2 the suggestion being that the Novichok which is at the 3 route of the Salisbury incident was placed on the door 4 handle of the house. This has all been made public, 5 well we need to see this, we need to see the basis for 6 these suggestions. We say it is in the public domain, 7 it is not going to cause damage to anybody to reveal 8 these matters.</p> <p>9 The question then arises in relation to Novichok: if 10 it was put on the door handle on the 4th and he had 11 already been out in the car, not only when did he get 12 back, but then he leaves in the car at about 12.30 on 13 that day to go into the centre of Salisbury. How long 14 does it take, if it has come from the door handle, for 15 the Novichok to have effect? Unlike the Dawn Sturgess 16 example where the effect was within minutes, this is the 17 best part of three and a half hours.</p> <p>18 So there are serious questions, therefore, about 19 where this Novichok was distributed. We say the family 20 should know where locations in Salisbury were that 21 Novichok was found. And of course some of the findings 22 may relate to after the bench, as it were, where they 23 were recovered from.</p> <p>24 This goes to the very important point that has been 25 made only this morning about the cleanup operation.</p> <p style="text-align: center;">Page 54</p>	<p>1 into the bin and found three months later?</p> <p>2 So these are basic questions and we say basic 3 information is required. And we say the sources of, if 4 you like, the sources of material is obviously CCTV. 5 ANPR has already been mentioned by Mr Straw, and this is 6 the one I mentioned last year which I think attracted 7 your attention, which was the mobile phone metadata.</p> <p>8 This is important because you will see on this 9 schedule that -- again, it is an organisation which is 10 not official, so I can't use it more than. It is 11 extraordinary how this organisation which is not 12 official happens to have hit all of the right nails, and 13 that is Bellingcat. Bellingcat put out a lot of 14 information, much of it related to mobile metadata. 15 They are claiming that it is the mobile metadata that 16 allowed them to name publicly who the third suspect 17 was -- and in fact they are naming a fourth as well -- 18 and they did this before the Metropolitan Police or any 19 other police force was able to indicate who the third 20 suspect was.</p> <p>21 That tends to suggest they might be accurate and we 22 say we would like to see -- it is a difficult task, 23 obviously, and it is a wealth of material, we would like 24 to see that metadata because it will indicate the 25 movement of people.</p> <p style="text-align: center;">Page 56</p>

<p>1 Now, one of the mobiles that is concerned here, 2 besides the mobiles of the perpetrators, Mr Skripal had 3 a mobile. What were his movements, according to the 4 data? That is not going to, as it were -- we cannot 5 see, perhaps there is something I have not noticed -- 6 but we cannot see how that is going to endanger 7 anybody's life for us to know what the metadata is 8 relating to his mobile which he has told Mark Urban he 9 had, provided by what he calls "the team", the people 10 who are basically his handlers in this country. So we 11 say these are matters the family need to examine at this 12 moment.</p> <p>13 Other basic things, again pretty basic to most 14 inquests, fingerprinting: how much fingerprinting has 15 been done, how much fingerprinting links? This is not 16 putting anyone in danger. If there is anybody's 17 fingerprints who are irrelevant, I'm sure they'll be 18 cast aside. We are only interested in the extent to 19 which fingerprints at the various locations -- it is not 20 only Salisbury, but also back in London, there are now 21 two hotels which are being examined. Have they been 22 examined for fingerprints and whose fingerprints are in 23 there which are relevant to this case, obviously not to 24 other matters? We don't have that.</p> <p>25 Obviously there is another heading here, we say, of</p> <p style="text-align: center;">Page 57</p>	<p>1 Now it is asserted they are the same and they may 2 well be, but they certainly seem to have very different 3 effects to which I have already alluded to. It may be 4 there is nothing in it, but it is a question the family 5 have asked, particularly because of Dawn's demise so 6 effectively -- although she didn't die on that day, she 7 was affected dramatically on that day. We are now in 8 a situation -- I go back and look at the papers we have 9 already had -- we have had very little, but we have had 10 some Novichok experts in relation to the damage to 11 health of people in this case.</p> <p>12 I don't think the family are interested in the names 13 of the experts -- in fact, we have them already. Now 14 they are apparently being withdrawn, but we did have 15 those. But in fact we do seek, or we probably will 16 seek, the permission of an expert to look at these 17 matters because the packaging and the application of 18 Novichok in relation to the premises in Salisbury is 19 an issue that needs to be examined rather carefully.</p> <p>20 So we say the Novichok background which is set out 21 very extensively in there, and I have only selected -- 22 of the 21 inserts in this schedule, they are nearly all 23 from official sources. So for example, the OPCW, the 24 Organisation for the Prevention of Chemical Weapons, are 25 quoted extensively. Of course they may be speculating,</p> <p style="text-align: center;">Page 59</p>
<p>1 data, and that is passport details have been -- again, 2 it could be that it is total speculation, but it happens 3 to be right, the passport details relating to the two 4 main suspects, I haven't noticed any detail about the 5 passport details for the third one. So in other words, 6 passport details have been bandied about in any event 7 and whether this is true or not, we need to know what 8 information there is without endangering anybody's life.</p> <p>9 So we say these are just a range of examples of 10 where we say restriction orders are not applicable at 11 all.</p> <p>12 If I may just turn to the second category, I have 13 already dealt with the status of Mr Skripal himself. 14 But may I just say on the issue of Novichok itself, the 15 family do want inquiries to be made about the nature of 16 the substance, and you will see in the schedule here 17 I have listed them all in a note I made, there are 21 18 entries here from official sources about the 19 characteristics of Novichok and the different kinds of 20 Novichok. This is important if it is going to be -- we 21 need to know, we say the family needs to know, the 22 public needs to know, quite sensibly, what the various 23 categories are and what the similarities are between 24 what was found in Salisbury and what was found in 25 Amesbury.</p> <p style="text-align: center;">Page 58</p>	<p>1 but I think it is unlikely they are speculating because 2 they are doing the work themselves, and that is the body 3 to whom the British government went in the first place. 4 But none of them have been, as it were, reticent about 5 going public as to what they found and the effect. And 6 I think the public need to know what the safety element 7 of all of this is. And of course the further dimension 8 which I put on top of all of this, these categories 9 which should come now, is a consideration which the 10 family want to know is how much safeguarding was being 11 done in advance; in other words, once you bring in 12 somebody who was undoubtedly a Russian spy, who lives in 13 Salisbury under his own name, has somebody done a risk 14 assessment?</p> <p>15 And we say again, this is why these basic questions 16 have to be asked first of all in order to indicate 17 whether there was a risk that was foreseeable and 18 nothing apparently seems to have been done. I hope 19 I have put it in a global context so you see where we 20 are coming from.</p> <p>21 I don't think there is anything else I can add to 22 the aspect of rolling disclosure because if that process 23 begins now, whether you include the matters I have 24 already mentioned which I have suggested to be excluded. 25 But if they are to be included, then we would ask that</p> <p style="text-align: center;">Page 60</p>

15 (Pages 57 to 60)

<p>1 there is a protocol which allows for regular revelation 2 to the families because of the pressure of time. That 3 is all. 4 THE CHAIR: Got it. Thank you. 5 MR MANSFIELD: Thank you. 6 THE CHAIR: Thank you very much, Mr Mansfield. 7 Mr Bunting. 8 Submissions by MR BUNTING 9 MR BUNTING: I act for seven media organisations: The 10 Guardian, the BBC, ITN, The Telegraph, The Daily Mail, 11 The Times and Sky News, and I hope to assist you with 12 three short points this morning. 13 The first is the fairness point which we have 14 developed in our submissions and which Mr O'Connor has 15 addressed briefly; secondly, what is the test that ought 16 to be applied; and then thirdly, a little bit on the 17 detail, in particular the detail of the categories, the 18 detail of the public domain material and the detail of 19 the draft order. 20 Chair, the first point I seek to make is fairness, 21 and I make this point without being critical of your 22 team, or indeed critical of the applicants for 23 restriction orders -- we understand that great work has 24 been done behind the scenes so as to ensure that the 25 media and, more importantly, the family can assist you</p> <p style="text-align: center;">Page 61</p>	<p>1 you had an open certificate from the Home Secretary, 2 open evidence from a senior police officer and more. 3 The second is that all we have are the categories 4 and those categories are wide and vague and capable of 5 covering material that is plainly not damaging to any 6 public interest. We are grateful for the clarification 7 this morning that those categories are intended as 8 chapter headings rather than as all inclusive 9 descriptions but that is all we have and that is all we 10 can argue about. 11 Of course the family of Dawn Sturgess have worked 12 hard to prepare their table and to make their helpful 13 and detailed submissions. We have also tried to do that 14 in our submissions but the fact that we have tried, as 15 have the family, to address the submissions 16 speculatively does not mean that we have been able to 17 address them effectively, and that is our concern. 18 Then the third problem in terms of material that 19 could be provided to us is material which we know has 20 been prepared and which we understand wouldn't cause 21 a harm to us seeing. So, to give an example, 22 Operation Verbasco say in their submissions at 23 paragraph 34(d) that they have prepared proposed gists 24 of the material that they seek to redact. We also 25 understand from His Majesty's Government's submissions</p> <p style="text-align: center;">Page 63</p>
<p>1 with the important task of addressing these restriction 2 orders. You in your decision last year, chair, 3 indicated that the starting point is openness and 4 transparency. We respectfully agree but, when assessing 5 the fact-sensitive balancing test, fairness is key. 6 Fairness comes of course in this context from 7 a ruling with which you agreed, sir, in the Supreme 8 Court judgment in A v BBC, in which Lord Reed was 9 addressing reporting restriction orders in a more 10 general sense and observed that the media is entitled to 11 be heard as a matter of fairness where an application is 12 made for the court to allow a matter to be withheld and 13 that judgment has been of course followed -- I am sorry? 14 THE CHAIR: Which is why you are being heard. 15 MR BUNTING: Yes, exactly, and of course that has been 16 followed more recently in Marandi, the case which we 17 have handed up this morning, and of course, chair you 18 have indicated we are on notice, we are being heard but 19 our concern is that we aren't able to be effectively 20 heard because we are not able to make effective and 21 focused submissions. 22 Can I identify three problems. The first is that 23 there is no evidence at all in open to justify these 24 applications and you can compare that situation, chair, 25 to the position last year in the anonymity hearing when</p> <p style="text-align: center;">Page 62</p>	<p>1 at paragraph 15 that they have prepared proposed 2 redactions. Now, provision of those gists or of those 3 redactions might assist us to assist you so as to enable 4 that we can make properly focused submissions about the 5 fact-sensitive balancing exercise that applies. 6 That is our submission on fairness. 7 THE CHAIR: You cannot have sight of the prepared redactions 8 before the decision has been made, Mr Bunting. That 9 defeats the object of the exercise. 10 MR BUNTING: What we would then see are the material that is 11 left once the redactions, the proposed redactions, have 12 been carried out and that might enable us to make 13 submissions about the context or to explain the extent 14 to which the gist assists or doesn't assist. 15 THE CHAIR: I see. 16 MR BUNTING: Or, more importantly, to explain the extent to 17 which material may actually be in the public domain from 18 an official source or to explain the extent which 19 redactions impact on the purposes of open justice. 20 So that is the fairness point and I will move to the 21 second submission, which is about the test. 22 You ruled last year, chair, at paragraph 7, that the 23 test is one of necessity and we respectfully agree for 24 the four reasons that we have set out in our submissions 25 for this hearing. A restriction order is an exception</p> <p style="text-align: center;">Page 64</p>

<p>1 to the presumption of openness that applies and 2 therefore only to be made where a high threshold is met 3 and we say that a particularly high threshold applies, 4 whereas here the reality of these orders will be that 5 there is likely to be closed hearings from which the 6 public and the media will be excluded, and that is 7 clear, aside from logic, from His Majesty's Government's 8 draft order at paragraph 4. A closed hearing is of 9 course the most extreme form of interference with open 10 justice that can be sought, and so a particularly high 11 threshold must be required to enable it and that is also 12 clear when the purpose of open justice is considered.</p> <p>13 You made a helpful observation this morning, chair, 14 if I may respectfully observe. You said that the more 15 relevant the material, the more cogent must the evidence 16 be to withhold it. We would respectfully add that the 17 more the material that is sought to be withheld goes to 18 the purpose of openness, the more strict the threshold 19 ought to be. So we have sought to summarise what we say 20 the purpose of open justice is at paragraph 7 of our 21 submissions: openness protects public confidence, deters 22 inappropriate behaviour, makes uninformed inaccurate 23 comment less likely, prevents the appearance of cover 24 up, assists in improving the quality of evidence and 25 enables catharsis, both for the family and the wider</p> <p style="text-align: center;">Page 65</p>	<p>1 harm, to use the language of PII -- let's look at what 2 tests His Majesty's Government puts forward in their 3 submissions.</p> <p>4 So in their opening submissions at tab 4, 5 paragraph 19, His Majesty's Government summarise 6 Articles 2 and 3 by saying material's disclosure "might 7 create a risk". We say that is not the test: it doesn't 8 matter if the disclosure might create a risk, it is 9 would it create a risk, and not just any risk but a real 10 and immediate risk when Articles 2 and 3 are involved. 11 Because, we say, of the lack of clarity as regards the 12 risk that His Majesty's Government relies on, your 13 counsel helpfully invited His Majesty's Government to 14 clarify this point in their responsive submissions of 15 25 August, which they did, and their answer, chair, is 16 at tab 10, paragraph 8(4):</p> <p>17 "HMG seeks to protect information that could put 18 individuals at risk of harm, whether or not that harm 19 might be expected to reach an Article 2/Article 3 20 threshold."</p> <p>21 We respectfully observe here that the test is not 22 whether information could create a risk, it is that it 23 would create a risk and not just any risk but a real 24 risk or a serious risk.</p> <p>25 THE CHAIR: Yes.</p> <p style="text-align: center;">Page 67</p>
<p>1 community. Those are important purposes. That is why 2 openness is such a powerful imperative, to use 3 Mr Straw's phrase, and insofar as these restriction 4 orders go to those purposes, we say the strict standard 5 of necessity applies.</p> <p>6 Of course that high threshold is also clear at 7 common law when reporting restriction orders are sought 8 and, chair, you have again Marandi's case handed up this 9 morning at paragraph 16 and 17 to make that point 10 good -- clear and cogent evidence. That is also the 11 test that applies under the convention. So when 12 Articles 2 or 3 are relied upon for a restriction order, 13 such an order can only be justified where it can be 14 shown that there is a real and immediate risk of death 15 or serious ill-treatment, and of course that is also the 16 threshold that applies when public interest immunity is 17 relied on, although we, like the family, do not suggest 18 that that analogy is apt. His Majesty's Government give 19 you a reference to Willey at footnote 2 of their 20 submissions in which a real risk of serious harm is 21 required.</p> <p>22 So, having set out those tests -- necessity, to use 23 your words, chair; clear and cogent evidence, to use the 24 language of the common law; real and immediate risk, to 25 use the language of the convention; real risk of serious</p> <p style="text-align: center;">Page 66</p>	<p>1 MR BUNTING: Nothing less meets the high threshold that 2 applies and, for those reasons, chair, we would invite 3 you when you go into closed to apply that high test.</p> <p>4 That brings me to my third submission on the detail. 5 For the reasons we set out in writing, chair, we say 6 that the material that falls into these general 7 categories, these chapter headings, is plainly material 8 that is likely to be of high public interest and also, 9 like the family, we respectfully observe that 10 a significant amount of material in those categories is 11 already in the public domain and in the public domain 12 from official sources.</p> <p>13 Rather than going through the detail, can I invite 14 your team to consider the links that we have included in 15 the footnotes to our submissions and those links 16 include, at footnote 35, chair, the counterterrorism --</p> <p>17 THE CHAIR: That is the website that Mr Mansfield was 18 referring to?</p> <p>19 MR BUNTING: Yes.</p> <p>20 THE CHAIR: Yes, I have found that.</p> <p>21 MR BUNTING: So we say that the material that is in the 22 public domain is not just unsourced material or 23 assertion material, it is also material that has been 24 put into the public domain deliberately by employees and 25 officers of His Majesty's Government, by employees and</p> <p style="text-align: center;">Page 68</p>

<p>1 officers of Operation Verbasco. That includes briefing 2 to the media at Porton Down as records Novichok, that 3 includes media comments from senior police officers such 4 as Neil Basu, that includes the counterterrorism 5 website, that includes books published with 6 Sergei Skripal's direct assistance. 7 But to address your point, chair, even if it is 8 right that material is only in the public domain because 9 of assertion, that goes to the purpose of open justice, 10 because open justice is about avoiding ill-informed 11 speculation about proceedings and, insofar as material 12 is in the public domain because of assertion, or even 13 because of state-sponsored misinformation, that is all 14 the more reason for disclosing that material in open 15 rather than in closed in our submission. 16 Then, just addressing the draft order if I can, 17 chair, it is at tab 4A. The first problem with that 18 draft order is that it doesn't contain any proviso for 19 the reporting of material that is already in the public 20 domain. Obviously where orders of this kind are usually 21 made, such a proviso is usually in there so as to permit 22 reporting material that is already in the public domain. 23 The second concern is that paragraph 2 of the order 24 appears to prohibit publication of material at all, 25 whether or not the media or the public obtains that</p> <p style="text-align: center;">Page 69</p>	<p>1 MR BERRY: I was going with the flow, sir. 2 THE CHAIR: Of course you were and I should have said so 3 earlier. It doesn't matter at all -- but please don't 4 do it. 5 MR BERRY: I will start again then, sir. 6 I rise to speak to the point made in our skeleton 7 argument at paragraphs 9 and 10 at tab 12 of your 8 bundle. I don't ask you to turn it up. 9 THE CHAIR: Yes. 10 MR BERRY: In Operation Verbasco's restriction order 11 application, at tab 5 of your bundle, they set out at 12 paragraph 21, 11 subcategories of damage relating to 13 counter-terrorism policing and national security. 14 They then continued at paragraphs 22 and 23 to set 15 out a further two categories of damage which relate to 16 what I will call general policing, those being damage to 17 ongoing or future policing operations and the prevention 18 and detection of crime, and the public interest in 19 maximising police resources. 20 Sir, in your counsel's submissions at paragraph 30, 21 tab 8 of the bundle, they accepted these two categories 22 of damage relating to general policing were capable of 23 supporting a restriction order, but they observed that 24 in practice, they may add little to the other categories 25 of damage identified by Operation Verbasco.</p> <p style="text-align: center;">Page 71</p>
<p>1 material from the inquiry. Paragraph 3 of the order has 2 a clear link to material that comes from the inquiry, 3 and we respectfully observe that this inquiry only has 4 power to prohibit reporting of material from the 5 inquiry, rather than to prohibit the reporting of 6 material that comes from elsewhere. 7 So with those two points about finessing of the 8 order, we would respectfully invite the inquiry to 9 consider that order with care. 10 So overall, chair, our starting point is that more 11 material ought to be provided to enable us to play 12 a proper role in this application. If that is not 13 possible, then we respectfully invite you, chair, to 14 subject these applications to particularly strict 15 scrutiny in closed and to apply the high threshold that 16 we have sought to identify. 17 Can I assist in any -- 18 THE CHAIR: No, that is very helpful, Mr Bunting. Thank you 19 very much, I am grateful. 20 Do you want to say anything? 21 Submissions by MR BERRY 22 MR BERRY: Chair, I rise to speak briefly to the point made 23 in our skeleton argument -- 24 THE CHAIR: You none of you really need to keep calling me 25 "chair". I fact I would much prefer it if you didn't.</p> <p style="text-align: center;">Page 70</p>	<p>1 Our simple point is that your counsel's observation 2 may well be the case with respect to Operation 3 Verbasco's material, but with respect to Wiltshire 4 Police's material, the damage that a restriction order 5 would seek to avoid is likely to be damage relating to 6 general policing matters and not -- or at least not 7 only, counter-terrorism policing or national security 8 matters. 9 We would therefore invite you, sir, to recognise the 10 two categories of damage relating to general policing 11 set out in Operation Verbasco's application at 12 paragraphs 22 and 23 as freestanding categories or 13 chapter headings as you have put it, sir. 14 THE CHAIR: I see. 15 MR BERRY: I simply add, as we have stated in writing, we 16 fully support the categories or chapter headings set out 17 in the balance of Operation Verbasco's application. 18 Sir, unless I can assist you further. 19 THE CHAIR: I follow, Mr Berry. Thank you very much indeed. 20 That is helpful. 21 Right, Ms McGahey. 22 Submissions by MS MCGAHEY 23 MS MCGAHEY: Sir, the government does not dispute for one 24 moment the enormous importance of open justice or that 25 that is the starting point. Any application for</p> <p style="text-align: center;">Page 72</p>

<p>1 a restriction order requires convincing justification. 2 But in my submission, sir, it is wrong for my learned 3 friend on behalf of the media to say that the test 4 should be of real and immediate harm, the risk of real 5 or immediate harm under Articles 2 and 3. 6 The test for you to apply is that set out in 7 section 19 of the Inquiries Act where a restriction 8 order is made when it is necessary in the public 9 interest. Attention is drawn to a number of categories 10 of harm, and in particular one of the risks to be taken 11 into account when considering a restriction order is 12 whether there is any risk of harm or damage, and that 13 can include a risk of death or injury, or indeed damage 14 to national security or to international relations. The 15 test is far, far wider than in my submission has been 16 set out so far. 17 THE CHAIR: Yes. 18 MS MCGAHEY: This restriction order application has been 19 made with immense care and it has taken months to 20 prepare. The government has been very, very mindful of 21 its obligation to make everything as open as it possibly 22 can. I don't propose to deal in any detail with the 23 categories of damage that we have identified, and indeed 24 a lot of the material before you sadly has to remain at 25 least for the moment in closed. But may I deal with two</p> <p style="text-align: center;">Page 73</p>	<p>1 is C an agent, we can't tell you -- then the entire 2 value of its protection is removed. 3 An argument can be constructed in almost any case 4 that this is exceptional. Any public inquiry, any 5 inquest, any major piece of litigation in which the 6 agent status of someone that comes into question will be 7 of immense importance and very often of a wider public 8 importance. But the more exceptions are created, the 9 weaker is the protection of NCND and, in my submission, 10 sir, it does not matter whether the person concerned is 11 dead, whether the person claims to be an agent, whether 12 the person claims he is not an agent, as Mr Scappaticci; 13 whether the person has written a book or appeared on 14 television, or where other people have written books or 15 made claims about that person. It is one thing for 16 there to be public assertions about a person's work and 17 it is another thing completely for the government to 18 confirm or deny the truth of that assertion. 19 There has already been reference to Mr Scappaticci 20 and also of course to Mr Litvinenko. In Mr Litvinenko's 21 case, although obviously sadly he had died, his widow 22 asserted publicly that he had been an agent. 23 THE CHAIR: Yes. 24 MS MCGAHEY: There was still no confirmation or denial as to 25 whether that was correct.</p> <p style="text-align: center;">Page 75</p>
<p>1 issues that have been raised this morning, firstly the 2 status of Mr Skripal. 3 As you have already said repeatedly sir, as a matter 4 of policy, the government does not confirm or deny 5 whether anyone is or has been an agent. Confirming that 6 a person is an agent may put that person at risk; 7 confirming that a person is not an agent may put someone 8 else at risk. That risk may very easily be a risk of 9 death. 10 As importantly, and indeed, sir, you have already 11 alluded to the fact that the NCND principle, neither 12 confirm nor deny, exists for the protection of others, 13 not necessarily those who are the specific subject of 14 an application. Potential agents will not work for HMG 15 if they think their identities may one day be revealed 16 in a court or inquiry; and if people will not work for 17 us, then vital intelligence that keeps this country safe 18 will be lost. 19 The NCND policy works only if it is consistently 20 applied. Yes, there may be very exceptional cases, but 21 as a rule, it means it has to be applied in cases where 22 it does matter and cases where it doesn't matter because 23 otherwise the whole value of NCND is lost. If the 24 government gives confirmation in some cases -- is A 25 an agent, no, he is not; is B an agent, no she is not;</p> <p style="text-align: center;">Page 74</p>	<p>1 The suggestion that HMG should confirm or deny agent 2 status when there has been a public claim that X is 3 an agent, in my submission, is one that presents huge 4 danger because in particular, it could encourage 5 a hostile actor to plant public stories about 6 an individual in the hope of then engineering a 7 situation in which the government was forced in 8 litigation or an inquiry to confirm whether that person 9 was an agent. So the more exceptions are created on the 10 basis, well, everybody said it, surely it's time the 11 government says whether it is right or wrong, the 12 greater the risk of something like that happening. 13 The second topic I would like to address is that of 14 whether there should be disclosure to the families and 15 the other core participants before the very end of the 16 restriction order process. Of course the government 17 understands entirely why the family wants to see as much 18 material as it can as soon as possible. It is not the 19 government's position that it is absolutely out of the 20 question for anything to be disclosed before the end of 21 the process. If it appears there are documents or 22 categories of documents that could be disclosed, then 23 the government will work with the inquiry legal team and 24 the police to try to make that happen. 25 But the risk of disclosing material as soon as it</p> <p style="text-align: center;">Page 76</p>

<p>1 has been redacted, and you have ruled that those 2 redactions are all that are going to be required, is 3 a very great one. In my submission, it is not as simple 4 as saying, as the family have done, if you have ruled 5 that disclosure in this form is safe, then it must be, 6 before the process has come to an end.</p> <p>7 I have given examples in the past but for the sake 8 of argument, say, you rule there is a need to protect 9 the identity of a certain person, but it is important 10 the family should know as much as possible about what 11 that person did. So you look at a document and say, 12 well, what I will order is that the person's name is 13 redacted but the place of work will be made public so 14 the family knows a little bit more about what was going 15 on. That document is then put to one side with the 16 place of work set out in it.</p> <p>17 But your view, in my submission, sir, must 18 necessarily be provisional because that place of work 19 and other details about that person's work may appear in 20 other documents you have not yet seen, and the rest of 21 us have not yet examined. And so the disclosure of 22 a place of work may look completely innocuous in one 23 document and then you come to consider an application 24 for another document which has that person's job title 25 in it and you think, actually, it is much more useful</p> <p style="text-align: center;">Page 77</p>	<p>1 THE CHAIR: Yes, right. The question I am being asked is 2 whether as a general proposition there are not bound to 3 be some parts of these documents where the risk of that 4 is either demonstrably non-existent or so vestigial that 5 it can safely be disregarded.</p> <p>6 Now, do you agree that as a general proposition, 7 there may well be such documents?</p> <p>8 MS MCGAHEY: Demonstrably non-existent as a principle, yes, 9 sir. We would be concerned about vestigial risk, simply 10 because the risk of harm if we get this wrong is so 11 great.</p> <p>12 THE CHAIR: I have your submissions on that.</p> <p>13 Then the question becomes: should we be looking at 14 least for the demonstrably non-existent risk documents 15 and getting those out as soon as one practicably can?</p> <p>16 MS MCGAHEY: That has already been done, sir, but I think 17 I mentioned on the last occasion, it is very likely 18 those sorts of documents will be the ones least useful 19 to the family by their very nature.</p> <p>20 THE CHAIR: That may or may not be so, but one of the topics 21 raised by the submissions your team has made in relation 22 to this is the general assertion that one really needs 23 to wait until every single document has been pored over 24 and compared with every other potential single document 25 to avoid -- before you can ever say the risk of jigsaw</p> <p style="text-align: center;">Page 79</p>
<p>1 for the family to know the job title. But if both the 2 job title and the place of work are disclosed in those 3 two separate documents, it will be possible for 4 a hostile actor to work out who that person is.</p> <p>5 THE CHAIR: By adding the one to the other.</p> <p>6 MS MCGAHEY: By adding one to the other. For that reason, 7 sir, we ask that you do not order disclosure of the 8 document with the place of work in it until we have gone 9 through all documents in which that person might be 10 mentioned to see whether we can safely say that, or 11 whether it is better that the family know the job title, 12 a little bit more about what the person was doing, 13 safely. If you put out the document with the place of 14 work, that will be safe, but then you may have to rule 15 later that you cannot disclose more about the person, 16 including the job title, what they did, because that 17 place of work is already out there. So actually in the 18 end, the family get to see less useful material than 19 they would have done.</p> <p>20 THE CHAIR: Yes. That is an example, you say, of what you 21 have described as the mosaic effect, it is sometimes 22 referred to as jigsaw. It is adding apparently 23 inconsequential bits of information together and finding 24 something that is consequential.</p> <p>25 MS MCGAHEY: It is.</p> <p style="text-align: center;">Page 78</p>	<p>1 or mosaic disappears, I just want to test whether that 2 is really what you are saying. It doesn't sound as if 3 it is, quite.</p> <p>4 MS MCGAHEY: There may very well be categories, sir, so it 5 may well be we can say actually we now know we have 6 looked at every single document in the disclosure 7 documents about the cleanup operation and so -- or 8 whatever -- and so, yes, as a category that has all been 9 done and everyone is content for it to be disclosed.</p> <p>10 I hear my learned friend saying you now know the 11 totality of everything the inquiry team has assessed as 12 relevant, so you have the whole lot. That is true. But 13 we are a very limited team of people and we are going to 14 have to make rolling restriction order applications as 15 we go. So we have made them on a sample of documents, 16 we are going to have to continue working with what we 17 have and look at the police documents.</p> <p>18 THE CHAIR: Okay. Well, then the answer to that is this -- 19 the answer we have arrived at is I think this: first, 20 there may well be documents which can be disclosed in 21 advance of April and where they can, they should be, 22 yes?</p> <p>23 MS MCGAHEY: Yes, absolutely.</p> <p>24 THE CHAIR: Right, so part of the task will be to look for 25 those.</p> <p style="text-align: center;">Page 80</p>

20 (Pages 77 to 80)

<p>1 MS MCGAHEY: To be honest, sir, I am not sure whether it 2 would be the best use of time to look for them. It may 3 be we find them or we come to a point where we have 4 completed an exercise --</p> <p>5 THE CHAIR: Or at the very least to mark them up, identify 6 them, flag them where they are seen.</p> <p>7 MS MCGAHEY: Where they are -- it is unlikely individual 8 documents will be in that category, so it is when we 9 have reached a point where we can say we have dealt with 10 all the material from this department and these issues 11 are not going to arise on any other document.</p> <p>12 THE CHAIR: It may be. That is the first point, that is 13 part of the task. You are not going to persuade me, at 14 least for the moment, of a blanket rule that we wait 15 until April.</p> <p>16 MS MCGAHEY: We are not saying there is absolutely no 17 question of it, sir. We certainly would ask that there 18 shouldn't be an order saying once one batch of 19 redactions has been done, that batch goes out.</p> <p>20 THE CHAIR: No, that is an entirely different proposition, 21 that it follows immediately on the redactions being 22 ruled upon. But to look for those which can be 23 disclosed and to accelerate the disclosure where it can 24 be done, you may take it is part of my aim.</p> <p>25 Secondly, I am very sympathetic to the problem of</p> <p style="text-align: center;">Page 81</p>	<p>1 approach. And our approach, Verbasco's approach, has 2 been informed by those principles. Also, an immense 3 amount of detailed work, time and care has gone into the 4 preparation of the restriction order applications and we 5 are very grateful for counsel to the inquiry's 6 acknowledgment that our application has been designed to 7 facilitate the participation of the family, the media, 8 the other core participants.</p> <p>9 The legal test is, as we understand it, largely 10 uncontroversial. It is that set out in section 19 of 11 the Act. The only point I would like to touch on is 12 a submission in Mr Bunting's written submissions that 13 you should be looking for exceptional evidence to 14 justify a restriction order. We would caution against 15 applying an exceptionality test instead of --</p> <p>16 THE CHAIR: In every context of the law in which I have ever 17 encountered it, it is a word that is extremely 18 dangerous.</p> <p>19 MS GIOVANNETTI: Yes. I think Lord Bingham once said it is 20 an expectation that cases will be exceptional outside 21 the norm but it's not a legal test and one shouldn't be 22 on a search for something exceptional.</p> <p>23 Then turning to our approach in a little bit more 24 detail, we were very concerned about the suggestion from 25 Mr Bunting that we were approaching it on a category</p> <p style="text-align: center;">Page 83</p>
<p>1 person power, but this has gone on quite long enough and 2 you will have to do your best, I am afraid, as all the 3 other teams have to do in the time available.</p> <p>4 MS MCGAHEY: That is already being done and we have put 5 forward a timetable to the inquiry team --</p> <p>6 THE CHAIR: You have done a lot of work, I don't doubt it.</p> <p>7 MS MCGAHEY: We have done a vast amount of work and our 8 proposal involves making restriction order applications 9 every two weeks.</p> <p>10 THE CHAIR: Yes, thank you. That deals with that.</p> <p>11 MS MCGAHEY: Sir, unless I can assist you further, those 12 were the only two topics I seek to address.</p> <p>13 THE CHAIR: No, I don't think so, thank you very much 14 indeed. Ms Giovannetti.</p> <p style="text-align: center;">Submissions by MS GIOVANNETTI</p> <p>16 MS GIOVANNETTI: Thank you, sir. My submissions are likely 17 to be equally brief, I hope.</p> <p>18 Could I start off by briefly addressing the legal 19 approach and by just emphasising that Operation Verbasco 20 also fully recognises the fundamental importance of 21 transparency and open justice. As the family have 22 observed in their written submissions, you have been 23 clear throughout, sir, not at least from your 24 August 2022 ruling, that that is the starting point for 25 the inquiry and we entirely recognise and endorse that</p> <p style="text-align: center;">Page 82</p>	<p>1 basis, which did sound very much like a class-based 2 claim. I think that has been clarified in exchanges 3 between you and Mr O'Connor at the outset.</p> <p>4 THE CHAIR: You are all in the same place on that, 5 Ms Giovannetti. End of story.</p> <p>6 MS GIOVANNETTI: I think we are.</p> <p>7 Each individual sensitivity is obviously going to be 8 considered very carefully in closed. That consideration 9 may include the factors identified by the family at 10 paragraph 14 of their written submissions. They may or 11 may not be relevant in each specific incidence. So for 12 example, a source who has retired is probably in the 13 same place as an agent working for the government, they 14 may still be at risk. The fact they are not active at 15 the moment does not mean that disclosure is safe.</p> <p>16 Again, it will all turn on the specific disclosure in 17 question.</p> <p>18 In terms of the family's table, of course we agree 19 it is enormously helpful. I hope it will reassure the 20 family that we had been, the Verbasco team had of course 21 been checking against open source material in the course 22 of preparing the restriction order applications, but 23 nobody will be unaware of the fact that the context of 24 this inquiry has had massive media coverage and there is 25 an enormous amount in the public domain.</p> <p style="text-align: center;">Page 84</p>

<p>1 So we are continuing to cross-check, it is</p> <p>2 an ongoing exercise, and if any modification of the</p> <p>3 detail of application in closed is required, then of</p> <p>4 course we will do that and we will liaise with your team</p> <p>5 to ensure they have the earliest possible notice of</p> <p>6 that.</p> <p>7 THE CHAIR: Yes, the schedule is enormously helpful. But</p> <p>8 they are right, aren't they, when they say it is your</p> <p>9 job to look for it?</p> <p>10 MS GIOVANNETTI: Absolutely, and we have been.</p> <p>11 Specifically, for example, the counter-terrorism</p> <p>12 policing, that has all been looked at and I can assure</p> <p>13 them about that.</p> <p>14 In terms of procedural matters, we understand</p> <p>15 His Majesty's Government's concerns about the risks of</p> <p>16 mosaic disclosure. Again, we have heard your exchanges</p> <p>17 on that. There is really not much we can contribute,</p> <p>18 save to say we will of course work closely with HMG and</p> <p>19 indeed with the inquiry legal team to ensure that</p> <p>20 everything (Pause).</p> <p>21 THE CHAIR: Press on, Ms Giovannetti.</p> <p>22 MS GIOVANNETTI: I will, thank you, sir.</p> <p>23 I wanted to give you my assurance that Verbasco will</p> <p>24 work closely with your counsel and legal team and HMG to</p> <p>25 ensure whatever can be provided in advance of next April</p> <p style="text-align: center;">Page 85</p>	<p>1 THE CHAIR: Well, yes. It is a mixed submission that</p> <p>2 Mr Mansfield made, none the worse for that, but it is</p> <p>3 a mixed submission. Part of it goes to the basis on</p> <p>4 which restriction orders may or may not be made; part of</p> <p>5 it goes to the timing of disclosure; and part of it goes</p> <p>6 to the assessment of individual candidates for redaction</p> <p>7 or otherwise.</p> <p>8 It is helpful, if I may say so, to have it -- to me</p> <p>9 at least -- to have the topics assembled together in the</p> <p>10 way that Mr Mansfield did. But there are different</p> <p>11 considerations applying to each of those three aspects</p> <p>12 of it.</p> <p>13 MR O'CONNOR: Yes.</p> <p>14 THE CHAIR: All right, thank you very much.</p> <p>15 MR O'CONNOR: Sir, that apart, there were no further</p> <p>16 submissions I was proposing to make.</p> <p>17 THE CHAIR: All right, thank you.</p> <p>18 MS GIOVANNETTI: Sir, I rise to my feet again. There was</p> <p>19 one additional point, and I don't know if it would be</p> <p>20 helpful to you if I addressed it, and of course that was</p> <p>21 Mr Bunting's point that less weight -- also advanced on</p> <p>22 behalf of the family -- less weight falls to be accorded</p> <p>23 to a certificate to an insertion of PII by the police</p> <p>24 than falls to be accorded to one by a government</p> <p>25 minister.</p> <p style="text-align: center;">Page 87</p>
<p>1 is so provided in as effective and efficient a way as</p> <p>2 possible.</p> <p>3 THE CHAIR: All right.</p> <p>4 MS GIOVANNETTI: Was there anything else I could assist</p> <p>5 with?</p> <p>6 THE CHAIR: I don't think so, thank you.</p> <p>7 I am assuming there is nothing that has been said</p> <p>8 there that demands a response from either you,</p> <p>9 Mr Mansfield or you, Mr Bunting or you, Mr Berry?</p> <p>10 MR MANSFIELD: I wonder if I might just make one response,</p> <p>11 it is very quick. It has never been answered, every</p> <p>12 time I raise the issue of the CCTV and the metadata, it</p> <p>13 is not answered. The example that has been given today,</p> <p>14 we have heard before, I accept that. Please deal with</p> <p>15 the examples we have given.</p> <p>16 THE CHAIR: Thank you, got it.</p> <p>17 Yes, Mr O'Connor, do you want to add anything?</p> <p>18 MR O'CONNOR: Sir, only in respect of that last point.</p> <p>19 I just assure from your team's point of view, we have</p> <p>20 heard what Mr Mansfield has said. He is right to say he</p> <p>21 has raised it before, both in court and also in</p> <p>22 discussions with us, and I can assure him that what he</p> <p>23 has said has been taken on board and we are pursuing the</p> <p>24 points he has raised in closed, that they are under</p> <p>25 consideration.</p> <p style="text-align: center;">Page 86</p>	<p>1 THE CHAIR: I don't think that is quite how he put it.</p> <p>2 MS GIOVANNETTI: I thought it was.</p> <p>3 THE CHAIR: He simply said -- and there is something in it,</p> <p>4 isn't there -- that you have not got quite the same</p> <p>5 specialist and recherche of knowledge on the part that</p> <p>6 the Home Secretary has on national security issues, and</p> <p>7 you certainly haven't got quite the same democratic</p> <p>8 accountability. But it doesn't alter the fact that the</p> <p>9 test in the end is the same.</p> <p>10 MS GIOVANNETTI: That was my key point: the test in the end</p> <p>11 is the same and I wouldn't wish to be seen to be</p> <p>12 agreeing with the suggestion or any deprecation of the</p> <p>13 expertise of counter-terrorism policing, who of course</p> <p>14 have particular expertise in the areas within their</p> <p>15 remit. It is going to in the end be an item by item</p> <p>16 assessment, of course the balance falls to be struck by</p> <p>17 you in the end. But you can assess in respect of each</p> <p>18 item the extent to which weight can properly be placed</p> <p>19 on the expert assessment of counter-terrorism policing,</p> <p>20 who have of course consulted with the relevant subject</p> <p>21 matter experts in respect of each item.</p> <p>22 So I don't think there is anything more I need to</p> <p>23 say than that.</p> <p>24 THE CHAIR: All right. Thank you very much indeed.</p> <p>25 Is there any other business that needs transacting</p> <p style="text-align: center;">Page 88</p>

1 here?
 2 MR O'CONNOR: I think not, sir. I invite you to rise.
 3 THE CHAIR: Well, then, thank you very much, everybody.
 4 I am very grateful. I hope we can move this on in
 5 accordance with the plans that have been really made in
 6 considerable detail. We are going to get there in the
 7 end.
 8 (12.37 pm)
 9 (The hearing concluded)

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