IN THE HIGH COURT OF JUSTICE

Royal Courts of Justice
Strand
London, WC2A 2LL

Friday, 15 July 2022

Before:

THE RT HON LORD HUGHES OF OMBERSLEY

DAWN STURGESS

INQUIRY

P R E L I M I N A R Y H E A R I N G

A P P E A R A N C E S

MR A. O'CONNOR QC, MS F. WHITELAW and MS E. POTTLE (instructed by Fieldfisher LLP) appeared on behalf of the Inquiry Legal Team.

MR M. MANSFIELD QC, MR A. STRAW QC and MR J. NICHOLLS (instructed by Birnberg Peirce & Partners) appeared on behalf of The Family.

MR A. MOSS, MS R. SHRIMPTON, MR D. MANSELL and MR G. BARTH (instructed by the Metropolitan Police Service) appeared on behalf of the Commissioner of Police of the Metropolis.

MR. J. BEER QC and MR J. GOSS (instructed by Legal Services, Thames Valley Police) appeared on behalf of Thames Valley Police.

MR J. BERRY (instructed by Legal Services, Wiltshire Police) appeared on behalf of the Chief Constable of Wiltshire Police.

MS G. WOLFE and MR R. BOYLE (instructed by the Government Legal Department) appeared on behalf of the Secretary of State for the Home Department (on her own behalf and in a representative capacity for other government departments and agencies).

MS J. CLEMENT QC (instructed by Legal Services, Wiltshire Council) appeared on behalf of Wiltshire Council.

MR A. CHAPMAN (of Kingsley Napley LLP) appeared on behalf of Sergei Skripal and Yulia Skripal.

I N D E X

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Friday, 15 July 2022

(10.37 a.m.)

LORD HUGHES: Good morning. This, as you know, is a further preliminary case management hearing of the inquiry into the circumstances of the death of Dawn Sturgess. That inquiry, as you will know, continues the investigation begun at an inquest. It was constituted as a statutory inquiry by the Home Secretary because it became clear that a good deal of what has to be considered is highly confidential material, much of it affecting national security, which the public interest makes it impossible to make public. An inquest cannot consider that kind of material but a statutory inquiry can, because it can hold part of its proceedings in closed hearings in the absence of the public. It follows that this preliminary case management hearing, and case management hearings such as this, also call for both public or open hearing and closed sessions, and this open hearing will be followed by one or more closed ones. What is essential is that as much as possible is done in public. However, closed hearings are a necessity if highly confidential material is not just to be left out of account.

This morning there are two principal areas to cover, please. First, the question of assembling the evidential material, both open and closed. This is usually known as a process called disclosure but what it amounts to is assembling the material. That is the first topic. And the second is this, the statute provides for decisions to be made about what material is to be public and what cannot be. It is done by way of application for an order known as a restriction order. There have been applications for restriction orders by both Her Majesty's Government and the two principal police forces involved in this case. I shall hear argument this morning about those applications.

I am, if I may say so, very grateful to you all for coming, especially I am very conscious of the family, for whom the passage of time must be exceedingly frustrating. I am more than aware -- I shall carry on whether the sound is working or not at the moment. I am particularly conscious that we passed last week the fourth anniversary of this unfortunate lady's death. However, the important thing is that the inquiry works rather than that shortcuts are taken. Anyway, I am very grateful to you all for coming and I am grateful for the written submissions which many of you have kindly lodged.

I shall call first on counsel for the Inquiry, Mr O'Connor. Now then, what is happening? (After a pause): Oh, Mr Mansfield, I understand that the family are relying on the electronics to hear what is going on----

MR MANSFIELD: They are, yes.

LORD HUGHES: -- and cannot.

MR MANSFIELD: As I understand it, it is -- my understanding is he has gone out, he is going to come back in again hopefully. At the moment I think there is no connection.

MR O'CONNOR: Perhaps I can add, I understand that it is a more wide-ranging problem because I have been told that some of the Government participants, who are also on the link, are also unable to hear.

LORD HUGHES: So the link has failed, has it? Is that what has happened?

MR O'CONNOR: It would seem so.

LORD HUGHES: Right. In that case I shall have to rise, shall I not, and you will just have to do it extremely quickly.

(Short break)

LORD HUGHES: The gremlins obviously struck. Mr Mansfield, as far as you know, is that thing now working?

MR MANSFIELD: That thing is, I think, now working.

LORD HUGHES: Right. Well, I am told that not only importantly are the family relying on it but so is the shorthand writer.

MR MANSFIELD: Ah, right.

LORD HUGHES: So I shall have to, I am afraid, with apologies to those who are here, say what I previously said again. This is a further preliminary case management hearing of the inquiry into the circumstances of the death of Dawn Sturgess. The inquiry continues an investigation begun as an inquest. It was constituted as a statutory inquiry by the Home Secretary because it became clear that a good deal of what has to be considered is highly confidential material, much of it affecting national security, which the public interest makes it impossible to make public. An inquest cannot consider that sort of material but a statutory inquiry can because it has to hold part of its proceedings in closed hearings in the absence of the public. It follows from that, that preliminary case management hearings like this also call for both public, or open, sessions and, on the other hand, closed sessions and this open hearing will be followed by one or more closed ones. What is essential is that as much as

possible is done in public. However, closed hearings are a necessity if highly confidential material is not just to be left out of account.

This morning, please, there are two principal areas to cover. First, the process of assembling the evidential material, both open and closed, a process usually called in inquiries of this kind "disclosure", but it is assembling the material. And, secondly, the statute provides the decisions to be made about what material is to be public and what cannot be and it is done by way of applications to me for an order known as a restriction order. There have been applications now for restriction orders, both by Her Majesty's Government and the two principal police forces involved in this case, and I shall hear argument this morning about those applications.

In the meantime, I am extremely grateful to you all for coming, despite the climatic conditions. Those of you who are at a distance and listening through the electronics may well be wise. But I am particularly conscious and grateful to the family for their attention to the process. I am more than aware that the passage of time must be greatly frustrating and I cannot help noticing, as they, of course, know all too well, that last week we passed the fourth anniversary of this unfortunate lady's death.

Right. I shall call first, please, on counsel to the Tribunal, Mr O'Connor.

MR O'CONNOR: I am grateful, sir. I will start, if I may, with representation, which is not quite the same as it was at the last hearing.

LORD HUGHES: No.

MR O'CONNOR: I appear, as you know, as counsel to the Inquiry with my learned friends Francesca Whitelaw and Emilie Pottle. The family of Dawn Sturgess and also Charlie Rowley are represented by my learned friends Mr Mansfield QC, Mr Straw QC and Ms Nicholls. The Home Secretary, both on her own behalf and in a representative capacity for other government departments and agencies, are represented today by my learned friends Ms Wolfe and also Mr Boyle. Operation Verbasco which, sir, as you know, is the name given to the corporate police entity which is assisting you in this inquiry, is represented today, firstly, by Jason Beer QC and John Goss, who are instructed by Thames Valley Police, and also by Aaron Moss and Ruby Shrimpton who are instructed the Metropolitan Police.

LORD HUGHES: Yes.

MR O'CONNOR: The Chief Constable of Wiltshire Police is represented by James Berry. Wiltshire Council is represented by Joanna Clement QC and, lastly, as far as those who are present today are concerned, Sergei and Yulia Skripal are represented by Adam Chapman. I should also add that the South Western Ambulance Service which, as you know, has core party status, has filed some written submissions but is not attending.

LORD HUGHES: Thank you.

MR O'CONNOR: Moving on, if I may, just to a few housekeeping points, sir. As you have already indicated, this is the second open preliminary hearing in this inquiry. The first such hearing took place towards the end of March this year, following your appointment earlier in that month, and there was a supplementary closed hearing that took place shortly afterwards. And following that exercise, you gave directions dated 4 April, to which I shall return shortly.

A few preliminary practical matters. First of all, I had intended to draw your attention to the fact that this was a hybrid hearing and that there were core participants attending remotely. I think that fact has become very obvious to us all. I had also intended to encourage those who are attending remotely to alert those of us in the courtroom if anything were to go wrong with the link. Again, that may now be obvious.

Sir, there are two bundles that you have for this hearing. I hope those intending to make submissions also have those bundles or at least indexes to that. There is an open hearing bundle, which contains submissions, applications and the like, and a single authorities bundle.

I have mentioned submissions, sir, as have you, that have been helpfully received from the core participants in advance of the hearing. May I repeat something that we have already put in writing, which is that we suggest that you should make arrangements for those documents to be published on the inquiry website at the end of this hearing simply as a matter of transparency. We do not believe that there is any objection to that course. We have canvassed opinion in the room. No doubt if anyone does wish to submit to you that some document, or some parts of some document, should not be published then they will say so.

LORD HUGHES: Well, let us pause there, Mr O'Conner. Has anybody anything to say about that? (After a pause): No? Well, I agree.

MR O'CONNOR: Finally on this point, may I just make it clear that what we anticipate publishing is, in fact, the entire contents of the hearing bundle, which I have referred to, not limited to written submissions but also the application notices that have been served, the Home Secretary's certificate, the defendant's notice, and so on.

LORD HUGHES: Right, yes.

MR O'CONNOR: Just turning, sir, generally, you have already indicated the two main issues. First of all, the disclosure process. Secondly, the restriction order applications. After we have dealt with those two matters there will be any other business, to include the question of a further hearing date. May I suggest that, as with previous hearings, we take those topics in sequence and you hear submissions on each topic before we move to the next?

LORD HUGHES: That is how I would prefer to do it.

MR O'CONNOR: And then, sir, lastly, as far as practical matters are concerned, may I simply make it clear, so that everyone is aware, that, as with the previous hearing, you intend to hold a closed hearing following this one. At that hearing, you will consider the same substantive issues as are on the agenda for today's hearing but clearly the submissions that you hear at that closed hearing will cover sensitive matters that cannot be explored at today's open hearing.

LORD HUGHES: That, as far as I can see, is unavoidable, Mr O'Connor.

MR O'CONNOR: Yes, and perhaps it is obvious that it is therefore very likely that you will defer giving any ruling on these matters that are before you today, at least until after you have heard submissions in the closed hearing.

LORD HUGHES: Yes.

MR O'CONNOR: May I then turn to the first matter on the agenda, which is the disclosure process?

LORD HUGHES: Yes.

MR O'CONNOR: And before I get into any detail, may I start simply by repeating the point that we have made on previous occasions. Put very bluntly, the disclosure process in this case is moving very slowly and one might add very slowly indeed. Although we hope that the process can be speeded up, and you will hear a little bit more about that in due course, there is no doubt that by the time we reach the substantive hearings in this matter the total time taken with disclosure will be far in excess of what would normally be expected. That is the result of the special sensitivities of this case, which present very significant challenges both for first-stage disclosure (that is the provision of documents by core participants and others to you and your team) and also at the second stage of disclosure (that is the making

available of relevant documents by you to core participants). And, as those representing Her Majesty's Government have previously observed, and no doubt it remains the case, the sensitivities relating to this case have been made more pressing and complex by the events in the Ukraine.

We acknowledge the frustration that this delay is causing, especially for Dawn Sturgess' family, and may I simply say that we are doing all that we can, with the assistance of the other core participants involved, to try and get through the disclosure process as quickly as possible.

As far as this topic is concerned this morning, sir, I intend to address two matters. First of all, a general update on how much has progressed since the last hearing insofar as disclosure is concerned and, secondly, to make some more focused submissions on one particular aspect of this process that has been responsible for a large measure of delay.

The update then. The directions that you made following the last hearing, those directions being dated 4 April (and they, of course, available on the inquiry website) were designed to move the disclosure process forward and I am glad to say they have been complied with. The first two of your directions, which requires Her Majesty's Government to produce to us documents that we had requested in open and closed versions, were intended to start the process of understanding where the dividing line may be drawn between open and closed in substantive hearing; that is, which factual issues will be covered in open sessions and which will have to be dealt with in closed. The work that has been done is very helpful. It is still at an early stage and there is little more that I can say now, other than that we will return to it in the closed hearing with the purpose, first of all, of encouraging core participants to put as much material into open as possible, including by challenging the dividing line that has so far been suggested, and, secondly, upon making, we hope, the process of applying for restrictions and the disclosure process more generally, as efficient as possible.

LORD HUGHES: Now, the directions which I gave then were specifically to require the Government to answer targeted questions which you raised in an effort to narrow down the issues by a particular date in June, I believe.

MR O'CONNOR: Yes, and also to provide documents marked to show a provisional submission as to which elements of those documents will be open and which closed.

LORD HUGHES: Precisely. Did you get those?

MR O'CONNOR: Yes, those directions were complied with. We have had them for a little time, as I have said. They will provide a good basis for further work, including for the consideration at the closed hearing which will follow this one.

LORD HUGHES: Right. Thank you.

MR O'CONNOR: Moving on, two of the other directions that you made -- in fact, it is the fourth and fifth directions -- directed Her Majesty's Government and also Operation Verbasco to make restriction order applications in respect of names, the redaction of names, on documents if they wish to do so. And, as we know, those applications have been made. As you have already indicated, those constitute the second item on this morning's agenda. The potential consequences of those applications are far-reaching and it is, therefore, particularly appropriate that we are addressing those at an early stage of the disclosure exercise.

Separately from the work associated with the particular directions that you made, your team and core participants have undertaken a substantial amount of work in the period of about three months since the last hearing, with a view to continuing to ensure, first of all, that all relevant material is made available to the Inquiry, and that is as much as possible is provided in open to the core participants, and, secondly, to ensure that this material appropriately respects the unusual sensitivities involved in this case and, firstly, to try and ensure disclosure takes place as quickly as possible.

We have held regular meetings with the core participants and we have also engaged in correspondence with them, in particular with the teams acting for Her Majesty's Government, by means of the GLD, and also the Operation Verbasco team, which between them -- that is HMG and Operation Verbasco -- they hold the vast majority of the documents with which we will be concerned. We have adopted these measures to monitor disclosure work flows and also to discuss issues that have arisen.

Her Majesty's Government have provided us with disclosure strategies which cover twelve departments or agencies which it represents, although there is one further one which remains outstanding, and so all are aware of the processes that we comment on these strategies on your behalf and that our comments are then incorporated into the strategies as they go forward.

Operation Verbasco, on its behalf, shares with us on a fortnightly basis its performance dashboard, tracking the metrics of the number of documents held, schedules, provide us with a security review, and so on, as well as providing information about the relevant witnesses contacted and requesting anonymity. And we understand that Operation Verbasco have now scheduled 50 per cent of the documentation it holds.

LORD HUGHES: Scheduled it?

MR O'CONNOR: Scheduled. Which is the process they undertake. You will hear more, if necessary, in due course, but that is the process of understanding the documents they hold prior to putting them through the security review.

Sir, I know that Mr Mansfield will have some submissions to you about this process and there are some detailed submissions set out in their written document. I just mention two of the submissions that they have made in writing. First of all (this is, in fact, at para.13a of their submissions), they have suggested that there should be an increase in the resources that are allocated by HMG and Operation Verbasco to scheduling and prioritisation. We certainly agree that action needs to be taken to improve and to speed up this process and we have, sir, as you know, given this matter considerable thought and debated it at length behind the scenes. Our view is that, certainly so far as Operation Verbasco is concerned, what is needed is better prioritisation of the way in which scheduled material is provided to us. That is the key, we submit, and as I will explain a little more in a moment, we are working with them to prioritise documents which are most likely to be of assistance to you.

LORD HUGHES: So you are in discussions with them in an effort to do what? Agree categories of priority?

MR O'CONNOR: Well, we have -- I will come onto make submissions and Mr Beer may have more to say about it when he makes submissions to you -- but we have been working with them to identify categories of material that they can prioritise and put into the security review and, therefore, to come to us and so that, as far as possible, the most relevant material reaches us first.

LORD HUGHES: All right. Yes.

MR O'CONNOR: Another helpful suggestion that has been made in the family's submissions (this is para.13d) relates to our team integrating more fully, or even embedding itself, with HMG and Operation Verbasco. We would simply say, in that respect, that we have established close ways of working both with HMG and with the Operation Verbasco teams. As I have said, we have regular meetings. There is dialogue and there is monitoring of

progress and so on, and our view at the moment is that that strikes the right balance between us understanding what they are doing and monitoring it whilst preserving our independent role, sir.

Sir, moving on, we have over this period continued to review material provided to us both by HMG and Operation Verbasco. That review is in closed conditions. And then we have returned documents to those teams with an indication as to which documents are relevant. Two such tranches, one in March, one in May, and that material will then go through a process of further sensitivity review before it can be disclosed to the core participants.

As I am sure the core participants are aware, there has been, in fact, in the last week or so, a tranche of material that has, in fact, got to the end of the process and been disclosed on the relativity platform to them. That is the tranche that we mentioned in our written submissions. It was held back for a time for consideration of redaction of names pending the applications that you are going to hear this morning. But, in fact, it has been possible to disclose that material, as I say, in the last few days.

LORD HUGHES: What, because in the end there were not any names which raised a question or what?

MR O'CONNOR: The police and HMG were given an opportunity to consider whether there were any names that required redaction under the applications and in the end there were not.

LORD HUGHES: So that is the kind of process which you have been undertaking?

MR O'CONNOR: The liaison process, yes. I would move on just to indicate, and this was something we mentioned we anticipated doing at the last hearing, we have started to issue Rule 9 letters requesting evidence. This is something that we have been doing through the review that we have undertaken of material in closed conditions, even though that is at a relatively early stage. We have, as I say, commenced that process of drafting and issuing requests for evidence under Rule 9. One request was made on 16 June and eight further requests have been sent since then. Even these requests have been complicated by the need for security and sensitivity checking and, in some cases, issuing the Rule 9 letters in closed conditions.

Sir, just to repeat, that notwithstanding the efforts and progress that I have outlined above, we, of course, recognise the frustrations of the family and other core participants are likely to be at the limited volume of material that has so far, in fact, been provided to them at the

end of the process by way of stage two disclosure. We know that those frustrations are shared by you and we share them to and every effort is being made to address the obstacles that prevent moving through the process more swiftly.

On that note, I will just move, finally, so far as disclosure is concerned, to that particular aspect that I mentioned earlier of the disclosure exercise. We have addressed this in our written submissions. But at the last hearing you will recall hearing detailed submissions, both in open and then in closed, which, as it were, surveyed the whole of the disclosure process, all of its complications and all of the difficulties raised by the special sensitivity. We do not propose to go over all of that process again but there is one particular stage of the process that has caused significant extra delay. We, as I say, did address that in the written submissions we have provided for this hearing and we submit that it is worthy of some further discussion at this hearing. That stage has been described as a preliminary security review and it is the stage at which a large proportion of both HMG and police documents are reviewed by HMG for sensitivity before they are shown to us in closed conditions, in order that we can consider their relevance. This process has been very time consuming and also inefficient. Because documents are put through this preliminary security review before we have reviewed them, time is necessarily spent reviewing documents for sensitivity that then ultimately prove to be irrelevant once we have a chance to review them.

You will have seen, sir, from the written submissions filed by Operation Verbasco -- and I do not ask you to turn it up but for your note it is at tab 7, para.6 -- that the average time that it has taken for material to pass through this preliminary security review is in the order of five months. It will be no surprise to you or others, therefore, to hear that we have been exploring, both with HMG and with Operation Verbasco, for some time a range of possible ways of either avoiding or minimising this problem. We have been requesting that this security review is simply dispensed with and exploring various ways in which that might be done. Those requests have not been successful. We have also, as I have mentioned, sought to prioritise police material passing through the review so that at least, if the review is to remain, the material that passes through it is as relevant as it can be. The police statement that you ordered to be prepared in the last set of directions was one means of prioritising and focusing on relevant material and, as I have mentioned, more recently we have agreed with Operation Verbasco some categories of prioritisation which have been compiled and

agreed, and we now have a process of fortnightly meetings to keep those categories under review.

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You will have noticed, sir, I am sure, the concern that the family have expressed about this particular aspect of the disclosure exercise in their written submissions, and it will be apparent from what I have said that we share those concerns. I am not planning to say any more about this issue at this stage, in part because I know that there has been a

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development, that I am sure Ms Wolfe will explain to you in due course, and we anticipate that she will be able to say rather more about that at the closed hearing than she can today.

LORD HUGHES: Right.

MR O'CONNOR: But that is all I propose to say about the disclosure exercise. I suggest that you invite submissions, first of all, from Mansfield in respect of the family and then from

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other core participants.

LORD HUGHES: Well, certainly, except that I have read the submissions and I am not at all surprised by them. But if there is some development which he does not know about, it might help if Ms Wolfe told us what it was because I do not know what it is, before he

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addresses it?

MR O'CONNOR: Yes.

LORD HUGHES: Do you agree, Mr Mansfield?

MR MANSFIELD: I certainly do.

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LORD HUGHES: I thought you might. Ms Wolfe, you will need a microphone, I am told. Ms Wolfe, I will come to you if I may in turn after I have heard from the family when it comes to argument, but is it right, as Mr O'Connor has just hinted, that there is some fresh development which affects the conduct of the process which we all ought to know about before we try and hear argument about it?

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MS WOLFE: It is absolutely right, sir.

LORD HUGHES: Right. What is it?

MS WOLFE: We are pleased to say that, after very considerable work on the preliminary security review by five different Government organisations, that the Government has made

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significant changes to that review that should result in a substantial reduction to the time needed for the review. There is little I can say in open and more detail will be provided in closed, but what I can say is that these are wholesale changes which have been made to streamline and tighten focus without compromising security. Where material previously

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needed to be reviewed by five organisations, it can now be reviewed by just one. Where

that review previously considered numerous issues, it is now focused on only one issue. This will reduce the length of time needed for the review.

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Furthermore, some of the remaining work can be automated. This automation process is still being tested and an update can be provided on that once testing is completed.

Sir, that is the substance that I can say about the change. Those changes have been made after reviewing a very large quantity of material and reflecting on the processes in place.

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LORD HUGHES: Well, better late than never, Ms Wolfe, but what is the effect of it on the predictions for timing?

MS WOLFE: The effects are that it will relieve the preliminary security review very considerably.

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LORD HUGHES: Yes.

MS WOLFE: I cannot give you figures as to that, not least because the process is still being improved with the automation process.

LORD HUGHES: Am I right in understanding from reading the documents that the bulk of the material which remains subject to what has been called the preliminary security review, are the police documents? Is that right or not?

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MS WOLFE: I think that is correct, sir, yes.

LORD HUGHES: Right.

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MS WOLFE: So one department rather than five, one issue rather than multiple issues, and the possibility of automation?

MS WOLFE: Indeed, sir.

LORD HUGHES: And is that, in your judgment and on the instructions that you have, Ms Wolfe, going to make a real difference to the speed of this process, because it has been going on a very long time?

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MS WOLFE: It has and it will. It will make a real difference.

LORD HUGHES: All right. Well, I will hear the argument later. Thank you very much indeed.

MS WOLFE: Sir, before I sit down, with your leave, may I just raise one point? Since we confirmed this morning that our submissions and note could be published, it has arisen that there might be a concern regarding publishing the bundle. That is being checked as a matter of urgency and we hope to update you on this very shortly.

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LORD HUGHES: Well, very shortly means this morning, Ms Wolfe.

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MS WOLFE: Indeed, and I raise it simply in case somebody has their finger hovering over an upload button.

LORD HUGHES: Yes.

MS WOLFE: We would just ask for a very little more time.

LORD HUGHES: No, the uphold button need not be pressed until I have risen but you are going to have to deal with it today.

MS WOLFE: Sir, we are taking urgent instructions.

LORD HUGHES: All right. Thank you very much. All right. Mr Mansfield, I have got the family's submissions at tab 6. Is that right?

MR MANSFIELD: Yes. Can I just check that this is recording sufficiently on the mobile microphone? Yes. I do not intend to replicate what is in the submissions but I do have what I would call a contextual matter in order for there to be a better understanding. I am not suggesting anybody in the room has not got it, but publicly an understanding of the concerns that the family have.

You may have noticed that, in fact, throughout the family have behaved with utmost restraint and also patience and understanding, realising, of course, the risk to security of a national nature. However, that patience is running very thin indeed and we would submit that -- What is interesting about today, so far, is that, upon your apposite question, namely what difference is this going to make -- I am sorry to pause but apparently the family are not in a position to see or hear.

LORD HUGHES: Right. Can you tell from down there whether the link is still live?

THE CLERK: It is still live and it is fine.

LORD HUGHES: Right. And can you identify the terminals at the other end so as to find out whether the family have some reason or other been cut off? You will presumably know which terminal they are on. (After a pause): They do not seem to be there. Maybe if someone could suggest to them that they re-click the link it might work.

MR MANSFIELD: I think we did try that earlier, but I----

LORD HUGHES: I expect they did, yes.

MR MANSFIELD: I wonder if just a few minutes might be -- I am not asking for you to rise but so contact can be made to see whether----

LORD HUGHES: Yes, someone is in contact with them.

MR MANSFIELD: Yes, Mr Sturgess who is the main one. Contact is being made at this moment from people who are outside the room to see if this can be reinstated. Dare I

interpose, this may have a relevance to the question of (inaudible), a completely different issue at a different time, but it is not the first time that we have had a problem. (After a pause):

LORD HUGHES: Yes. Just sit down for a moment, Mr Mansfield, while the effort is made. The court will spot if the link is activated.

MR MANSFIELD: Yes. Thank you very much.

LORD HUGHES: But in the meantime, you might be just thinking about what you want to ask me to do if it is not.

MR MANSFIELD: Yes.

LORD HUGHES: If you just keep your counsel for the moment.

MR MANSFIELD: Yes. (After a pause):

LORD HUGHES: I imagine, Mr Mansfield, though I am guessing, that of the two topics for today, this is probably the one that is of more immediate interest to the family watchers?

MR MANSFIELD: Well, they are interlinked but, yes, I think that is right.

LORD HUGHES: Of course, they are linked, yes.

MR MANSFIELD: And, in fact, we have divided it and Mr Straw is going to be dealing with the question of restriction orders. I am just dealing with----

LORD HUGHES: Thank you.

MR MANSFIELD: -- this stage. Thank you. (After a pause):

LORD HUGHES: Well, well done, the techies, whoever you are! It may have worked, I gather, Mr Mansfield.

MR MANSFIELD: Yes, I gather that, in fact, I had also got permission to carry on anyway if it did not work.

LORD HUGHES: Well, that is very understanding but I would much prefer them to hear.

MR MANSFIELD: Yes. Thank you very much for the interval. Assuming that it can be heard now, I will not repeat what I said before other than in one sentence. The family have exercised understanding and patience. However, and what I was about to say was that that patience has worn extremely thin because of the time lapse there has been already. You have already alluded to it. Namely, this is the fourth anniversary. You posed the question, what is it that the family want you to do in these circumstances and we do have proposals. Those proposals are in the written submissions. I will develop one of them in a moment but the background or context for indicating what we want you to do is not done lightly and it is not done without reference to what has happened before. May I just briefly touch upon -- it is not in the written submissions but it is historical and of importance -- if this inquiry is

going to satisfy the objectives of (1) the search for truth as to what happened in this case, as well as the protection of the public in future. Any more lapse of time will compromise both those objectives.

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And the reason why the family are extremely concerned, and have an extreme element of consternation here, is this. Going back to 2018, at the time of the two events at Salisbury and Amesbury, and shortly after that, there were public statements made by the Government, through the Prime Minster, through the Foreign Secretary and also through the United Kingdom's representative, Head of Security, addressing NATO, Sir Mark Sedwill.

B

LORD HUGHES: Yes.

MR MANSFIELD: And the particular moment, in 2019, all of this happened within days of these happenings and certainly within three months of the occurrence in Amesbury, the Prime Minister was able to make -- you may have it or have seen it----

C

LORD HUGHES: No, I have seen it, Mr Mansfield, and I have got Sir Mark Sedwill's letter in front of me.

MR MANSFIELD: I am most obliged. Those combined are, as you have seen, in considerable detail and breadth as to the history of what happened here. So somebody, in order to, as it were, allow them to make these public statements, had done a lot of work at that time. It transpired that in one of the earlier hearings -- this is the fifth hearing prior to inquest/inquiry, as it now is, it is the fifth one -- in a much earlier one, last year, actually this time last year, at a time when Baroness Hallett had dealings with this and was chair essentially of what was to become an inquiry, but at that time was the coroner, what was revealed at that time was precisely the point I am making. Namely, in 2018 there had been what are called "assessments" made in order for politicians to be able to make the statements they did.

D

E

F

LORD HUGHES: Yes.

MR MANSFIELD: Those assessments became described or characterised as documents which were overarching reports. That is how they were referred to. And at this time last year----

LORD HUGHES: Sorry, referred to by whom?

G

MR MANSFIELD: Referred to by those representing the Government.

LORD HUGHES: Right. Thank you.

MR MANSFIELD: They were adopted by Baroness Hallett at the time. My learned friends saw them, according to the transcripts, many times and they are a summary -- and it is called a jigsaw of intelligence -- was put together in relation to these.

H

LORD HUGHES: Yes.

MR MANSFIELD: The starting point here, we say, goes back to 2018, four years ago, when the material we are now talking about was assembled, to use your word today. I appreciate it was not assembled for the purposes of disclosure but it was----

LORD HUGHES: Well, that is perhaps the point, is it not, Mr Mansfield? I mean, I have read Sir Mark's letter and, of course, we have all seen what the Prime Minister said.

MR MANSFIELD: Yes.

LORD HUGHES: But is there any sign of either of them declaring or making public the sources on which their conclusions were based?

MR MANSFIELD: No.

LORD HUGHES: Well, you see, the point about the inquiry is that that is what it has got to do.

MR MANSFIELD: I appreciate that. What I mean is that it is a starting point. Somebody somewhere has assembled, which is the word that you used this morning, somebody has assembled, and this goes straight to what I am going to propose on behalf of the family that you might do, and that is condense the process into two stages, one of which has essentially already been accomplished. That is why I start with what happened in 2018. May I just put as a footnote, in 2018, although not disclosed, they must have been prepared for disclosure. And why? Because two men were charged. Now, I appreciate the difficulties of bringing a case but, of course, by now there were three people charged. So those prosecuting must have considered, unless there it is an empty barrel, they must be considering the possibility they might have to go public with----

LORD HUGHES: With at least some of it.

MR MANSFIELD: Yes, with at least some of it.

LORD HUGHES: Yes.

MR MANSFIELD: So that is the starting place. So what we are suggesting is that it is condensed, this process, and if one thinks about it logically -- which sometimes is not always appropriate but in this one we say it is----

LORD HUGHES: Yes.

MR MANSFIELD: -- the first stage has got to be: what do you need for an inquiry or inquest, whichever comes first -- in this case the inquest -- what do you need? And then, of course, you go to the scope, now terms of reference, and, of course, they evolve. But they, in a sense, mirror the issues raised by the Prime Minister and others in public, so that they marry up, the kind of issues that are going to be----

LORD HUGHES: Some of them do.

MR MANSFIELD: Some of them. Well, the important ones. I hope I can put it that way. In other words, the important issues that will be certainly central to this inquiry will be, you know, what happened in Salisbury? What happened in Amesbury? Why did it happen? Where did the Novichok -- I can go through the list. These are all questions that were answered publicly by both Theresa May and other ministers. I appreciate your distinction that obviously at that stage it was not going to be full disclosure. However, the two-stage condensation, we say, should happen now, and should have happened before. The first point is, what do you need? It is relevance, is the first thing. There is no point in having security reviews on material that may not be relevant.

LORD HUGHES: I think that has already been said.

MR MANSFIELD: Yes, it has been said but not happened. Because what is happening is that security comes first, in the sense that there is a security preview, in other words, Government and other agencies, twelve let us say, are looking at material and they are themselves no doubt considering relevance because they have to do that in 2018 and all the way through, because originally there was a limited inquest, then there was a broader inquest and now there is an inquiry. So they must have had their finger on the pulse, unless they have all been sitting back and waiting, which we hope they have not done.

So the first question is what is needed by you, by the inquiry, and Mr O'Connor, I am quite sure, is in a very strong position to say exactly what is needed. But it may be that it goes by category. So the stage one condensation into the issue of relevance is shaded because not every document will be pertinent to a critical matter. Some will be on the periphery. So you have to, as it were, have a league table or a triage of relevance.

LORD HUGHES: Prioritisation certainly----

MR MANSFIELD: Yes.

LORD HUGHES: -- comes to mind as a word.

MR MANSFIELD: That is the word that they use, yes.

LORD HUGHES: Yes.

MR MANSFIELD: And so that happens before you get to anywhere near the issue of whether there is a security issue and whether it can only be in closed or whatever.

LORD HUGHES: Got it.

MR MANSFIELD: So if it were condensed so that you are dealing with relevance first, and that area -- and can I deal with the practicality of that -- it has already been considered, that is integration -- we have called it integration in our argument. In other words, you have one

location. If secure, you do not have many steps because the problem of having many steps increases the risk that the Government is concerned about and that is inadvertent disclosure, seems to be the concern. So the more steps you have and the more, as it were, different stages of consideration the bigger the risk.

So if all the material that is suitable for consideration for relevance is all in one location, that those people -- and, as I understand it, cooperation is between all of the departments as well as yourself and those that represent you -- and, of course, that is the whole point -- in a sense, it was the whole point -- of converting this into an inquiry in the first place.

So stage one, relevance, having decided what the material says. That may take time. That is appreciated by the family. Having, as it were, distilled and prioritised the categories of documents, then there is the question of a security review may be required. At the moment, a security review comes in at the start, goes back again and then three levels of security review. Now, we do not know exactly what the complications are. We can imagine quite a few and I am not going to speculate. However, whatever the difficulties are, there needs to be a clear process, number two, for, as it were itemising what security considerations apply to what document. And we would ask, in relation to what we would say should only be a two-stage rather than a five-stage exercise, that there should be time targets set. What is interesting today is that nothing has been said essentially other than, "We are doing the best we can." That has been said from the beginning and if we wait for "doing the best we can", the situation will remain fluid.

A year ago they said it would take two years. Well, it is clearly going to -- what, two years from now or two years from then? We have no time estimate. We do not want, and the family perfectly understands that you cannot pinpoint, you know, September 15, however, if again the inquiry is going to satisfy its objectives then it has got to have some window as to when this might get off the ground and we do not have any indication and for the family, never mind the public as well, not to know at least is it going to be one of the dates that is mooted, to be the beginning of next year. Well, as far as I can understand the present situation, there is no hope of that.

So what is the hope? I think the family and, as I say, the public, are owed a little bit of hope. Now, it appears from, if I can call them the "Verbasco submissions", that they are

neutral on this issue of an intelligence preview in the first place. If they are neutral, then it is Her Majesty's Government that, in effect, is saying that it is not possible, although they have indicated in very vague terms that they have reduced the wholesale scale of what they were doing and so on. That is welcome but it does not actually help us and that is the question you asked. Well, what difference is actually going to make? And we would ask that, therefore, the concept we have of a two-stage process only, with time limits set so that everybody knows what can be expected, because without that there is a real risk in this case that things can lapse. Because we do not even know what it is, we have not been told what the other difficulties are of reducing it. So what has happened is, as far as I can see -- I hope I have got this right and I will be corrected -- that they are still saying it has got to have a preview but they are just reducing the number of people involved in it. Well, I hope I have got that right. Yes.

LORD HUGHES: Broadly, yes.

MR MANSFIELD: I put it very shortly.

LORD HUGHES: I think she would say it is quite a big reduction but, yes.

MR MANSFIELD: Yes, she says a big reduction. We would like to know how big is that, please?

LORD HUGHES: Well, yes.

MR MANSFIELD: And certainly the family would like to hear more on that. I hope that has made it clear as to what our ambition is so far as that is concerned?

LORD HUGHES: Yes, understood.

MR MANSFIELD: Thank you very much.

LORD HUGHES: Thank you very much indeed. I am very grateful. I will come to you now, Ms Wolfe, please. I am told that there is still difficulty hearing at the other end of the link, so we had all better be as clear as we can.

MS WOLFE: I am grateful, sir. First, may I say that I can reveal that there is no objection now to publication of the hearing bundle.

LORD HUGHES: Well, thank you very much.

MS WOLFE: Sir, I will address you on really two matters; disclosure but, in particular, I will say a few more words about the preliminary security review and then I will address Mr Mansfield's concerns about the perceived delay.

LORD HUGHES: Well, they go together, do they not?

MS WOLFE: They do but I will take it in that order if I may. Before I do, may I say by way of introduction that Her Majesty's Government has sought to be entirely open and helpful to

the inquiry and continually seeks to provide as much information in open as possible. For reasons that are well known to you, sir, and to the ILT and to the core participants, this is a case in which it is unusually difficult but we continue to make these efforts and keep all decisions and processes under review. There has already been considerable disclosure work undertaken and we continue to respond to further requests for material from the ILT as well as starting work on the Rule 9 requests.

We recognise the family's understandable frustration at the length of time the disclosure is taking. The family are at the centre of these proceedings and so their frustrations must be compounded by the fact that this work necessarily takes place behind closed doors. We recognise and appreciate, as Mr Mansfield said, their patience, restraint and understanding. Every effort is being made to progress disclosure quickly and as safely as possible.

Counsel to the Inquiry is correct to identify that the special sensitivities of this case present very significant challenges to the conduct of the disclosure process, and the Government has been working hard to comply with the Inquiry's directions and to facilitate both stage one and stage two disclosure. As counsel to the Inquiry has already said, a substantial amount of work has been undertaken since the last hearing.

Disclosure in this case also entails needing to protect some of the most sensitive material in the Government's possession. It is not an overstatement to say, as we do at para.3 of our submissions, that inadvertent disclosure could endanger lives and would put national security at risk. The disclosure works requires the utmost care.

You have heard the concerns raised by the family and by your counsel in relation to that preliminary security review. The Government takes those concerns very seriously and has, for that reason, been working throughout this process to seek a resolution. We are keen to see this inquiry progress as quickly as possible. We wish to minimise the distress felt by the family and we do not wish to tie up everyone's limited resources unnecessarily. But what I set out this morning as having changed is much more than simply "doing the best we can". Those are real changes that have been implemented and those are changes that can now be made because, having reviewed large quantities of material, the Government has been able to reflect upon that material and the review process. The reviewing teams can

now be more confident that their equities do not arise or are otherwise protected. This work and those decisions could not have been made at an earlier stage.

LORD HUGHES: In other words, you are saying you can now see better where the risks are? Is that it?

MS WOLFE: That is exactly it, sir. And that is very important because what is essential that the family do understand is that this is an ongoing process and an iterative process, and we are working hard to improve and streamline things.

LORD HUGHES: Yes.

MS WOLFE: It is not a case of having missed an opportunity some time ago and only implementing something now.

LORD HUGHES: You could not have done before what you have done now, you are saying?

MS WOLFE: Exactly.

LORD HUGHES: Or at least not long before.

MS WOLFE: Exactly, sir.

LORD HUGHES: Maybe.

MS WOLFE: We can be confident that this will significantly speed up the time that this process takes.

LORD HUGHES: Right.

MS WOLFE: We are grateful too for the family's other suggestions about how to speed up the disclosure process at para.13 of their submissions. I will just say this. We would like to reassure the family that the allocation of resources is something that the Government keeps under close and constant review. It is tab 6 of the bundle, para.13.

LORD HUGHES: 13?

MS WOLFE: They have set out those submissions.

LORD HUGHES: Yes.

MS WOLFE: Resourcing is something that has been discussed at length in closed session and during meetings with the ILT, as well as internally, and resources have been increased where possible.

LORD HUGHES: Well, in the past what you have said, in open, I think, what you have drawn attention to is that the expertise is in short supply and currently, because of world events, fairly preoccupied.

MS WOLFE: That is also true.

LORD HUGHES: All right, as far as it goes. Go on.

MS WOLFE: In a similar vein, on the suggestion of greater integration, the Government already work closely with the Inquiry Legal Team, including through regular meetings with our legal team, and we do not anticipate that greater integration will be possible or could assist in speeding up the processes underway. But, again, this is something that we will keep under review.

LORD HUGHES: Right.

MS WOLFE: I will turn now to the issue, developed by Mr Mansfield this morning, about the perceived delay. We recognise, of course, that Sir Mark Sedwill and the Prime Minister made statements shortly after these events and also that charging decisions were taken by the CPS. I cannot say, for what it is worth, this morning -- I do not know whether or not those charging decisions were made on the basis of a full code test or a threshold test. That is something that may be relevant to the evidence that was before the CPS and that may be something that my learned friends for the police can address you on. But, in any event, for the reasons I am going to explain, this is not in any way a similar process.

There are two reasons for that. First, is something which you, sir, rightly touched on. Before this inquiry can take place, not only must the relevant documentation be located and identified, itself a very considerable task, but it must be carefully cleared for disclosure to the Chair, the ILT, core participants and, in due course, the public. Only a scintilla of this work was undertaken before Sir Mark Sedwill's letter was published and the charging decision made. It is a very different process, as you pointed out, sir, for making an assessment as compared to providing full disclosure to an inquiry and all of the underlying evidence that supports that assessment.

LORD HUGHES: Well, as I understand it, the terms of reference with which I have been charged effectively require me to find out whether Sir Mark Sedwill and the Prime Minister were right or not, do they not?

MS WOLFE: That is exactly right. I suspect that if I suggested that we could short circuit the entire disclosure process by relying on Sir Mark Sedwill's letter and the Prime Minister's statement, and not providing you with any further information, that Mr Mansfield would be on his feet for a different reason.

LORD HUGHES: Yes. But what about, please, the proposition that the inquest, which proceeded at this stage, was told that overarching assessments had been made? So, first of all, is that right?

MS WOLFE: I think that is correct.

LORD HUGHES: Right. Well, what Mr Mansfield is saying, I think, is, well, if you start there and do your necessary security review on that material, you might achieve something pretty close to arriving at a collection of core relevant material.

MS WOLFE: Indeed, sir.

LORD HUGHES: Do you want to say anything about that?

MS WOLFE: I think there is little I can say in open but I can say that this consideration has, of course, been given by both the ILT and the Government to exactly that process. I do not think I can go any further, save to say that, of course, there are efforts to focus the disclosure that is provided.

LORD HUGHES: I think you might have to be a little bit more -- I entirely recognise the constraints that you operate under, Ms Wolfe, and I am quite sure everybody else as well, but has the exercise been done that Mr Mansfield suggests should be the starting point? In other words, has anybody gone to the overarching assessments and the combination of intelligence and open source information which is contained within them presumably, and said, "Let us start there. Let us do this security review on all of these first", or, to put it another way, has it by now all been done?

MS WOLFE: Sir, I know the answer to that question. I am simply reticent about saying it in open just in case I inadvertently disclose something which should not be disclosed. It is an answer that can definitely be given to you in closed----

LORD HUGHES: All right.

MS WOLFE: -- and, if necessary, we----

LORD HUGHES: Well, you are going to have to do it there and you are going to have to go into a good deal more detail there. Anyway, you hear the proposition. It may or may not get the process much further. I simply do not know. But you do need to answer it.

MS WOLFE: Indeed, and it may be that we can provide, after the hearing, an open note so that the family too can hear the answer.

LORD HUGHES: Well, if you can you certainly should. All right. Go on.

MS WOLFE: The second reason, sir, why this is a very different process from that prosecution and from those statements, is that the scope of the inquiry's terms of reference and the provisional scope identified for the inquest are very different from the task of simply identifying the main perpetrators. By way of example, included within the provisional scope are matters such as the precautions taken in early 2018 by the UK authorities and the steps taken by the UK authorities to ensure public safety following the Skripal poisoning.

LORD HUGHES: Yes.

MS WOLFE: These are matters that did not feed into Sir Mark Sedwill's letter or into the statement from the Prime Minister and that would not feature in any criminal prosecution. Yet they cover the work of many Government departments, not to mention the police and local authorities. They span many months and even years. This includes, for example, the work undertaken by the Cabinet Office, the Foreign Office, the Home Office, the UKHSA, as it is now but then Public Heath England, and Defra, to name but a few, who would have had minimal, if any, involvement in a prosecution. This is in no way a similar process to the work that was undertaken in 2018, and while we appreciate that it will come as little comfort to the family, we trust that understanding the very different nature of the work underway will at least shed some light on that apparent delay.

LORD HUGHES: Well, they have made it clear, the family, that they are concerned about the question of the continuing protection of the public and what you are saying is that that involves an examination of a huge range of Government reaction.

MS WOLFE: Indeed.

LORD HUGHES: Yes, I see.

MS WOLFE: Sir, unless I can be of any further assistance on disclosure, that completes everything I want to say.

LORD HUGHES: Well, the core question, which has been addressed both by Mr O'Connor and by Mr Mansfield, is whether it is necessary for what we have all been describing as the preliminary security review to take place before the unredacted information is given to the Inquiry so that it can address the question of how much of it is potentially relevant. It follows, does it, that there is some part of the security review which is addressing the question of whether there is something which simply cannot be shown even to me? Is it? Because in the end, decisions on what can and cannot be redacted are for me, are they not?

MS WOLFE: They are, indeed, sir.

LORD HUGHES: Well, then you are going to have to address -- I appreciate you may have to do it in closed hearing rather than here -- but you are going to have to address the question of what reasons there might be which justify withholding material from the vetted team who are advising me and, through them, from me, before any question of relevance can be addressed.

MS WOLFE: Sir, I entirely understand and we will address you on that in closed.

LORD HUGHES: Is there anything at all you can say about that here?

MS WOLFE: I wish there was but I do not think so.

LORD HUGHES: No, all right. I can see that that might be the case. But please understand, and I am quite sure you do, Ms Wolfe, and those behind you and beyond you understand, that is something on which I am going to need some detailed submissions as soon as we can convene a closed session.

MS WOLFE: I am very grateful for that indication.

LORD HUGHES: All right. Thank you very much. Who is next? Mr Beer, it is you next, is it? Yes.

MR BEER: Thank you very much, sir. There are four issues on which I would hope to provide assistance to you under the heading of disclosure.

LORD HUGHES: Thank you.

MR BEER: Firstly, the necessity for what has been described as the preliminary security review. Secondly, since the last hearing, a change in approach by which documents are prioritised.

LORD HUGHES: This is the police documents?

MR BEER: Yes. Which seems to ensure that more relevant material passes through the process as quickly as possible. Thirdly, the provision to the Inquiry Legal Team of a draft report that sets out a narrative of events along with the material that underlies that report as an aid to the disclosure process. And, fourthly, briefly to address some of the helpful suggestions made by the legal representatives for the family as to how the process, in their view, ought to be undertaken more speedily. I make these four points against the background of the rightful recognition, in our submission, by your team of the substantial work that has been done but also the unusual sensitivities of the material involved, a matter to which I will return.

So, firstly, the preliminary security review. It is, as I anticipate you already know, an HMG requirement, not an Operation Verbasco one. I do not say that with sloping shoulders or an attempt to look further down the road to say where the responsibility lies. It is just a fact.

LORD HUGHES: Yes.

MR BEER: Operation Verbasco is, as Mr Mansfield said, neutral on the necessity for this stage of the process.

LORD HUGHES: Well, the reasons for it, if they are justified, are national reasons rather than police reasons, are they not?

MR BEER: Exactly, and HMG has previously said, I think, that it is the minimum necessary for the proper protection of information, the disclosure of which may be damaging to national security.

LORD HUGHES: They have.

MR BEER: We have no basis or information to dispute that view. We have provided you, at your team's request, with some information as to the consequence of the process, namely some statistics as to the time that it is taking for HMG to conduct a preliminary security review. They were set out in para.6 of our written submissions. You will have seen that the category A documents, that is documents which Verbasco considers to be non-sensitive, the time taken for them to be approved for disclosure within the preliminary disclosure review was 58 days, and for category C documents, that is sensitive documents, the average time for them to be approved by HMG for disclosure was 147 days.

LORD HUGHES: That is under the previous system?

MR BEER: Yes.

LORD HUGHES: We do not yet know, I suppose, about the new one.

MR BEER: No, we do not and we anticipate that we were asked for this material----

LORD HUGHES: Yes.

MR BEER: -- as a driver for change. Why else would we be asked? We should point out that there are some limits to that data. It was not a forecast; it was a look backwards. It concerns average figures that concern a wide range of documents. So that is the preliminary security review and that is all we say about it. Although we have got information about, and although it concerns our documents, it is a requirement, as I say, imposed by HMG. Can I turn to the second topic now?

LORD HUGHES: Yes.

MR BEER: The prioritisation of work by Operation Verbasco. This seems to us to be relevant to the issue of the speed by which disclosure is given, namely whether a process of prioritisation can be included to ensure that the documents that may be of most relevance are disclosed first. And since the last hearing, and in the light of the analysis of the material that has been undertaken, we have reached agreement with the Inquiry Legal Team about which issues or areas ought to be so prioritised for disclosure, and work is now ongoing, it is happening, to ensure a steady flow of documents into, presently, the initial security review process conducted by HMG. So the prioritisation categories which we proposed to the Inquiry Legal Team, and which they were happy with, resulted in about 4,500 documents of the currently scheduled documents being identified as priorities. The five priority categories are the SIO, Senior Investigating Officer, logs; documents concerning the search for Novichok and the management of scenes----

LORD HUGHES: One minute. Yes.

MR BEER: Excluding continuity issues. Victim accounts and the management of the victims. Fourthly, the governance of the incident and, fifthly, material relating specifically to Dawn Sturgess, in particular background material and medical information.

LORD HUGHES: Thank you. That is helpful to know.

MR BEER: And so as part of the dialogue, to use Mr O'Connor's phrase, or integration, to use Mr Mansfield's phrase, those proposals were made and have been agreed to by your team.

In terms of the speed of processing material in the future, I can confirm that the Government Legal Department (GLD) on behalf of HMG have recently agreed to Operation Verbasco uploading 500 documents for them to review every two weeks.

LORD HUGHES: And that is before or after the change in process to which Ms Wolfe has been----

MR BEER: I think it takes into account the change in process. You might even say it was in anticipation of the change in process.

LORD HUGHES: Thank you.

MR BEER: As you would expect, HMG have highlighted that that figure needs to stay under review, i.e., the amount of documents that they are able and willing for us to deposit with them every fortnight.

LORD HUGHES: Yes. I may have got the wrong impression, Mr Beer, but in terms of simple volume, as distinct from significance maybe, am I right in understanding that probably the police documents are the more voluminous?

MR BEER: Yes. Well, the answer is I do not know because I do not know what----

LORD HUGHES: No.

MR BEER: -- is in HMG's possession.

LORD HUGHES: No, all right. You cannot know that. All right.

MR BEER: But I can certainly say that our documents our voluminous. I do not know whether they are more voluminous----

LORD HUGHES: So it would seem.

MR BEER: -- than HMG's. I suspect, on good grounds, that they are.

LORD HUGHES: Yes.

MR BEER: Under this new approach, Operation Verbasco processed for transmission the first tranche of documents yesterday and they were sent to GLD yesterday. This approach of an agreement of prioritisation has been possible because of greater knowledge of what the

material contains and ought, in the result, as an outcome, to ensure speedier disclosure to core participants. That is the second issue, prioritisation.

LORD HUGHES: Yes.

MR BEER: The third issue is the provision of a report setting out a narrative of events and the provision of the material that underlies that narrative of events. Paragraph 2 of the directions that you made on 4 April this year required us to provide an advance draft of a statement of events and underlying material by 24 June, and the purpose of that requirement, as we understand it, was essentially three-fold. It would give your team an overview of the underlying relevant events and also counter-terrorism policing's involvement in them after it had happened. Second, the product could be used by your team to make targeted, or more targeted, requests for disclosure or for witness statements or, as in fact happened, to use it as a tool to suggest priorities for disclosure. And, lastly, the marking up of that report in draft, of those parts of it which would likely to be covered by an application for a restriction order would assist your team in identifying the likely boundaries between open and closed material, which would assist them in turn for the purpose of giving stage two disclosure. That report, the narrative of events and the underlying material has been provided to your team and is part of the substantial work that is going on behind the scenes in parallel, as they describe it in their submissions, and as a direct result of the work on that report Operation Verbasco has identified and prepared for stage one disclosure substantial quantities of highly relevant documents.

I mention those last two issues, the prioritisation and the provision of a narrative of events, in particular, so that you can consider the necessity, in particular after the closed hearing, of the new proposal which has been made today by Mr Mansfield.

Can I turn then, lastly, to the family's suggestions? We are obviously very grateful to the family for the suggestions that they have advanced in their para.13. Simply increasing resources, which is the suggestion made at their para.13a, is, in fact, neither a realistic option nor the problem. It is not a realistic option because issues of recruitment of people, the time that it takes to make such additional people effective, by training them, by putting them through enhanced vetting, and the very substantial resources already devoted to Operation Verbasco from counter-terrorism policing officers, whose primary duty is to protect the public from current threats, means that this is not an option. And it is also not the problem. This is not the usual case that one might encounter in other courts or tribunals,

where the tribunal places pressure upon a party to turn on a tap and obtain more resources, speaking frankly.

Additional, setting deadlines which----

LORD HUGHES: Sorry, I take the point that your overall submission is that it will not work but why do you say it is not the problem?

MR BEER: Because the issue is, the main element of the process, is not the speed at which we have got through the documents.

LORD HUGHES: Yes. Yes, all right. Thank you.

MR BEER: As to the setting of deadlines, arbitrary deadlines, we would say, are not constructive. There is no need to focus minds here by the setting of arbitrary deadlines. Minds are focused already.

As to the greater integration of your team with the Verbasco team, as you have heard, there is already substantial liaison of work between the two teams, with regular meetings, with regular exchanges of views and inputs at different levels, from counsel, solicitors to a working load.

LORD HUGHES: Yes.

MR BEER: Overall, and I start where I began here, it has been consistently recognised by your team, in their submissions of 24 August 2021, in their submissions of 1 December 2021, in their submissions on 23 March 2022 and their submissions for this hearing today, that the special sensitivities of this case present, and will continue to present, very significant challenges to the disclosure processes in the inquiry. Overall, we say that it is insufficient simply to recognise or to state that fact but then concurrently seek to impose processes or deadlines that might apply to an inquiry or an investigation of a different nature, which was not afflicted by very significant challenges; an inquiry into a building fire, a transport disaster or a police shooting. The special circumstances of this inquiry, in terms of the subject matter of the investigation, the identity of those responsible for Dawn Sturgess' death, and the geo-political landscape in which it is currently being held, do, I am afraid, require a paradigm shift in thinking and approach.

That is not to say that just because we have got those circumstances means that the inquiry must yield to Operation Verbasco and whatever we say. Far from it. I hope that what I

have said shows that changes have been made in order to still further improve the process of disclosure to your team.

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I do not know whether I can assist you any further?

LORD HUGHES: No, I do not think so. Thank you very much indeed, Mr Beer. Mr Berry? Yes, Mr Berry.

MR BERRY: Sir, I have nothing to add.

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LORD HUGHES: You have nothing. Right, thank you very much.

MR BERRY: Unless I can assist you?

LORD HUGHES: Thank you. Ms Clement, do you want to say anything?

MS CLEMENT: Sir, the same for me.

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LORD HUGHES: And, Mr Chapman, do you want to say anything?

MR CHAPMAN: The same for me.

LORD HUGHES: Right. Mr O'Connor?

MR O'CONNOR: Sir, there is very little I wanted to add, unless there are any questions that I can address. I think we have all recognised that it is entirely unsurprising that the family's patience with this process is, as Mr Mansfield said, wearing thin. We hope that they will take it from us that when we say these are exceptional difficulties and that we are working as hard as we can to try and get round them, that is not a platitude but it represents hard work on all sides.

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Sir, you have heard this morning of some progress in terms of prioritisation. We hope that the process will be speeded up by the streamlining Ms Wolfe referred to and, in any event, we do, as Mr Beer mentioned and I mentioned to you, we have passed on statistics as to how speedy or otherwise that process has been to date. As you heard, more documents are now to be put through it and we will, by the time of the next hearing, have some further statistics so that we can at least measure whether that process, or the difficulties associated with it, has eased or not. We continue to work on a number of fronts in disclosure to try, as I say, get round these problems.

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LORD HUGHES: Yes. Well, the expressions of goodwill are helpful, Mr O'Connor, that we have had from various sources and unsurprisingly. But by the time we have finished this process, after the closed hearing, I want to be in a position to give the family some idea of when the disclosure process can reasonably be expected to be completed.

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MR O'CONNOR: Sir, yes, we hear that and that will be informed by the further detail that we will hear in closed session.

LORD HUGHES: Yes, I expect it will. Do you want to move on to the restriction orders?

MR O'CONNOR: I will move to the second item on the agenda, which is the restriction order applications. As you know, and I think everyone in the room is aware, very broadly stated, those applications relate to the redaction of names from documents that will be disclosed to core participants in the course of the inquiry.

The applications that have been made, one, as you know, by HMG and one by Operation Verbasco, were made pursuant to your directions given following the last hearing. The applications themselves, which are towards the end of the bundle that has been prepared for this hearing, are partly in open and partly in closed. So the main application documents specifying what it is that is sought, legal submissions and a certain amount of the risk assessments and supporting evidence are there in open but there is then further information relating to those matters in closed.

And then, sir, further, as you are aware, we and other core participants have made written submissions at various stages in the process in relation to the applications and media representatives have also been invited to comment on the applications and have done so. All of those written submissions, to which I have referred, as well as the press observations, are present in the bundle and, as I have anticipated, will be published on the inquiry website in due course.

I wish to emphasise and make it clear right at the beginning, that these applications are applications that are made to you by HMG and Operation Verbasco. They are not in any sense agreed by us. It is for HMG and Operation Verbasco to persuade you that the applications they make are well-founded and that the redactions they seek should be made. For that reason, I do not propose to say very much at this stage about these applications.

LORD HUGHES: It would be much better if you respond to them, is it not?

MR O'CONNOR: Well, I certainly was intending to respond to them on the merits, sir. I had intended to make just a few observations about the approach that you might take when considering the applications.

LORD HUGHES: Yes, by all means.

MR O'CONNOR: But, as I say, they are very much restricted to those matters. First of all, sir, in my submission, it is important that everyone involved is clear about the nature of these applications. The applications are for names to be removed from open versions of documents. That is not the same thing as an application for so-called witness anonymity. You have not yet decided who you wish to give evidence before you as a witness. Once you have done so, any witness who wishes to may seek an application for anonymity, and they will need to do that even if their name has already been redacted from documents as a result of a restriction order that you make now. We stress, witness anonymity is an entirely different matter that will need to follow it in due course. Different considerations apply to it.

LORD HUGHES: Yes.

MR O'CONNOR: Secondly, the legal approach. The applications are for you to make restriction orders under s.19 of the Inquiries Act. The written submissions that you have received go into some detail regarding the test that you should apply. We doubt there will be much dispute about that. It seems to us that the parallel that has been drawn with what is known as the wider balance of PII claims, in other words balancing the harm that would be caused by disclosure against the prejudice that would be caused by non-disclosure, is a useful starting point, with the caveat, of course, that the effect of upholding a PII claim, on the one hand, and making a s.19 restriction order on the other, is not precisely the same. Where a PII claim is upheld, the material is entirely excluded from proceedings. With a restriction order, although the material is excluded from the open proceedings -- and the impact of that should not be underestimated -- the material is still available as evidence in closed proceedings.

LORD HUGHES: Well, yes, it is but the starting point is the same, is it not? Unless there is a good reason not to do it, material should be published, and the good reason that has to be found has to be a real risk of harm.

MR O'CONNOR: It does, which is why, sir, we say the starting point, the wider balance parallel with that, is entirely appropriate.

LORD HUGHES: And effectively in nearly all these cases what you are doing is balancing the harm against the interests of open justice.

MR O'CONNOR: That is right, sir, and perhaps the point I made is one of detail.

LORD HUGHES: No, no, it is helpful. Thank you.

MR O'CONNOR: But one should not lose sight of the fact that after all that is the whole purpose of the process, because what we have achieved by converting from an inquest to an inquiry is to have a process that can still consider things.

LORD HUGHES: Yes.

MR O'CONNOR: So one half of the balancing exercise, as we have just discussed, is the harm that would be caused were a restriction order not to be made and, therefore, the names were to be published. HMG and Operation Verbasco have both provided harm statements for you to consider. Whilst a fair amount of the content of those documents has been made available in open, and therefore will be debated before you now, there is, it needs to be recognised, significant detail that can only be considered in closed and it follows, we submit, that you will not be able to reach a final conclusion on that balancing exercise until you have further submissions at the closed hearing.

Further, sir, we submit that you must consider whether there are alternative measures that could be taken that would provide an adequate level of protection for the material in question, that is the names, and also have a lesser impact on the core participants' ability to participate in the proceedings than the restriction orders currently propose. Sir, you will recall we made a number of proposals for this in our note responding to the application. It is in the bundle at tab 5, sir. I do not ask you to turn it up.

LORD HUGHES: No, I have read it but I am going to turn it up. Yes.

MR O'CONNOR: It is para.7----

LORD HUGHES: Yes, I have got it.

MR O'CONNOR: -- of the document at tab 5. And you will recall also that both HMG and Operation Verbasco have responded to those points and that, moreover, those matters have been pursued in written submissions by the family. So that is certainly a matter that you must consider----

LORD HUGHES: Yes.

MR O'CONNOR: -- alongside the restriction order applications. Fourthly, sir, and this rather assumes that you have reached the point where you are, as it were, satisfied that there is some harm that needs to addressed, you will still need to consider the extent of any orders made. As all have recognised, the applications that have been made are for orders in the broadest of terms. We asked for clarification from HMG and Op Verbasco as to the intended scope of the applications. They have responded, again in the note that you have seen, that essentially, and maybe we will come back to this if necessary, what is sought are

restriction orders that would protect the names of all counter-terrorism police officers and all HMG staff, former staff and contractors. So we say, sir, there are at least three issues that you will need to consider in this context.

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First, there is the question of names that have already been publicly linked with the events surrounding the poisoning, and that is a matter that has been debated in written submissions and there may now be a degree of common ground that such names should not be included in this order, although there is remaining practical questions as to how those individuals are to be identified, which I may come back to.

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The second, there is an issue about names where the context of the document makes it perfectly clear who the individual is. If I could just give you an example, and I stress an entirely hypothetical example, if one was to imagine a list of names of those appearing at a meeting where the minutes of the meeting are in a document that is being considered for redaction, and one saw at the beginning "Boris Johnson, Prime Minister", that is a reference which will soon become dated, you can see that simply redacting the name "Boris Johnson" is not going to conceal the identity of that person because we all know who the Prime Minister was at the date of the meeting. And so that is an issue that arises on the documents and something that is going to have to be considered. And I just add that the fact that in that hypothetical example the Prime Minister was at the meeting is something that is itself important. One cannot simply redact a job title, we would submit. That we simply raise for consideration.

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Sir, the third point regarding the extent of the orders, which will need to be addressed and has been addressed in written submissions, is the question that was raised in the Wiltshire Police submissions, which I know you are familiar with. They raise the question, if the restriction order is to cover even what one might describe as low-level HMG employees -- they gave the example of a Territorial Army reservist, who is involved in the clean-up operation, why, they ask rhetorically, should it not also apply to a Wiltshire police constable who may have been involved in the same operation? We do submit there are a variety of possible answers to that conundrum. Resolving it will require a proper understanding of the nature and extent of the risk that is asserted and, therefore, it is probably only possible to answer once you have heard both open and closed submissions. But we do flag that one possible explanation of that conundrum, or the outcome of it, is that in fact the risk does not

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extend to the low-level HMG employee. Therefore, the claim is put too widely. That is something that you will need to consider.

LORD HUGHES: Yes.

MR O'CONNOR: As I say, at this stage anyway I just raise those as matters that will need to be dealt with. The last of these points, again assuming that you are at least minded to make a restriction order, relates to implementation and, in particular, ciphering, again a question that has been canvassed in the written submissions. Our position, as we have set out in writing, is that ciphering is both necessary and achievable, assuming redactions are to be made, but there needs to be a recognition that that process does add time to the whole exercise of preparing the documents. The more ciphering the more time. We have submitted that attempting, as it were, a total exercise of cyphering, in other words ciphering every single name that may be redacted, would not be practical and, therefore, we have suggested a proportionate approach. I will not go into the detail now. But, as we understand it, we think it is now common ground amongst those here that there should be at least some ciphering. Perhaps the issue that needs to be resolved is how much.

Sir, that is all I wanted to say by way of introduction to the applications. As I have said, in my submission, it is really for Ms Wolfe and Mr Beer to make the applications, the CPs then to respond to them and, if I may, after that I will have something more by way of response and it may then be appropriate to ask Ms Wolfe and Mr Beer to reply. And I would simply opine that, as I have already said, although they are not appearing today, you do have before you written submissions both from the Times Newspaper Limited but also from the BBC. I think I can fairly summarise what they say in that they raise concerns about the applications and the effect of them on open justice. They are at tabs 14 and 15 of your bundle, sir.

LORD HUGHES: Yes.

MR O'CONNOR: And just to add that, I am also aware that there is at least one member of the press present in court today who may wish to make oral submissions and, if he does, I suggest that the core participants have made their submissions would be the appropriate time to do so.

LORD HUGHES: Thank you very much, Mr O'Connor. All right. Ms Wolfe, this is your application. Let me just have it in front of me. Tab 20.

MS WOLFE: Yes, sir. Sir, I will take matters, if I may, in this order. First, the legal framework, then the application itself, then I will address the matter that Mr O'Connor mentioned about the protection of Wiltshire Police names and, finally, I will cover alternative practicalities.

We recognise at the outset that it is important, especially for the family, that as much of the process as possible is transparent and all relevant evidence is disclosed to all core participants where it is safe to do so. We take our disclosure commitments very seriously.

LORD HUGHES: Is that the test, "where it is safe to do so"?

MS WOLFE: It is not the test, no. I will come to the test. But that is, of course, the effect.

LORD HUGHES: No, all right.

MS WOLFE: Sometimes, as we all know, unfortunately full disclosure is not possible and it is in these circumstances that we have made this application for a restriction order, as we say at para.2 of the opening application before you at tab 20 of the bundle and also set out within the draft order at tab 22, the names and designations, as appropriate, of the following categories of Government staff. All staff below senior civil servant grade and the military equivalent of below one star grade; all senior civil servants not officially publicly linked to the 2018 events -- and I will return to that point about public linking in just a moment -- and all UK intelligence community staff unless publicly avowed, such as the Chief of SIS and the Director General of MI5, including cover names used by staff. Collectively we have termed these the "relevant staff", and further clarifications of the definition has been provided in the Government's response to the note from counsel, which is at tab 10 of the public.

The application is made with an open section at tab 20 and a closed section, in accordance with the Inquiry's protocol and, as required, it is supported by evidence, here in the form of a closed damage assessment which has been provided, along with a certificate signed by the Home Secretary, which can be found at tab 21 of the bundle.

LORD HUGHES: Yes.

MS WOLFE: By way of preliminary points, having considered counsel to the Inquiry's note and submissions, in particular their observations regarding individuals who are publicly linked with the events (that is set out at para.27d of their submissions), as stated at para.7 of the Government's submissions, the Government now agrees in principle that separate restriction applications should be made for individuals who have already been publicly linked with the events.

LORD HUGHES: Yes, whose names are, in effect, in the public domain.

MS WOLFE: Indeed.

LORD HUGHES: In this context.

MS WOLFE: Exactly.

LORD HUGHES: All right. So you are going to make a separate application in relation to those, which means that if I make the order that you are asking for it will need to exclude those?

MS WOLFE: Indeed.

LORD HUGHES: Yes.

MS WOLFE: As we have recognised in the open section, this application is unusual and probably unique. That is because the circumstances in which it has been made are unusual and probably unique. It has not been made lightly. The application and underlying damage assessments have been compiled with advice and input from subject matter experts across Her Majesty's Government, after detailed consideration of the alternatives. The application has been made because those experts, and the Home Secretary, assess that it is the only way to protect national security and the relevant staff. It is necessary in the public interest.

As stated at para.32 of the open application, the risk and level of harm to the public interest that would follow disclosure of names is very high. It would endanger individuals and their work across Government and would harm the UK's national security. Those risks must not be understated.

We have set out the relevant legal principles in the open section of the application and counsel to the Inquiry does not envisage that these are contentious, nor do any core participants take issue with them in their submissions. Sir, given the unusual nature of this application, we propose to highlight some key areas briefly this morning, if I may. The application, as my learned friend has said already, is made pursuant to s.19 of the Inquiries Act. That appears at tab 24 of both bundles. The relevant parts of that section are as follows. Under subsection (1), restrictions may be made, in accordance with this section, and may be imposed on attendance at an inquiry, which this is not what we are addressing today, but (b):

> "disclosure or publication of any evidence or documents given, produced or provided to an inquiry."

Under subsection (2), restrictions may be imposed by a restriction order made by the chairman during the course of the inquiry. Under subsection (3), the restriction order must specify only such restrictions as are required by any statutory provision or rule of law, or under subsection (b)----

LORD HUGHES: Well, you are not on (a), are you? You are on (b). Well, are you not?

MS WOLFE: That is an extremely good question, sir. We are on (b) but the effect of (b), in my submission, would be that you are getting into the realms of PII, and PII amounts to a rule of law. Now----

LORD HUGHES: All right.

MS WOLFE: -- I can take you, sir -- this is something that was considered in another public inquiry and perhaps I will just give you the reference to it because it may be instructive. This is a matter that came up before the *Anthony Grainger* inquiry and HHJ Teague, and if we perhaps turn to it, sir, at tab 14 of the bundle, p.403 and para.7. The chair of that inquiry says this:

> "As to restrictions required by any 'rule of law'"----

LORD HUGHES: Sorry, paragraph?

MS WOLFE: Paragraph 7, towards the bottom of p.403.

LORD HUGHES: Yes.

MS WOLFE:

> "As to restrictions required by any 'rule of law', it is a matter for debate whether that expression is intended to cover the legal principles relating to public interest immunity."

It goes on to cite s.22(2) of the 2005 Act, which provides as follows:

> "The rules of law under which evidence or documents are permitted or required to be withheld on grounds of public interest immunity apply in relation to an inquiry as they apply in relation to civil proceedings in a court in the relevant part of the United Kingdom."

Sir, there is a way of reading that which suggests that it is describing public interest immunity as a rule of law but, as you can see, HHJ Teague was a little concerned, or perhaps not entirely persuaded, that that was the correct reading because he went to

consider Sir Christopher Pitchford in the *Undercover Policing* Inquiry as pointing out that s.22(2) appears that it does not relate to restriction orders. The answer to this----

LORD HUGHES: Does it make any difference?

MS WOLFE: -- is that it does not make any difference, and you can see at para.8----

LORD HUGHES: The test is the same, is it not?

MS WOLFE:

> "Whether I treat the established principles of public interest immunity as a 'rule of law' within the meaning of section 19(3)(a) or apply the public interest test in section 19(3)(b), it seems to me that the practical outcome is bound to be identical."

LORD HUGHES: Which means, in effect, that it is helpful to look at 19(3)(b) and the ensuing provisions in 19(4).

MS WOLFE: Exactly, which is why you will see that the way that the application is pitched is to cover those very points.

LORD HUGHES: Thank you very much.

MS WOLFE: Turning then to s.19(3)(b), that is the section which says that a restriction order must specify only such restrictions:

> "(b) as the Minister or chairman considers to be conducive to the inquiry fulfilling its terms of reference or to be necessary in the public interest, having regard in particular to the matters mentioned in subsection (4)."

And subsection (4) contains the following matters of relevance:

> "(a) the extent to which any restriction on attendance, disclosure or publication might inhibit the allaying of public concern;
> (b) any risk of harm or damage that could be avoided or reduced by any such restriction."

(c) covers confidentiality. And:

> "(d) the extent to which not imposing any particular restrictions would be likely---
> (i) to cause delay or to impair the efficiency or effectiveness of the inquiry, or
> (ii) otherwise to result in additional cost …".

Harm and damage, as set out in that section, is further defined in subsection (5) and, in particular, it covers damage to national security.

Before leaving the Act, it is worth briefly turning to s.20, which provides at subsection (4) that:

> "The chairman may vary or revoke a restriction order by making a further order during the course of the inquiry."

Subsection (5) provides that restrictions under s.19 on disclosure or publication or evidence of documents, continue in force indefinitely, unless:

> "(a) under the terms of the relevant notice or order the restrictions expire at the end of the inquiry, or at some other time, or
> (b) the relevant notice or order is varied or revoked …".

That, sir, provides the relevant statutory framework. What is described is a unique public interest test. It is not exactly the same as a PII application but, as you can see, there are very similar considerations.

LORD HUGHES: Yes.

MS WOLFE: And, as my learned friend Mr O'Connor pointed out, this is not a PII application because of the facility for closed material to be considered by this inquiry. But also, in our submission, the relevant names would otherwise be protected by PII so, therefore, we suggest that those principles and authorities relating to PII are instructive. PII is not a privilege. It cannot generally be waived. There is a duty to claim PII. It is not an exercise of discretion on the part of the decision-maker.

We have set out, sir, as you will have seen, in our submissions, the principles governing a PII application and the slightly different test contained in the case of *Wiley*. That is a test that I am sure everyone is very familiar with. It is summarised in the footnote to para.8 of our open application and considers the consideration of three questions. I will not, sir, take you to that case but it is contained at tab 1 of the bundle and pp.7 and 8 of the overall numbering, in Lord Templeman's judgment, and it appears further in the judgment of Lord Woolf.

LORD HUGHES: Yes.

MS WOLFE: The three questions are these: whether the material in question passes the relevance threshold for disclosure in the proceedings. If it does not, then the material is not disclosable and no PII issue arises. That is the point that my learned friend Mr O'Connor mentioned may perhaps be the answer to the difficult question of soldiers and police officers. If the threshold test----

LORD HUGHES: I am sorry, say that again?

MS WOLFE: My learned friend Mr O'Connor made the point, sir, that the difficult question, which I will come to in due course, about soldiers and police officers, may simply fall away because it may be that they are not, in fact, relevant.

LORD HUGHES: Yes.

MS WOLFE: I will address you further, sir, on that point. If the threshold test of relevance is passed -- one comes to the second part of the *Wiley* test -- whether the material identified as relevant, and which would therefore normally fall to be disclosed, attracts PII. The test is whether there is a real risk that disclosure of the documents or material would cause serious harm to the public interest; here the public interest being national security. The application and the court are required to consider whether any harm could be prevented by other means. And the final part of the test is if, applying the test of 'real risk of serious harm', the material attracts PII, the question arises as to whether it is in the public interest -- whether the public interest in non-disclosure is outweighed by the public interest in disclosure of material.

The final balancing exercise involves asking whether the public interest in refusing disclosure is outweighed by the public interest in doing justice in the proceedings. The nature or seriousness of the proceedings is a relevant factor in the PII balancing exercise, inasmuch as it effects how heavily the court should weigh in the scales the harm to the administration of justice that would be caused by non-disclosure. And, of course, as we say in the application, a major difference between a PII application and an application for a restriction order is that the material here will not be entirely excluded from proceedings.

The court, of course -- and here the inquiry -- is the ultimate arbiter, where necessary having inspected the documents. It has been said, sir, many times that appropriate deference should be accorded to the views of the authorities asserting harm to the public interest, and I will take you, if I may, briefly to three examples of that. I do not ask you to turn them up but I will provide the court with references. The first if Lord Reid in *Conway*

v Rimmer, which appears at tab 3 of the bundle, and it is p.139, next to the letter G, that says:

> "… cases would be very rare in which it could be proper to question the view of the responsible minister that it would be contrary to the public interest to make public the contents of a particular document."

That was referred to with approval in the second case I will refer to, Lord Neuberger in the case of *Binyam Mohammed*. Lord Neuberger also observed, on the question of whether disclosure would bring about a real risk of serious harm to an important public interest, there in the context of PII but, in my submission, it has equal application here, the following (and this is tab 19 of the bundle and p.575 at para.131). He said this:

> "National security, which includes the functioning of the intelligence services and the prevention of terrorism, is absolutely central to the fundamental roles of the Government, namely the defence of the realm and the maintenance of law and order, indeed, ultimately to the survival of the State. As a matter of principle, decisions in connection with national security are primarily entrusted to the executive, ultimately to Government ministers, and not to be the judiciary. That is inherent in the doctrine of the separation of powers …".

And, of course, as we say and everybody accepts, despite that the ultimate decision, sir, here is for you.

LORD HUGHES: Yes.

MS WOLFE: The Divisional Court -- and this is, sir, the final case that I will refer to -- reiterated something similar in the case of *Commissioner of Police of the Metropolis v Bangs*. Sir, that is a case that can be found at tab 23 of the bundle. It is also a case which may be familiar to you. It came before the Supreme Court in the case of *Haralambous*----

LORD HUGHES: Yes.

MS WOLFE: -- and was a case that was approved by the Supreme Court back in 2018. The Divisional Court there said this, at para.48----

LORD HUGHES: Just let me remind myself what that was about.

MS WOLFE: Yes. It was----

LORD HUGHES: It was a police claim for PII, was it not?

MS WOLFE: Exactly, it was.

LORD HUGHES: Was it not the search warrant case?

MS WOLFE: It was disclosure of the information undermined the search warrant, indeed. At para.48, and it is p.739 in the bundle, the court said:

> "While the ultimate decision is a matter for the court, it is well established that proper weight must be given to the view of the public official, whether a government minister or a police officer, who has claimed PII. The statements to this effect are primarily in cases where PII is claimed by a government minister, often in the context of national security, but, with due allowance for the difference of context, they are also of relevance where PII is claimed by [any] public body such as the police."

It continues in the next paragraph, para.49, to say this:

> "The margin accorded to the responsible official is likely to be widest where the view concerns risks to national security and relationships with other governments, or the risks of identifying methods of covert surveillance, or informers."

LORD HUGHES: Yes.

MS WOLFE: In my submission, that margin here, concerning the risk of national security, is pertinent.

LORD HUGHES: National security. What were the other two? Covert surveillance?

MS WOLFE: In that case they were relationships with other governments or the risks of identifying methods of covert surveillance or informers.

LORD HUGHES: Yes. But you are interested in the first. Yes, of course.

MS WOLFE: Indeed. Sir, I will not take you to it, but many of these cases have been referred to and were considered in the case of *Begum* by the Supreme Court in 2021, which, of course, is contained in the authorities bundle.

LORD HUGHES: Yes, they were.

MS WOLFE: None of this is to say, as the family correctly point out in their submissions, and I am sure that Mr Mansfield will address you on this firmly in due course, that the Home Secretary's views should command the unquestioning acquiescence of the court. But in this case, in our submission, there is ample evidence of reasoning provided in closed to explain why these applications have been made and should be granted. Disclosure should not usually be made if it would cause significant harm to national security. The interest engaged is usually sufficiently important to override the competing public interest in

administration of justice and fulness on inquiry and here, in my submission, that clearly applies. You will be relieved to know I will not refer to any further authorities.

LORD HUGHES: I am sure you are right about that as a general approach, Ms Wolfe, but I cannot help noticing that the Home Secretary's certificate, if I were to adhere to the view that it should be given the kind of deference that you mention, would include those who you have only a few minutes ago suggested may well be irrelevant.

MS WOLFE: Sir, I will address you fully on that.

LORD HUGHES: Yes. Anyway, I think I understand the question I have got to face.

MS WOLFE: I am grateful. Sir, Her Majesty's Government has weighed up these competing public interests here and invites the Inquiry to conduct the same exercise. Those interests are the needs to allay public concern about the subject matter and to maintain public confidence in its process, impartiality and fairness, the need to avoid or reduce a risk of harm to the relevant staff, other current and future government staff, and the risk of damage to national security.

Taking each of those in turn, and, sir, I will be brief -- I am conscious of the time----

LORD HUGHES: Do not worry.

MS WOLFE: -- allaying public concern is such a fundamental part of a public inquiry that it features within the Act itself. With the shocking events of 2018 to be investigated, and many questions remaining unanswered, allaying public concern will be one of this inquiry's most significant roles. The principal means through which the inquiry can do this is by ensuring that the hearings and evidence are publicly accessible and that the family are kept fully informed and at the heart of these proceedings. Because of this, and the Government readily acknowledges at para.19 of the open application, the starting point is that no restriction order will be made unless it is necessary in the countervailing public interest in avoidance or reduction of a risk of harm or damage.

LORD HUGHES: Quite.

MS WOLFE: What is proposed is not a full black-out of names. As I have said, it is not a PII application. So the public concern can be allayed to some extent by the reassurance that relevant material, protected by the restriction order, will be seen and considered by the independent Inquiry Legal Team and you, sir, the chair. The relevant material, in this context, consists only of names and potentially personal details that would reveal names. Those names can be seen by you and referred to you in any report, even if ultimately the

names have to remain protected in closed. The public and the family, while themselves not able to see these names, can rest assured that the inquiry itself will do so.

A

The next factor to weigh in the balance is the risk of harm to the relevant staff and damage to national security. These, of course, are two separate issues and are considered separately in the closed application. You will understand, sir -- well, everyone, I am sure, in court -- that I am not free to say all that I would wish to say in open session. For that reason, I will

B

draw your attention only to the following examples, none of which is generic or premised on significant speculation. On the contrary, it includes the conclusions of experts.

We have cited the June 2020 Intelligence and Security Committee of Parliament's report on

C

Russia before, and it bears repeated. It can be seen quoted in more detail at para.24 of the open application. But, in particular, it highlights Russia's heavily resources intelligences services, which are described as "disproportionately large and powerful", and which will analyse whatever we put in the public domain. It identifies the UK as a top Western intelligence target and reports that Putin considers the UK to be a key diplomatic adversary.

D

Russia's cyber capability, when combined with its willingness to deploy that capability in a malicious capacity, is a matter of grave concern and poses an immediate and urgent threat to our national security. And it goes on. That all applies to the present application.

E

In the open application, at para.25, in what we describe as a summary of the closed material, but is not comprehensive, we say that the Russian threat is evolving. Russia poses a serious threat to the national security of the UK and our allies and the challenge posed by

F

Russia will be one of the most significant challenges facing the UK and our allies in years to come. The attacks on Alexander Litvinenko and the Skripals demonstrate that Russia's intelligence services have conducted reckless criminal attacks on UK soil with the deliberate aim of murdering UK residents.

G

In para.12 of our response note, which is at tab 10 of the bundle, we have also given examples of Russian espionage and interference against similar proceedings, available in open source, such as the Danish governing's MH17 investigation and the World Anti-Doping Agency's Russian doping investigation.

H

In our submission, this shows that there is a very real risk of harm to the relevant staff and others and a risk of damage to national security if the relevant names are disclosed. That risk is substantial and immediate. Revealing the names would provide Russia, but also hostile foreign intelligence services, terrorists and capable non-state actors, with a target list of the most highly cleared individuals in the Government, with the most relevant knowledge and expertise into the sensitive matters being investigated by the Inquiry. It would endanger the safety, privacy and careers of those Government staff. It would increase the UK's vulnerability to espionage and foreign targeting of the Government and the military, especially by Russia but also by others. This would increase the threat to the UK of future attacks and would endanger our national security. These risks must, in my submission, weigh heavily in the balance. They are risks that cannot be mitigated. Making a restriction order, however, would avoid and significantly reduce the serious risk of harm and damage.

Paragraph 30 onwards of the open application considers the risk of harm in not disclosing the relevant names. That risk is low. It would not endanger anyone, nor would it impact on national security. The risk and harm to the public interest in openness, while not to be underestimated, could be mitigated.

For those reasons, the Government and the Home Secretary assess that this was an application, unusual as it may be in these unusual circumstances, that had to be made and we invite you to find that the order, for the reasons we have given, is necessary.

I will come now to the issue about Wiltshire Police names that has been raised. As you have identified, sir, the Government's restriction order application covers only Government, civilian and military staff, as well as contractors and experts engaged by the Government. The current police restriction order applies only to counter-terrorism police and Wiltshire Police have raised the question of whether the inquiry needs to protect other police officers and staff by redacting their names from documents.

LORD HUGHES: I think they are saying if all Government staff, what is the difference, and they draw attention, do they not, to the fact that, for example, a clean-up operation would have been conducted, and I am assuming without knowing but this is probably right, a clean-up operation will have been conducted in part by local constables and in part by Army reservists; the latter are Government staff and the former are not.

MS WOLFE: Indeed. May I just say, sir, on that point, it is tempting to use shorthand and refer to low-level employees in this context. These were essential keyworkers. It may be that they were not at the high level of decision-makers but they were carrying out dangerous work in very difficult conditions, in what must have been a quite terrifying time. I am just keen that if we do give them a shorthand, that it not simply be "low-level employees."

LORD HUGHES: Well, that is a point well made. But does it answer the question of whether they are at risk of targeting by the Russians?

MS WOLFE: Sir, you will be aware that this application order has been made at a very early stage. We were invited to make an application order in principle----

LORD HUGHES: Yes.

MS WOLFE: -- to cover these names. In particular, it is being made before all relevant, or potentially relevant, documents have been identified and necessarily, therefore, before all witnesses have been selected and even before all individuals have been identified. It is not possible to say with any certainty whether any particular name will be relevant and, in some cases, whether the publication of a specific name in an inquiry context will give rise to any risk to that person or to national security more widely. It will be much easier for you to address Wiltshire Police's concerns once you, and the ILT, have selected the documents that you wish to disclose to core participants and the public as relevant.

LORD HUGHES: Yes.

MS WOLFE: But at the moment, the Government thinks that it is highly likely that many of these police names will be found in irrelevant documents. To take the example of that clean-up operation, it does seem unlikely that the inquiry will want documents detailing the decontamination of Zizzi's restaurant, for example, or the bench the Skripals sat upon.

LORD HUGHES: Quite.

MS WOLFE: So the inquiry will never have to consider whether it should redact the names of any police officers or soldiers identified in the documents dealing with decontamination work. The Government would, therefore, respectfully suggest that this issue be addressed in stages. It may well be that there are no, or very few, relevant documents in which Wiltshire police officers or staff are named in any context that could put them, or others, at risk. Once the Inquiry Legal Team have identified the documents they wish to provide to core participants as relevant, it will be possible to assess the scale of any issue. The Government will willingly work with the ILT and the police to identify and address any such risk. If there is a potential concern that cannot be resolved before disclosure, then police names should be redacted as an interim measure, possibly pending the making of

application by Wiltshire Police or others. Those names could always be unredacted at a later stage if redactions were ultimately considered----

LORD HUGHES: Well, what are you actually asking me to do, Ms Wolfe? You are asking me to make an order, I say "now", after the parallel closed hearing has occurred, long before the questions of relevance that you have just been addressing have been thought about. And you are asking me to make an order which will involve someone sitting down and working through all these documents now to remove the names of everybody who has ever worked for central as opposed to local government. That is basically it, is it not?

MS WOLFE: That is basically it but----

LORD HUGHES: So that----

MS WOLFE: -- the Government has no choice, sir, but to protect people in such categories as Government contractors or reservists.

LORD HUGHES: I quite understand that, to the extent that there is a risk either of personal targeting, which there might be, or absent personal targeting, nevertheless with providing potential hostile actors of any kind with a helpful directory of personnel. All of that is one thing but if an order is made, even, as it were, an interim order, which requires the redaction of everybody who works for central government, that would include all the Army reservists, would it not?

MS WOLFE: It would.

LORD HUGHES: What about anybody who, for example, worked in the Job Centre and had dealt with one or other of either Ms Sturgess or her friend?

MS WOLFE: It would depend who their employer was, I think, on the----

LORD HUGHES: Well, likely to be the Department of Work and Pensions, is it not?

MS WOLFE: If it not the local authority then, yes.

LORD HUGHES: Yes. There are plenty of other potential examples, are there not? What about people who came from -- well, the clean-up operation is part of it. I gather that several shops had to shut as a result of the emergency and it was necessary for Government staff to help with liaising with the remedial measures, making their wares available to people, and that kind of thing. Are they covered?

MS WOLFE: Sir, it is difficult to see how there would be relevance to how----

LORD HUGHES: Very.

MS WOLFE: -- Dawn Sturgess is linked by that.

LORD HUGHES: But there might be, you see. You have got to demonstrate, have you not, that everybody who has worked for the central government is within the category of people to whom there is a risk in one of the ways that I have mentioned?

MS WOLFE: Indeed, but in circumstances such as this, where we are still undergoing the disclosure process----

LORD HUGHES: Yes.

MS WOLFE: -- and still identifying those people or those categories of people, it is very difficult to work out a way to do that other than the way that we have proposed.

LORD HUGHES: So what are you are asking me to do? Make an order and then leave people to apply to remove them?

MS WOLFE: Sir, if it became clear that there was a category, such as those involved in the clean-up operation, who had made it into some relevant documents but who were not relevant, certainly discussions could be had with the ILT as to whether those names could or should be redacted on the grounds of relevance, in the first instance, and/or whether we ought to revert to you, sir, to unredact those names and to release them and to amend the restriction order. You have the faculty to amend that restriction order.

LORD HUGHES: Oh, I understand that. I am just concerned with the possibility of it having to happen rather often. All right. I am sorry, I interrupted. Go on. Or, well, do you want a break now, Ms Wolfe, or are you -- where have you got to?

MS WOLFE: Sir, I think there is probably little more I can say that will assist you in relation to the names of others and I have brief submissions to make about alternatives and practicalities. I am in your hands if you would like me----

LORD HUGHES: Well, alternatives, practicalities and those who have been publicly avowed, so perhaps you would like to deal with those at two o'clock?

MS WOLFE: I am grateful.

LORD HUGHES: Thank you very much indeed.

(Adjourned for a short time)

(2.05 p.m.)

LORD HUGHES: Thank you, Mr O'Connor.

MR O'CONNOR: Sir, before Ms Wolfe continues her submissions, may I simply apologise to everyone who is here today, in particular to those who are following remotely -- I hope they

can hear me -- for the poor sound quality on the link today. It is perhaps one of those things. What I can say is that this system was thoroughly tested before today's hearing. Everything seemed to be in order. It is obvious, and, as I say, will be obvious to those who are not here with us, that it has not worked as well as it should have done today. The problem seems to be that not all of the microphones in court are actually working. That is why we are having to move this particular microphone from one person to another. But all attempts to improve the situation for today's hearing have, I am afraid, come to nothing. So, we will simply have to make the best of this one microphone for today. Sir, you can be assured that we will do our best to ensure that these problems do not recur.

LORD HUGHES: Well, it is not your fault, Mr O'Connor, but what does matter is that, because we may well have to have similar hearings and this is as good a place as most, we need to make sure that it can be fixed. In any event, it will be necessary for other proceedings in this court.

MR O'CONNOR: Yes.

LORD HUGHES: All right. Thank you very much indeed. Yes, Ms Wolfe.

MS WOLFE: Sir, I shall be brief. There are just two outstanding points to cover: alternatives and practicalities. It is incumbent upon those applying for a restriction order, and of course the Chair in considering that application, to consider whether there are less restrictive alternatives to the applications. Lengthy discussions have taken place across government and very considerable thought has been given to whether there were practical alternatives that could reduce the risk to the individuals in question and to national security. Our conclusion, with regret, is that there are not. To state the obvious, names cannot be adjusted. We considered whether there would be a method of providing names to core participants only, whether in hard or soft copy, perhaps with the protection of some sort of confidentiality ring. As explained in paras.34 to 37 of the open section of the application (tab 20), and paras.13 to 15 of the Government's response to the note of CTI (tab 10), unfortunately, this did not offer a safe and sensible solution. The risk of inadvertent disclosure was high and it would put those known to be in possession of sensitive material at increased risk of being targeted by Russia. That same increased risk applied to the possibility of inspection by CPs of hard copy documents at inquiry premises, as is explained in paras.16 to 17 of the government's response. As a result, the government assesses that there are no lesser means other than a restriction order that may be available to avoid or reduce the risk of harm or damage. Any other such means would not avoid or sufficiently reduce the risks.

The family, this morning, set out a proposal and I will leave it to them to set that proposal out to you, sir, save to say this: we will take instructions on that point. But I am keen not to raise any expectations. As I have said, much thought has been given to the alternatives, and the risks described are real.

The joint note of the Metropolitan Police and Thames Valley Police, at para.16 (tab 8), proposes an informal process whereby CPs may make reasoned requests for access to a specific name, whereupon Operation Verbasco can give proper consideration to whether the access can be facilitated without the individual needing to make an application to the Chair.

The Times Newspapers Limited have inquired whether the government might agree to a similar arrangement. May I suggest that my learned friend Mr Beer first sets out exactly what is proposed. For example, does this proposal need to be reflected in any restriction order itself; and, if not, how can it be given a practical effect without breaching any restriction order made by the inquiry? Once that has been clarified by Mr Beer, I will endeavour to set out the government's view in reply.

We recognise, too, the point raised by Mr O'Connor at the outset of this hearing regarding the example of somebody whose name, whilst redacted, could be easily identified on the face of document, the example given using Boris Johnson. In due course, this will need to be considered in context and with examples of documents to consider it fully, but, in my submission, where the identity is obvious from the context of a document, it should be covered by this order.

LORD HUGHES: Because? Saying that the identity is obvious from the context, at least in this context, means, does it not, saying: "Whether it is redacted or not makes no difference; it is in the public domain"?

MS WOLFE: No, it does not mean that.

LORD HUGHES: Does it not?

MS WOLFE: It means that it can be pieced together from different parts of disclosure or from a single document----

LORD HUGHES: Oh, well, that might be different.

MS WOLFE: --such that it could be identified. It may, of course, apply to those in the public domain, and that is something that, as I have said, we have already accepted that further applications will need to cover those who have been publicly named.

LORD HUGHES: In which event, if I were to make the order that you are asking for, they should be excluded, should they?

MS WOLFE: Yes. Sir, I was not going to say anything more about the public names given what I said at the outset, that the government has accepted the points raised by CTI, unless there is anything I can say that would assist you on that point further.

Which just leaves me to say this: as to practicalities, we welcomed counsel to the inquiry's proposal at para.27(g) their submissions of ciphering a core list of individuals. We accepted that in our note at (tab 9) at para.8. The use of such a list during the initial redaction process should be much more efficient than the time-consuming retrospective application of ciphers to redacted names. That redaction ciphering process should take place following disclosure to the ILT and to enable the ILT to have as much unredacted information as possible to be able to identify the names of relevant individuals.

LORD HUGHES: Sorry, just take it slowly for me, Ms Wolfe. What is the sequence of events that you propose?

MS WOLFE: The sequence of events is that documents be provided to the ILT with the names appearing on them.

LORD HUGHES: That is going to happen in any event, is it not?

MS WOLFE: Indeed.

LORD HUGHES: Yes.

MS WOLFE: That the ILT compile a core list of names with ciphers.

LORD HUGHES: Yes.

MS WOLFE: And that those ciphers be applied at the redaction stage before documents are disclosed to any other core participants.

LORD HUGHES: Got it. Right. Yes, thank you.

MS WOLFE: Sir, as I have already touched on, we have made this application for the order to last indefinitely under the provisions of s.20(5), but, of course, as you know, you may vary or revoke the order in due course. As we say at para.41 of the open section of the application, if a restriction order is made, we respectfully invite the Chair to keep it under review and if it becomes apparent that an individual or category of individuals could safely be named, then the restriction could, and should, be varied.

LORD HUGHES: Yes, but that is the wrong way round, you see, is it not? What is the justification -- what is the case, in a sentence or two, for saying that every member, everybody who has worked for (including contractors) to the central government, in any capacity, would be at the risks that you have adverted to?

MS WOLFE: The case is this: it is too early for us to identify all the individual concerned and to be able to assess whether or not they might have access to the sort of knowledge that would put them at risk, given the definition that has been provided in the note that was provided by the government in response to CTI's questions. So, the risk focuses on those who have access to information or might be perceived to have access to information. We are not yet able to identify everybody who falls into those categories to identify on which side of the line they fall, but the risks in this case are very significant.

LORD HUGHES: When did this process start, Ms Wolfe?

MS WOLFE: It started a long time ago, sir, but this is a very difficult process and it is one that has to be conducted with the utmost care because the priority must be, in my submission, the protection of individuals and of national security.

LORD HUGHES: Yes, I see. Well, thank you. I understand that.

MS WOLFE: Unless I can be of a further assistance?

LORD HUGHES: No, thank you very much indeed. Mr Beer, you have a similar application.

MR BEER: Yes, I do. I hope to be shorter than Ms Wolfe because we, save where I am may identify otherwise, agree and adopt the submission that she has made, in particular as to the law.

Operation Verbasco makes an application for a restriction order in respect of the names of counter-terrorism police staff. I will revert in a moment what that phrase means.

LORD HUGHES: Yes.

MR BEER: But it means counter-terrorism police officers and counter-terrorism police staff, save for those who have been avowed by counter-terrorism policing. The terms of our application are in para.5 of the document (tab 23).

LORD HUGHES: Yes.

MR BEER: If the application is granted, the effect will be that those CTP staff (as I am calling them) will be given unique ciphers in the inquiry proceedings.

LORD HUGHES: Yes.

MR BEER: Although your counsel raised in their submissions deferring consideration of this issue until after it was known whether any other individuals made a like application, we

understand that there are important reasons for the inquiry to confront the issue now and, therefore, that is why you have proposed that it is proceeded with now. I would, therefore, propose to address three matters: firstly, to introduce the basis of the application; secondly, briefly to address a small number of legal issues; and then, thirdly, to address some of the points that have been made by the family, by Wiltshire Council and by Wiltshire Police.

Sir, the basis of application, you will know that we filed the application in accordance with your directions, so it is an in-principle application. It consisted of an open part and a closed part in accordance with your inquiry's protocol. The open part consisted of the application and submissions in support, a damage assessment and a sample redacted witness statement showing prototype ciphering. I can confirm that all of those three elements Operation Verbasco is content should be made public and we have attempted through that, in our supplemental note, to put as much as the application on the open side as is possible.

You know that there is a closed part, consisting of closed submissions, a closed damage assessment and a closed witness statement of the Assistant Commissioner of Special Operations, Mr Matt Jukes. It is unavoidable, of course, that the substance of the application, which is set out in the closed documents, may itself only be addressed orally in a closed hearing. We all know that you will make our application and that of HMG the subject of appropriately close scrutiny in that forum. That is essentially for the principal request, as we see it, made by the family. Their submissions amount to: "You must subject this application to close scrutiny."

It is said in a number of places in the submissions that the applications made by both the government and the Operation Verbasco, are broad. A number of epithets have been used to describe the breadth of the application. "Extremely wide-ranging" is your counsel's submission, "exceptionally broad" in the family's words, and, repeating what your counsel said back to you, Wiltshire Council say that they are "exceptionally wide-ranging". We agree, sir, that the application is broad in the sense that it relates to a cohort of people that is large in number. But that is because the national security reason that underlies our application applies to a large cohort of people, not that the application made by counter-terrorism policing is wide-ranging or broad in its scope. That is because our application is not an application for all police officers.

LORD HUGHES: no.

MR BEER: It is all counter-terrorism police officers and staff and, therefore, those who have or had access to secret or top-secret material by reason of THE vetting that they enjoyed. Therefore, in this sense, it is different from the application by HMG. There is no equivalent in our application of the Job Centre employee or the TA reservist.

It is also said that this is not an application that has been made in our other public inquiries or large inquests, prompting the use of the words "unique" or "unprecedented".

LORD HUGHES: Mm.

MR BEER: However, that is simply a reflection of the exceptional and incomparable circumstances which underlie the application. As I said before lunch, they do require a paradigm shift in thinking and approach. Firstly, the underlying subject matter of the inquiry involves the attempted assassination of an agent by a hostile foreign state, using a chemical weapon, a military grade nerve agent, on UK soil, in a cathedral city in the south of England. Second, the inquiry requires investigation, by its terms of reference and its provisional scope, into responsibility for the attempted assassination, including the involvement of Messrs Petrov, Boshirov and Sergeev, the source of the Novichok and Russian state responsibility for it. Thirdly, the geopolitical political landscape in which this inquiry is being held, includes, as you have heard, the devotion of disproportionately large and powerful resources by Russia to its intelligence services in circumstances where Russia considers the UK to be one of its top intelligence targets and a key adversary; and it has proven recent intent and capability to carry out attacks. That is not a feature or a collection of features that has been seen in the past.

In terms of the law, with your permission I should do this briefly----

LORD HUGHES: Yes.

MR BEER: --because, as I say, I have adopted the submissions made by Ms Wolfe on behalf of HMG because we set out at some length in writing the legal basis of our application. Because nobody has disagreed with the legal principles that we set out in writing and because your counsel have said that those submissions are useful and they do not envisage significant disagreement with them.

But the only points I make would be these. The first is the statutory basis on which the application is made. It is made under both s.19(3)(a) and (b). For our part, we also do not consider there to be any material difference, that no different approach is required to be

taken between the determination of the application under s.19(3)(a) on the grounds that the rule of law concerning PII required the order to be made, or the determination of the application under s.19(3)(b) on the grounds that the public interest requires it. We agree with what Ms Wolfe said as to the correct approach being set out by the now Chief Coroner in the Grainger Inquiry ruling to which you were taken.

There is, in reality, no because of the PII point: ie. if our application is well-founded and if an order is necessary in the public interest under s.19(3)(b), then the order will also be required by a rule of law (namely PII) to s.19(3)(a).

We also respectfully agree with HMG that the application should be considered by reference to the four questions with which you will be familiar on a PII application, namely: first, is there a public interest in bringing the material, hear the names of CTP staff which appear in a range of documents, into the public domain; secondly, would such disclosure of names bring about a real risk of serious harm to an important public interest (and, if so, which public interest); thirdly, whether that real risk of serious harm can be protected by other means or more limited disclosure; and, fourth, if such alternatives are insufficient, where does the public interest lie?

Those four questions, which I have adapted to the circumstances of a disclosure of names application, are in many of the authorities.

LORD HUGHES: Yes.

MR BEER: But just for your note, sir, they are conveniently set out as headings in para.34 of the judgment of the Divisional Court in the *Binyam Mohamed* case (tab 2 Authorities bundle). There is no need to turn it up.

LORD HUGHES: That is Lord Neuberger, is it? Actually, it is probably Lord Judge there.

MR BEER: No, in fact it is not. It is Lord Justice Thomas.

LORD HUGHES: Oh, sorry, in the Divisional Court.

MR BEER: In the Divisional Court.

LORD HUGHES: Yes.

MR BEER: It is Lord Justice Thomas (as he then was) giving the judgment of the court consisting of him and Mr Justice Lloyd-Jones (as he then was).

LORD HUGHES: That is right, yes.

MR BEER: They are very conveniently set out there as italicised cross-headings.

LORD HUGHES: Yes, of course.

MR BEER: Although we both cross-refer (us and HMG) to the law of public interest immunity, there is, however, an important difference and it is a slightly different difference to the one identified so far by Ms Wolfe. This is not like a PII balancing exercise in relation to documents in an inquest or in civil proceedings or in criminal proceedings, where the effect of a successful claim to PII would be to rule the documents out of consideration by the tribunal of fact: they are put in a box on the shelf and nobody gets to see or use them again. This is different in three ways. Firstly, here, we are not considering the nondisclosure of documents. We are considering the individual ciphering of witnesses' or individuals' names. What those individuals did or did not do will still be there for all to see. So, the facts remain on the open paperwork. That is very different from a normal case. The second difference, as I have said, this is not about the anonymity of witnesses; this is about the disclosure of documents to core participants. The anonymity of witnesses will be dealt with separately by a different process. Then, thirdly, there is the point that Ms Wolfe made, that here there is a facility for closed hearings. And so, to the extent that a name is necessary or the examination of the identity of a person is necessary, that can be accommodated within a closed hearing; and in any event your security-cleared and DV counsel will be able to see the identities of individuals who are ciphered in the documents.

My second point under the law concerns the very first question in the four-step approach that is required to be taken: what is the public interest in the disclosure of names to core participants of the names of counter-terrorism police staff? It seems that there are possibly two public interests. Firstly, there is the application of the open justice principle----

LORD HUGHES: Yes.

MR BEER: -- and I will say a little bit more about that in a moment, reflected in the terms of s.18(1) of the 2005 Act. In the present context, that means public confidence in the conduct of the inquiry, its fairness and its independence. Those things might be maintained or enhanced if the names of CTP staff involved in or connected to the investigation in some way are disclosed to all core participants and then publicly in the course of inquiry's hearing. Then, secondly, the more private interests of the family, in particular, but also of other core participants, in being able for themselves to identify in a document a person by their name. They will be able to see that it was DC John Smith who did something rather than V0001 that did something.

I just want to make submissions on how, in the context of this application, we submit that you should view the limited reach of the open justice principle. Some may say that that is heresy to say out loud in any court or tribunal.

LORD HUGHES: (Soft laughter)

MR BEER: We, of course, realise the importance of the open justice principle, but its application must be fact specific rather than it being a flag which is raised requiring the court to salute it. The context here is not -- emphatically not -- witness anonymity. In this regard, we would urge some caution, with respect, in what is said in the last sentence of para.19 of the family's submissions (tab 6) -- no need to turn them up now -- and the citation of the authorities in the footnote that is given there. The cases invoking the open justice principle involve identifying or not the name of the defendant in criminal proceedings, or a claimant bringing civil proceedings seeking to protect their privacy because they have been embroiled in some controversy or other, or of a witness who is giving evidence in proceedings, not, as here, simply a person whose identity may be relevant or not, who happens to be mentioned in a document that is being disclosed to the participants in these proceedings.

So, it is for that reason why I say the application of the open justice principle needs to be attenuated somewhat in the context of this application.

LORD HUGHES: Yes, one other thing the open justice principle achieves is to provide to other parties access to information which they might think was relevant, even if other people do not, I suppose.

MR BEER: Yes. That facility, one of the reasons why we are in an inquiry----

LORD HUGHES: And you say ciphering goes to that.

MR BEER: Well, firstly, ciphering does that and one of the features of our application is that we have proposed ciphering of all----

LORD HUGHES: Yes, I know.

MR BEER: --who are applicants or people over whom this application is made.

LORD HUGHES: Yes.

ME BEER: That was one of its core features to try and mitigate the effect of the application. But, also, these are special proceedings in which you have DV counsel and solicitors who are able to see all of the names that we are speaking about. So, it is not completely closed.

LORD HUGHES: No.

MR BEER: It is said that there is a class claim being made by Operation Verbasco and, in reliance on *Wiley*, it is said that such claims are rarely granted and would require compelling evidence. Here, the contrast between class claims and contents claims in reference to documents may not be of the first importance here because they do not read across aptly to applications for a restriction order of this kind.

In this case, we submit that the anonymity in the documents of each and every person within the scope of the application is justified on the basis that the reasons are common to them all because of the substantial harm that disclosure would cause to the public interest. That is consistent with the *Wiley* principle that a restriction order should be made in the minimum terms necessary.

It is fair to say that conducting the balancing exercise at this stage may present the inquiry with slight difficulties because the relevance of the names over which the application relates, the relevance of those names is not yet known and, as a suggestion, we would submit that you should approach the balancing exercise, conduct the balancing exercise on the basis that the names of the CTP staff may or may not be relevant and, therefore, for the purposes of the application, the most that can be said is that they might possibly be relevant; but that, if they are----

LORD HUGHES: Well, the most that can be said is: "We just don't know".

MR BEER: Yes, and the blunt answer to that is because, for reasons that we do not criticise, the application has been required to be made at this stage----

LORD HUGHES: Yes.

MR BEER: --and not later in the process.

LORD HUGHES: Very well.

MR BEER: Which we completely understand, but it is a function of that.

LORD HUGHES: Yes.

MR BEER: But also in this regard, the relevance issue, you should keep well in mind that is there is a route two. There is a separate process for those people who are going to be so relevant that they become witnesses, ie. individualised applications.

LORD HUGHES: Yes.

MR BEER: Can I turn to some of the points raised by others? The breadth and the clarity of application that we have made: the boundaries of the application have been carefully considered by Operation Verbasco and have been fixed no more widely than is necessary.

CTP staff includes all police officers and police staff who fit the following categories and that is, essentially, reading from our note (tab 8) at para.4:

> "a. Those who worked in CTP at the time of their involvement in events relevant to the Inquiry, and continue to do so; and
>
> b. Those who worked in CTP at the time of their involvement in events relevant to the Inquiry, and who no longer do so (either because they now undertake a role elsewhere or because they have retired)."

As I have said, this is not an application in respect of CTP staff who will be called as witnesses. We presently do not know who they are but accept that, if they are called as witnesses, then individualised and different considerations may apply.

Turning to names linked in open source material to these events, the number of officers who have been named in open source material in connection with this investigation is very few indeed. The overwhelming majority have not been so named. Those that have, for the very most part, are very likely to be witnesses in any event. But to the extent that they are not, we, like HMG, accept that a separate application ought to be made in respect of them.

LORD HUGHES: Yes.

MR BEER: So, the exemption that you discussed earlier with Ms Wolfe earlier applies to us too.

LORD HUGHES: Right.

MR BEER: In terms of ciphering, can we make one point clear: we have not proposed, certainly did not intend to propose, that the Inquiry Legal Team should be prevented from having documents which name those who are the subject of the restriction order. We envisage that we would apply ciphers to documents to render them suitable for disclosure to core participants to help with pragmatic and resourcing issues, ie. provide a marked-up copy in V or T (?), rather than that be the only copy that your team received.

LORD HUGHES: So, the proposal is that the counsel for the inquiry get, as it were, two copies of relevant documents, one ciphered and one not.

MR BEER: Yes.

LORD HUGHES: Got it.

MR BEER: The non-ciphered one would perhaps indicate with a transparent mark where the cipher would be applied.

LORD HUGHES: Yes.

MR BEER: It has been proposed by Wiltshire Council, I think, that they apply some ciphers to documents. For our part, we think the only workable system is for Operation Verbasco to apply ciphers for the names of its officers. Because, otherwise, it would require the supply of a cipher list to Wiltshire Council and having such a cipher list would be subject to such strict handling conditions, including vetting requirements, that they probably could not meet.

As I say, our intention was that everyone should be ciphered. The proposal by your counsel appeared in paper to be that, for HMG, they adopt the core list approach with everyone else being simply cut out. That was on pragmatic and resourcing grounds. In oral submissions this morning think Mr O'Connor included us in that as well and mentioned Operation Verbasco. If that is your team's wish, then we will certainly comply.

LORD HUGHES: I am not so sure it is a question of wish, Mr Beer, unless I have misunderstood it. It is a question of best solution to an otherwise over-time-consuming task. But you are geared up to do it, are you?

MR BEER: Yes, and we saw it not as a compelling reason to grant this application----

LORD HUGHES: No.

MR BEER: --but a modest supporting reason that might assist you in granting our application. That is why we can do it and we will.

LORD HUGHES: All right. Thank you.

MR BEER: The last point is in relation to Wiltshire Police's conundrum.

LORD HUGHES: Yes.

MR BEER: I should say that we have supplied the open and the closed damage assessment to Wiltshire Police and have confirmed to them that if they wish to read and use the closed damage assessment, we are happy to facilitate that in future: ie. to consider for themselves whether any of their staff, on the basis of the closed damage assessment, wished to make an application. It is probably the case that they have not advanced that to date because the conditions under which they were shown the closed damage assessment first time round did not permit them to do so.

LORD HUGHES: Right. So, they would need time to consider that, effectively?

MR BEER: Yes. But the point I make is that the conundrum, as I called it, has at least that potential solution to it by facilitating access to the close damage assessment prepared by CTP; and they will be able to see the extent to which it is being a CTP officer that materially enhances the risk that we seek to protect against.

LORD HUGHES: Yes.

MR BEER: Sir, I am conscious of the time. Those are the submissions that I would propose to make in open, unless I can assist you or seek to assist you further.

LORD HUGHES: No, I do not think so at the moment, Mr Beer. Thank you very much indeed. I am grateful. Mr Straw, I think we come to you.

MR STRAW: Thank you, sir. These submissions are made on behalf of the family and Mr Rowley. I do not propose to repeat anything that is already within our written submissions, but just to cover three topics, if I may: the first, anonymity; the second, and this is our key concern, the government's proposals as to ciphers; and, thirdly, alternative options.

So, anonymity, we readily accept that on one side of the balance there may be compelling evidence to justify the applications for anonymity that have been made. Because we have not seen the closed material, we are not in a position to know whether the applications are justified or not; and, therefore, are not in a position either to support or oppose the applications.

LORD HUGHES: Well, even without the closed material, do you doubt the proposition that is advanced which is that in a case where the possible activity of a hostile state with enormous cyber resources is involved, those -- let's take for example the counter-terrorism police in Mr Beer's application -- to provide a ready-made directory of those to potential hostile actors would be to court an unacceptable risk?

MR STRAW: We do not doubt that at all and accept that there is already considerable evidence in public about the risk posed by Russia in general; and also, more specifically, to inquiries such as this.

LORD HUGHES: All right.

MR STRAW: But all we can do, though, without knowledge of the closed material is simply to invite you, sir, to closely scrutinise it and to ensure that any justification that there is extends to everyone within this very broad class.

LORD HUGHES: Thank you.

MR STRAW: Looking, however, at the other side of the picture, so the factors that weigh against the anonymity or the restriction order applications being granted, we can make submissions about those and I would like to draw attention to a few points, if I may. These are really to supplement what we have already put in our written submissions.

Firstly, Mr Beer suggested that these applications concern only the question of what is disclosed to core participants. We respectfully disagree. As we understand it, the orders would be for indefinite restriction, subject, of course, to changes being made later, and, therefore, would produce anonymity for documents that go to the public----

LORD HUGHES: Yes.

MR STRAW: --as well as the court.

LORD HUGHES: Yes, it would.

MR STRAW: Continuing with the list of factors weighing in the other side of the balance, so against the anonymity applications, open justice is of fundamental importance and we respectfully submit that should be the starting point for these applications. More specifically, some of the reasons why disclosure of a name is important were set out by Lord Roger in his speech in *Guardian News and Media* (paras.63 to 69), which famously began: "What is in a name?", and some, not all, but some of those apply here. For example, disclosing name enables the public to understand the evidence. It enables the public to link names that may be of interest to them to other information that they have. It garners public confidence in the process. So, it is correct that counsel to the inquiry will be performing an important role in closed and we, of course, trust you, sir, and counsel to the inquiry to do their very best to do that. But the central thread that runs through the open justice case law is that it is not enough to pat the public on the head and say: "You can trust us to do this." It is necessary to reveal the evidence so that the public themselves can view it and have confidence and understanding of the justice system.

LORD HUGHES: And, conversely, not to present the public with ostentatious gaps in the material.

MR STRAW: Yes.

LORD HUGHES: Yes.

MR STRAW: The last point then on this side of the balance is about the effectiveness of the inquiry. This is an unusual case in which there have been a number of investigations that are not performed by the state, for example, (inaudible due to coughing) media organisations who have conducted pretty substantial investigations. And it may be that if names are revealed, it will enable those investigations to be linked up with this one and for the inquiry to be more effective as a result.

There are just two issues on the law in the Operation Verbasco submissions that we respectfully do not agree with. The first, the submissions rely on the first Lord Saville case which was one of the *Bloody Sunday* cases----

LORD HUGHES: It was.

MR STRAW: --in support of the submission that anonymity is of no great significance to the families. Now, that was simply said in respect of the particular facts of that case; and, specifically, the fact that anonymity was of no great significance to the families there because they already knew the names of the soldiers concerned. That case did not lay down any general principle and does not apply here.

Secondly, Operation Verbasco discussed subjective fears, so the subjective fears of officers concerned that they may be put at risk, and Operation Verbasco submit that this can be a powerful factor and may rely on the case of *Re Officer L* in the House of Lords.

LORD HUGHES: Yes.

MR STRAW: We respectfully disagree. *Re Officer L* did not support that being a powerful factor. Lord Carswell said instead that those subjective fears will have much more significance if they are objectively justified (para.14(b) and 26). So we respectfully submit that the key issue here is whether there is objective justification.

The second topic is the government's proposal on ciphers. As I understand it, the proposal is that only individuals in a core list will be given a cipher; everyone else will not. We would respectfully invite you to consider a different approach, which is that any individuals who are not relevant can be entirely redacted, but for those who are judged to be relevant ciphers should be applied.

LORD HUGHES: Yes. Well, that may or may not be different in the result.

MR STRAW: Yes.

LORD HUGHES: But, yes, I understand the point. Deal with first, or at least at some stage review after relevance has been decided upon; yes?

MR STRAW: Absolutely, sir. Yes, the practicality issue may fall away if relevance is decided upon and, in fact, it turns out that there is very much fewer named that need to be disclosed.

LORD HUGHES: Yes.

MR STRAW: Just briefly to look at the balancing exercise in terms of ciphers, we submit that redacting entirely without a cipher causes considerable harm. In particular, it means that

neither the family nor the public will in many cases be able to understand the role of the individual.

LORD HUGHES: Erm... Why is that?

MR STRAW: Well, it may help to give an example.

LORD HUGHES: Yes.

MR STRAW: One of the issues before the inquiry is likely to be whether, after Ms Sturgess was poisoned, it should have been recognised sooner that she was poisoned by Novichok----

LORD HUGHES: Yes.

MR STRAW: --or whether there was a delay in doing so. Now, that may well depend in part upon whether the emergency services who responded in those first five days had some involvement at an earlier stage: so, for example, they were copied in on an email about the Novichok attack in Salisbury or sat in on a meeting on the Novichok attack in Salisbury.

LORD HUGHES: Oh, I see. Right. Yes. Yes, well, I understand that.

MR STRAW: So, without releasing a cipher it would be impossible for us to understand whether or not they should have known----

LORD HUGHES: Or whether the same person appears in two different places; is it that basically it?

MR STRAW: Yes, that is it. So, there will be some restriction on the public's ability and the family's ability to understand the relevance of particular individuals. That, therefore, will undermine the public and family's ability to effectively participate and will limit the extent to which the inquiry can satisfy public confidence.

LORD HUGHES: Yes, perhaps.

MR STRAW: On the other side of the balance, so the factors weighing in favour of no ciphers at all, it appears to us to be just an issue of practicality and administrative convenience. Of course, we accept that that is a relevant factor, but it is of considerably less weight than national security or a risk of harm to individuals. It may be, as I have already submitted, that because it is only concerning relevant names, it may be that this actually is not a particularly important issue in terms of practicalities.

LORD HUGHES: No, but we need to confront it in principle.

MR STRAW: Yes, it needs to be confronted in principle.

Two other factors that perhaps limit the extent to that that should be given. The extent to which these factors should be given weight are, I think it is accepted by everyone that it is easier to apply ciphers now than redact and then apply ciphers later. And it is also

significant that Operation Verbasco are ciphering everyone. It is significant in part because that will mean that it is not only their----

LORD HUGHES: You see, their class the person is distinctly more limited. It is only -- I say "only" -- it is limited to counter-terrorism staff.

MR STRAW: Yes.

LORD HUGHES: So, the numbers involved are quite different, I would imagine.

MR STRAW: I say all this without knowledge of the closed material. So, we readily accept that we are not in a position to make those sorts of----

LORD HUGHES: No, but that is extremely helpful nevertheless: easier to cipher now than later. I take that point.

MR STRAW: If that is rejected and it is decided that some people who are judged to be relevant nevertheless will not be ciphered and it is only a list of core individuals who will be ciphered, for all the reasons I have already given we would respectfully invite the threshold for putting someone on the core list to be a low one. In other words, they perhaps (inaudible due to coughing) they might be relevant or they might have some significance, then their names should be on the list for individuals.

LORD HUGHES: Yes, it is not a question of the -- or is it? Is it a question of the potential significance of what somebody did or the potential significance of their identity?

MR STRAW: Yes.

LORD HUGHES: It is the latter, is it not?

MR STRAW: It is the latter, yes.

LORD HUGHES: Yes, okay.

MR STRAW: So that is the second issue. If I may turn then to the third one, which is much briefer.

LORD HUGHES: Yes.

MR STRAW: The third is an alternative option. Ms Wolfe is right that I raised this issue with her earlier this morning. It is a suggestion that we are putting forward. We are not seeking a decision at this stage, but I thought I should raise it at this stage. It is that Mr Nicholls and I both have Developed Vetting. Once disclosure is made, we would be grateful for the opportunity to put forward categories of documents which we can go into a secure premises and view those documents with the names unredacted. We would be content to comply with security measures such as leaving computers outside, not taking notes away from the room. But that main reason for raising this now is that we have instructions that we would

also agree to an undertaking not to forward any information to anyone else without being given permission to do so.

LORD HUGHES: Does that put you in a position you are satisfied you can adopt?

MR STRAW: Yes, because we have taken specific instructions about that.

LORD HUGHES: Because you have got clients to worry about, you have also got co-counsel to worry about, solicitors.

MR STRAW: Yes, and we appreciate that various difficulties are involved. But, having discussed it with the team and with our clients, we are happy to do that, if it is thought to be appropriate.

LORD HUGHES: All right.

MR STRAW: As I say, we are not seeking a decision now because it does not arise yet. But we would say that there are clearly many people involved in this who would each know at least one anonymous name. So, there would be----

LORD HUGHES: Mm.

MR STRAW: --in part because they would know their own name and also because they would know whichever colleagues who also are using anonymity. What that means is that there is already a considerable knowledge of anonymous names and we struggle to see why permitting two vetted lawyers, with those very stringent safeguards, would materially increase any risk.

LORD HUGHES: Well, thank you. I have written it down, Mr Straw. A very interesting thought.

MR STRAW: Thank you. Unless there are any further questions, those are all my submissions.

LORD HUGHES: No, thank you very much. Mr Berry.

MR BERRY: Thank you, sir. Sir, Her Majesty's Government has made an application for a restriction order over names, including HMG staff, the definition of which includes, for instance, "all military personnel and reservists". I make it clear that Wiltshire Police does not seek to gainsay HMG's application in any respect, including as to the existence of a risk for those individuals or national security, or as to the scope of the restriction order required to meet it. Nor, for good measure, does Wiltshire Pollice seek to gainsay Operation Verbasco's application in any respect.

LORD HUGHES: Right.

MR BERRY: Rather, sir, Wiltshire Police makes a request to you which is this: when HMG's application is considered in closed session, that you give careful consideration to whether any risk that you consider justifies a restriction order in respect of all HMG staff----

LORD HUGHES: Yes.

MR BERRY: --applies in a similar way to all Wiltshire Police officers and staff. We make that request----

LORD HUGHES: Sorry, it applies equally to all Wiltshire Police staff, did you say?

MR BERRY: All Wiltshire police officers and staff mentioned in documents that are going to go through the disclosure process.

LORD HUGHES: Right.

MR BERRY: We make that request because it not immediately apparent to us from the open submissions that we have seen why the type or the level of risk to a soldier identified by HMG would be materially different to the type or the level of risk to a police officer. I accept, of course, that Ms Wolfe might very well provide a compelling answer to that question in closed submissions.

LORD HUGHES: You have not limited your question to me to police officers, have you? "All staff" is what you said. Anybody who works for you?

MR BERRY: Well, police officers and police staff, because some police staff might have been involved. For instance, a police communication officer is the member of police staff.

LORD HUGHES: All right, go on.

MR BERRY: And they may well be mentioned in relevant documents.

LORD HUGHES: Right.

MR BERRY: So, with respect, we are not presently convinced that the issue can be side-stepped by deeming the names of soldiers where they appear in documents to be irrelevant, or unlikely to be irrelevant -- sorry, unlikely to be relevant at the first stage of consideration under Lord Templeman's rubric in *Wiley*. I say that for two reasons. First, HMG's application that is before you today is one made in principle to redact the names of all HMG staff regardless of whether or not their names will turn out to be relevant or not. That is based on a (inaudible) assessment of the risk of harm to all those persons. Second, the names of at least some police officers contained in the documents to be disclosed are likely to be relevant.

LORD HUGHES: Well, yes, sorry, the second one I understand. Yes. Go on.

MR BERRY: So, the issue or the disparity of the risk to police officers versus the risk to soldiers as identified by HMG will remain.

If, sir, you are minded to accede to HMG's application in the terms sought, we would, of course, be willing to make further submissions as would assist you about the position of

Wiltshire Police officers and members of staff, assuming that anything relevant from the closed session can be shared with us.

Finally, sir, with respect to Mr Beer's last point, we were given sight of Operation Verbasco's claims for damage assessment under strict handling conditions which prevented us from referring to it, but for which we are nonetheless grateful. I have to say at this stage I doubt that the chance to review it under less strict handling conditions would help resolve what has been described as the "conundrum" when it comes to this general application. That is because Operation Verbasco's application exclusively concerns counter-terrorism police officers and they are not an appropriate comparator with Wiltshire Police officers and staff, who do not have the same security clearance or perform the same sensitive roles that counter-terrorism police officers do.

LORD HUGHES: Quite.

MR BERRY: The appropriate comparator, we would say, is HMG staff, such as soldiers or reservists, who do not have high security clearance and do not perform particularly sensitive roles. That is why our submissions in writing and orally today have engaged HMG's application rather than Operation Verbasco's.

LORD HUGHES: I follow.

MR BERRY: Sir, unless I can assist further.

LORD HUGHES: No, thank you very much indeed, Mr Berry. That is helpful.

MS CLEMENT: Sir, thank you. As you know, sir, the local authority has not made any application for a restriction order. That is because the local authority is not aware of any risk of harm to any of its officers if the names of these officers who were involved in events are disclosed. But that is on the basis that the local authority has not seen the closed assessment that has been produced by the Secretary of State or (inaudible), and the local authority is not aware of factors that may create those risks.

The point that the local authority is concerned is that we may get to a situation where notes of meetings, high level meetings after the event, are being disclosed. Every single name other than those of local authority officers is going to redacted, if the government's application succeeds, and so the only names that will be disclosed will be those of local authority officers.

So, sir, I am not in a position to make any submissions about risk of harm because the local authority simply does not know. But I echo the points made by Mr Berry that when you,

sir, and your counsel team are looking at those (inaudible due to coughing), we will ensure, if there is anything that suggests that that risk of harm could apply to those local authority officers, then we would obviously be grateful to be notified of that and then can consider our position.

LORD HUGHES: You can assume that that will be done, Ms Clement, and it is an important point. Though the scenario that you suggest in which there are minutes which include only, or mostly, your officers would be relevant only if there were a risk to them, would it not?

MS CLEMENT: Sir, yes, absolutely. But I simply do not know whether there would be.

LORD HUGHES: No, no. That is a point I completely -- that point I have completely got hold of. All right. Thank you very much.

MS CLEMENT: Sir, that is all I wanted to say.

LORD HUGHES: Yes, thank you very much indeed. Does anybody else in the building want to say anything? Yes, sir, would you identify yourself first, please.

MR GARDHAM: Yes, of course. I am Duncan Gardham and I am a journalist. I am freelance but I work mainly for The Times (inaudible).

LORD HUGHES: Thank you.

MR GARDHAM: I know our lawyers have submitted some documents to the inquiry, but they wanted to point out they have reserved their position----

LORD HUGHES: Yes.

MR GARDHAM: --and may want to submit further material later. Obviously, these documents are not going to immediately come our way. They are documents to be disclosed to core participants. But this is the first stage before documents would get presented in public.

LORD HUGHES: That is right.

MR GARDHAM: And we know as a result of these inquiries that these documents do form a really key important part of any inquiry. They are quite often quoted as the inquiry goes along and I think we would be put in a difficult position if every time we wanted to name somebody from a document, we had to make an application to have the order varied. Could be application could be resisted, etc, etc. I would suggest that we are getting the cart before the horse here in that if names turn out to be sensitive and documents want to be disclosed, the usual format would be to make a restriction application at that stage, with plenty of time to object to it, and the inquiry and then any interested core participants could make objections to it.

So, my submission would be that disclosing these documents to people within this room is of minimal risk and that when it comes to disclosing it on a public level, there is another stage to go through. Perhaps it would be better to do it in the normal way rather than trying to take out all the names beforehand.

It has been suggested that this application is unique. It is not unique. We have seen the same application in the Streatham Inquest in which all the police officers were given anonymity, claiming that they were at risk from terrorists. The same application was made in the Post Office Inquiry. I am not quite clear why they needed protection but they made the application anyway. On a day-to-day basis, up and down the country, counter-terrorism officers give evidence by name in court and are named in public documents and in publications. Indeed, quite a number gave evidence at the Manchester Arena Inquiry only a few months ago.

So, Mr Beer kindly made reference to this floating the flag of open justice with slightly turning on its head the usual reference to saluting the national security flag. But open justice is important and it is important, it is being said, the importance to public confidence, also to innumerable conspiracy theories which will no doubt have already sprung around this inquiry and of which the inquiry's job is to try and clear up some of those. But, importantly, and if we are really asking what is in a name in the way that Lord Rogers quoted it, and he had various examples of why it might be important for the public, but one of the really key elements is that if that individual has given erroneous information or evidence in the past that has turned out not to be true, it is important that people are given their proper names and, indeed, everybody in this court will use their proper names: the Chairman, the Counsel to the Inquiry and, indeed, myself as a reporter.

Now, we could all argue that we will subsequently be bombarded by Russian cyber attempts and, indeed, were they able to get hold of my phone, they would probably find it quite useful. But we all take precautions. Indeed, the Director General of MI5 gave a speech to industry sources last week in which he was stressing the importance of people taking proper measures to ensure that they are not vulnerable to these kinds of attacks and these are individuals who are as much in the line of sight of the Russians as anybody in this court because they have real secrets that the Russians and Chinese might want to get hold of. So,

this is standard procedure and one would hope that all the individuals in this position would already have taken proper procedures to make sure that they are not going to be at risk.

So, I think it is important that we acknowledge that these sorts of things have been going on for decades, if not centuries. Spies have been trying to get hold of information, individuals have spoken openly and spies have been prosecuted in open courts, and that we should not allow ourselves to get caught up in the fact that this is a public inquiry or that technology has advanced to allow us to allow officials to redact their names from proceedings in which it really is important that their names are put out there.

I would apply the same to every journalist who writes a story. Their name must be at the top of story so that people know who they are. Thank you.

LORD HUGHES: Thank you very much, Mr Gardham. Ms Wolfe, do you want to come back? No. Mr Beer?

MR O'CONNOR: Obviously, I was hoping to make----

LORD HUGHES: I am coming to you, Mr O'Connor. Wait for it. Do you want to come back on anything that has been said since you were on your feet?

MR BEER: Just two short matters. The first is that Mr Straw submitted that, or your team rather, should adopt the approach of ciphering relevant names and redacting by blacking out the names of those who can be said to be irrelevant. We rather agree. Indeed, that was the suggestion that we made at the beginning. The difficulty with it was pointed out by Mr Straw in his submissions (tab 6) at para.22.

LORD HUGHES: Yes.

MR BEER: At 22(b).

LORD HUGHES: Yes.

MR BEER: The last line:

> "In line with Counsel to the Inquiry, the Family do not agree that it can be said at this stage that names are of no relevance to the Inquiry."

LORD HUGHES: Well, it depends who they are, does it not?

MR BEER: Pardon?

LORD HUGHES: It depends what they did.

MR BEER: Yes, exactly. If there has been a change of position and it can be said that classes of individuals or on an individualised basis people are irrelevant and therefore could be

blacked out rather than ciphered, we rather agree that your team pushed back on that previously, saying it was too lengthy a process.

LORD HUGHES: Yes.

MR BEER: Mr Straw, I think, rather agreed. If there has been movement on that, we resurrect our submission. That is a very sensible approach because it obviously brings in exactly what you are trying to achieve in the disclosure exercise (looking at relevance first) rather than conducting a whole exercise on the basis of information that might be irrelevant.

The second thing is two points of information in relation to what Mr Gardham has just said. In the Streatham Inquest there were individualised anonymity applications for firearms officers and counter-terrorism police officers.

LORD HUGHES: Who were witnesses or who were named in documents?

MR BEER: Witnesses.

LORD HUGHES: Witnesses.

MR BEER: In the Post Office Inquiry, the Department of Business, Enterprise and Industrial Strategy applied for the redaction of all names of all civil servants below the rank of Senior Civil Servant on the basis that as a class they were irrelevant. Sir Wyn Williams last week disagreed and declined that application.

LORD HUGHES: That may be some comfort to Mr Gardham but it is no surprise to me. Yes, thank you very much. Yes, Mr O'Connor.

MR O'CONNOR: Sir, this is in response from me. Unless I can assist you, I am not going to say anything about the law. As I hope we have correctly anticipated, the law is important but I do not think that is controversial.

Next, may I come straight to the merits of these applications. Obviously, ultimately, this will be a matter for you and it will be a matter for you having heard closed submissions and seen, indeed, and talked through the closed written material. As things stand on the basis of the open documentation, our submission is that the combined HMG/Operation Verbasco harm assessment that you have seen in their open versions are capable of supporting restriction orders of the type sought in respect of names of individuals, let me put it this way, who "could reasonably be expected to have knowledge or access useful to Russia".

LORD HUGHES: Wait a moment. Knowledge or access?

MR O'CONNOR: Yes. Sir, those are words taken from an HMG document which I will come to in a moment, if I may.

LORD HUGHES: Mm.

MR O'CONNOR: Sir, you may think that is not to take matters very further forward and is broadly similar to the point you put to Mr Straw a few moments ago. But what we mean to say is that our submission on the basis we opened to you is that there is certainly material here on which you could grant restriction orders of this nature.

Moving on, our submission, as I think has already been anticipated by the other submissions that you have heard, is that the difficult issues here arise more at the edges of the application. We would make three points in particular which I think, as it were, are anticipating the earlier submissions. First of all, so far as names of those already publicly linked, whether formally avowed or not formally avowed, we say should be excluded from this order. As I have already indicated, that has, I think, been accepted both by Operation Verbasco and HMG, but I do add two further points. One is that when the order comes to be drawn, it will need expressly to exclude such people.

LORD HUGHES: Yes.

MR O'CONNOR: That is the first point. The second point is, of course, there will need to be some effort of ascertaining who those people are----

LORD HUGHES: Quite.

MR O'CONNOR: --so that we know whose names are not to be redacted. That was a matter that was canvassed a little in the written document and I will invite you, sir, to direct HMG and Operation Verbasco to provide a list of those individuals, so far as they are aware. Obviously, the point has been made by HMG that it would be a great task, and so on. It seems to us this calls for a proportionate exercise. There will be some names of whom they are aware have been made public----

LORD HUGHES: Yes.

MR O'CONNOR: --and really that is what we are asking for, at least in the first instance. I think Operation Verbasco say they have already prepared a document.

LORD HUGHES: Right.

MR O'CONNOR: So that is all I say about that first point.

The second point again I mentioned earlier is the question of the names where the context of document makes it clear who the individual is. If there is any doubt about exactly what I am describing, I will be able to say a little bit more about this in closed and perhaps show you an example. But it will be our submission that, one way or another, that category must

also be excluded from any order that you make and that again will have to be made clear on the face of the order.

LORD HUGHES: Hm-mm.

MR O'CONNOR: Sir, I then turn to the third category about which there is a little more to say. It relates to the conundrum raised by Mr Berry in his submissions and the category of individuals, who I rather inelegantly described as low-level employees earlier, I fear. I certainly intended no disrespect to the important job they do.

Sir, it seems to us that this issue which is being debated raises at least two really quite different problems that need to be confronted. The first is the possibility that the harm that is the basis, or the potential harm that is the basis of the HMG application in fact points towards the harm to others, whether that be Wiltshire Police officers or staff, or, as Ms Clement identified, Wiltshire Council staff, or, for that matter, perhaps others in some broader categories. That is a concern and that is something that the inquiry itself, as well as HMG, needs to consider and it may be that that is a matter we can take further in the closed session. I certainly endorse Mr Berry's point that it is probably not going to be answered by reference to the Operation Verbasco risk assessment which focuses, as it does, on counter-terrorism police.

LORD HUGHES: Yes, yes.

MR O'CONNOR: But that clearly, sir, is one issue that is raised which we would need to consider further.

But there is a completely separate point which also emerges from this, or perhaps emerges from the conundrum, which is the possibility that in fact there is no harm to Wiltshire Police officers, Wiltshire Council officers; and, moreover, there is no harm to some people who, at the moment, fall within the scope of the HMG application. Sir, as I understand it, in answer to my submissions, this may be an inquiry, something slightly different to our adversarial proceedings, but, at the end of day, this is an application made by HMG and HMG must satisfy you that the restriction order, in the terms they are seeking, is justified if you are to make it.

It is in this context -- I will come back to those words that I used a few moments ago about individuals who could reasonably be expected to have knowledge or access useful to

Russia. If I can ask to you turn to tab 10 of the bundle, this is the note prepared by HMG in response to our note following the application notice.

LORD HUGHES: Hm-mm.

MR O'CONNOR: If I can ask to you turn to para.11, which is part of the section of that document addressing this very issue. You will see at the start, there, this is where I took those words from:

> "HMG assess that those individuals who could not reasonably be expected to have knowledge or access useful to Russia are less likely to be targeted than those that do. Therefore, for example, neighbours of Charlie Rowley or of the Skripals, interviewed as part of house-to-house inquiries and who had little of evidential value to say, or those officers that conducted the interviews, are less likely to be targeted. Whereas HMG staff or CTP officers that work with, or have worked with, [the intelligence agencies] on policy and/or investigations linked to Russians actors are more likely to be targeted."

Sir, you may agree that that paragraph is useful up to a point, but it does not assist very much with understanding where the cut-off of risk is between those two rather distant extremes.

LORD HUGHES: Well, there is a spectrum between them and it is the in between that matters.

MR O'CONNOR: Yes. Sir, the question you will need to ask yourself, given what is certainly clear is that, as it is drafted, the HMG application does certainly cover the TA reservists, the lady in the Job Centre and other examples that we could give, is whether they have satisfied you that those individuals do use face this risk, and, to use the term, "could they reasonably be expected to have knowledge or useful access to Russia" if not.

LORD HUGHES: Or, I suppose, could they be treated as part of a cohort, a group, of which a directory might be of considerable interest to hostile actors?

MR O'CONNOR: Sir, that may be one way of looking at it and I anticipate that when you look at the closed material -- obviously, I am not going to say anything about its content -- it may well be that the analysis becomes more sophisticated still.

LORD HUGHES: Maybe.

MR O'CONNOR: But ultimately, you are still left with the same core question----

LORD HUGHES: Yes.

MR O'CONNOR: --which is that have you been satisfied that there is enough risk, if one comes back to -- I think we are all agreed that the *Wiley* values is a close but not exact parallel -- is

there enough on the risk side of the balance to satisfy you that the prejudice, the impact on open justice is satisfied, is justified.

LORD HUGHES: Well, has the applicant (in this case the government) satisfied me of the risk to the whole group for whom it seeks the order?

MR O'CONNOR: Yes. One can quite see, looking back at that parallel, that they may find it rather easy to satisfy you for individuals who have worked closely with the intelligence services on matters relating to Russia, but that does not answer the question about the TA reservists, and so on.

LORD HUGHES: Yes.

MR O'CONNOR: If they have not satisfied you on those points, then they should not be included in the restriction order. It may be not easy to formulate the right language to reflect that, but that is something that we will have to do.

In my submission, it will also be of some significance, if that is the view you reach, namely that those -- I am trying to avoid using the language of "lower-level" actors, but there you are, I have just used it. But if you take the view that that category of individual does not attract this risk, then that would, of course, also be of some value to Wiltshire Police/Wiltshire Council in understanding the risk that they may or may not face.

So, sir, clearly, this is matter that I imagine we will take up again in the closed hearing, but, in our submission, there is no way round it. Perhaps I should also say this. I entirely accept Ms Wolfe's suggestion that, as we go forward, we may find that this is a problem that does not arise very much on the documents. But that is not an answer to this core question of whether you should grant the restriction order in broad terms or less broad terms. That is the question you have to answer, we would submit.

LORD HUGHES: If you were right about it, and I have not made my mind up, Mr O'Connor, but you were right about that, as it happens, the necessity for yet another hearing in closed would give Ms Wolfe the opportunity to see whether she can formulate any definition which separates out the relevant people. But all that depends on whether you are right or not. Yes.

MR O'CONNOR: Sir, that is all I wanted to say about those categories.

Can I come on to the question of ciphering? It may be that, although we have all perhaps used slightly different terminology and come at this question from a slightly different angle,

there is less between us than it might appear. We maintain the approach we have suggested in our submissions, namely that, first of all, it will not be proportionate or possible to cipher every single name; and, secondly, that what should be the approach that should be adopted is to produce what we have described as a core list of names to be ciphered and to cipher those names only.

Can I add one or two riders to that? The first is that, on reflection, I can see that the use of the word "core" might be misleading. If I look back at my submissions, we did not explain what we meant. I would not want anyone to think that we are proposing to come up with a list of five or ten names. I do not know how many names will be on it because we have not done the job yet, but we are certainly anticipating it will be a lengthy list.

If I can side-step to a related point for a moment, the debate about relevant or not relevant names. We have set out our position on that question in para.27(e) of our submissions.

LORD HUGHES: Which of your submissions is that?

MR O'CONNOR: It is behind tab 4.

LORD HUGHES: Four. Oh, your principal ones. Or 20 something?

MR O'CONNOR: Yes, 27(e).

LORD HUGHES: Just hang on a minute. No, I need to cross-reference all the time.

MR O'CONNOR: In summary, sir, as Mr Beer was correct to say, we pushed back (his words) against the idea that it is possible, certainly at this early stage, in our submission, (inaudible) really to distinguish or to divide names into categories, the class that are relevant and class that are irrelevant. A normal approach, which may well be (although I have not seen this ruling) that asserted by Sir Wyn Williams in the Post Office Inquiry, is that names are always relevant in documents. They always assist the reader in understanding the document, the case, the context. And so that is why one does not tend to cross out names on a document unless there is a good reason to do it. Certainly, at this early stage, one cannot go through documents in this case deciding once and for all that a name is irrelevant, crossing it out, losing it to the understanding of the inquiry, because it is quite conceivable that, in a week or a month's time, another document will appear with that name on it and if one was only able to put the two names together some sense might be made out of it.

So, for that reason, we do not accept that there is ever going to be a clear category of irrelevant names. But, having said that, it obviously must be right that there are going to be

names that are more important than others. As I have said, we certainly intend our core list to be a lengthy list and we would hope to capture on it most (if not all) of the names that really will ever be of any use to us.

LORD HUGHES: So, what you are saying is it is a core list which may have to be added to from time to time rather than a definitive categorisation as relevant or not; is that it?

MR O'CONNOR: Yes. But, as I said at the start that there may be less between us than people might think, and I would hope that our core list will really represent something quite similar to what Mr Straw has in mind when he talks about ciphering all relevant names.

Just for the avoidance of any doubt, what we intend is a list that will, as it were, apply across all of the documents, whether they are Operation Verbasco or HMG documents. So, there will be a common cipher for any individual whether their name appears in HMG documents or----

LORD HUGHES: Oh, for heaven's sake, that is essential.

MR O'CONNOR: Yes. But I just wanted -- I said that as Mr Beer has said he will be ciphering all of his names, but he will be using a common set of ciphers that we will all agree on amongst ourselves.

LORD HUGHES: Yes, you will need to do that.

MR O'CONNOR: Sir, that is the limit to our submissions about the approach. Obviously, it is a matter for you.

The last point I wanted to raise on the question of the applications is that of alternatives. It is really focusing on trying to address whether there are other measures to address the disadvantage that the family in particular, but all CPs, would be under faced with redacted documents. Quite a deal about this has been said in the written submissions and I am not going to repeat all of that. But may I just make the point that, as a matter of practicality, and this rather builds on the points that Mr Straw was making, in the first instance, we would hope, as I have said, that the ciphering will assist considerably, if that is the line that we go down. It will also, of course, be possible for Mr Straw, Mr Mansfield and their team, if they do have concerns about a document that had been ciphered, for example, a concern that names that appear to have been ciphered should not have been redacted or that they need ciphers and they have not got them, or simply want to ask the question "Is that blacked out name the same as that blacked out name because they are not ciphered?", those

questions are questions that they come to us with in the first instance and we will, of course, do our best to assist.

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For that matter, going back to the example Mr Straw gave about a rather more general questions, for example, it is hard for us to know, looking at these documents which have got redactions, whether any of those involved in Dawn Sturgess' care had previous involvement in the immediate aftermath of the Skripal poisoning; did they or not? That is something of a

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rather more general exercise but still something that we would be capable of looking into, no doubt under your direction and assisting with it.

So, sir, in my submission, there are alternatives available that we can assist with and the

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next step along the line perhaps is the proposal that Mr Straw made of him and/or Mr Nicholls themselves inspecting documents. Sir, I am not proposing to say anything more about that other than to just remind you that, as Ms Wolfe did, although Mr Beer did not address this in his submissions, I do not think, but a suggestion along those lines does seem to have been made by Operation Verbasco, but it is still was not clear quite how they

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intended that process to work. I do not know if you have in mind the passage? It is behind tab 8 in the bundle, sir. It is para.16 of the Operation Verbasco submissions.

LORD HUGHES: (After a pause) Oh, I see.

MR O'CONNOR: At any rate----

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LORD HUGHES: I do not think that is quite the same as what Mr Straw was talking about.

MR O'CONNOR: No, it is not the same as what Mr -- it is not exactly.

LORD HUGHES: Well, no, it is not at all the same.

MR O'CONNOR: But they do involve the common theme that they both involve the family representatives seeing the names.

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LORD HUGHES: Asking whether they can have a particular name and being given an answer, yes or no----

MR O'CONNOR: Yes.

LORD HUGHES: --is that one, which is different.

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MR O'CONNOR: In any event, sir, perhaps that is no doubt something you will consider and it may be addressed further in closed at the hearing.

LORD HUGHES: Yes.

MR O'CONNOR: But perhaps the main, more general point to end on this is that these are not

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once-and-for-all orders that you are being asked to make. You have a continuing duty to

review them, (inaudible) in the first place, and there is, of course, the opportunity for applications to be made to you to vary them, or for such (inaudible) be made into them as we go in, as necessity requires.

LORD HUGHES: Yes.

MR O'CONNOR: Sir, those are the only points I wanted to make on the substance of the application.

The last point I was going to make is simply to canvass the question of how you might approach determining these applications, and, particularly, given a certain degree of uncertainty about exactly how they should be framed or how, to whom they should apply. It seems to me that, broadly, there are two options you have available to you. Perhaps I should, as we have said before, clearly you are not going to do anything until at least you have heard closed submissions. But if you are sufficiently clear as to all the detail and perhaps then no reason why you should not make your determination, and if that is your decision, make the orders in whatever for you decide. However, if there are still matters that you regard as unresolved or unanswered questions which prevent you from making any final orders, then an alternative course would be, we suggest, to make a ruling in principle and identify your core decision, but, equally, identify any, as it were, tidying-up points that you thought it necessary to do----

LORD HUGHES: Yes.

MR O'CONNOR: --and inviting us and CPs to work on those points either prior to the next hearing or even to an earlier time, so that you would then be in a position to make any orders in the appropriate form.

LORD HUGHES: I follow.

MR O'CONNOR: Sir, I will turn over to the last point which I hope we can take rather more quickly than the first two.

LORD HUGHES: I am conscious, Mr O'Connor, that you have had the opportunity to speak after, as it were, Ms Wolfe, whose application this principally is. I will just give her the opportunity to see whether there is anything which she wants to add.

MS WOLFE: I am very grateful, sir. There is not unless I can be of any assistance.

LORD HUGHES: No, well, I did not expect there to be, but I thought you should have the chance. Right, now, Mr O'Connor, where do we go next?

MR O'CONNOR: Sir, we are just on any other business. There is the question about the preliminary hearing, the next one. Before I come to that, sir, I hope, just taking stock, much

has been said, understandably, about frustration about the length of time the slow process is taking and so on, and perhaps we have already said what we want to say about that. But may I perhaps just try and end on a slightly more positive note. I hope it is apparent that a lot of work has been put in by all of those involved in this case. One can see the amount of work that has gone into the restriction order applications. You invited those applications to be made at this early stage precisely because the outcome of them will enable us to deal with remaining elements of the disclosure process more swiftly, rule on that, and requests have started to be said and I will not repeat all the other matters. But I hope, sir, in general terms, it is apparent that an awful lot of work is going on and we are working hard.

Sir, moving then to the question of the next preliminary hearing, it is important that momentum is maintained. We have already given the example we are keen to see how the more streamlined disclosure process works and to report back, as it were, on that. I think we are all agreed that it would be appropriate to have a hearing in the Autumn. In our submissions, we floated the possibility of a hearing in October or November. The families have suggested that October would be preferable simply to keep momentum going. We understand the force of that. The difficulty in having it too soon, of course, is that there is not time for a significant amount of work to be done, particularly when one thinks that submissions are starting to be prepared a good month or so before the hearing. In any event, we did look at dates in late October, but the difficulty there is that that is half-term and there are one or two other commitments that we need to avoid.

But, sir, the date that we would propose for the next hearing is 11 November. Fridays are convenient for this building; that is why we have focused on a Friday.

LORD HUGHES: I see. Well, it is helpful, Mr O'Connor, to have that said now. I do not think it is going to be suitable -- it is not going to be appropriate to have a date auction here. But, I mean, first of all, it is absolutely clear that there must be a hearing in the Autumn. If it is not at the end of October, it needs to be early in November. There is a possible date which you have set out which everybody can note, without yet knowing whether it is a firm date or not.

I am just I am thinking out loud. It is possible that it might be affected by the forthcoming closed hearing. I have my doubts, but it could be. So that is another reason for it to be notified in greater detail after that. What I would certainly hope -- not hope but direct, is

that you all know before you all disappear to different climes when it is in the Autumn that you are expected back.

MR O'CONNOR: Yes.

LORD HUGHES: All right. Does that conclude your submissions, Mr O'Connor?

MR O'CONNOR: It certainly concludes my submissions now. I do not know if anyone has any submissions to make on the last point.

LORD HUGHES: Are you about to rise, Mr Mansfield?

MR MANSFIELD: I am afraid I did not know about the date until now and I know you do not want a date auction at this late hour----

LORD HUGHES: No.

MR MANSFIELD: --but I would emphasise that the problem is that these dates get shifted and I would ask you to consider a much earlier date. It can be changed, but to have a target. They are not arbitrary, but the fact is, bearing in mind the delay so far, before we know where we are it will be Christmas before we actually have a hearing and then repercussions flow into next year. So, I would ask to keep the pressure up, please.

LORD HUGHES: The risk of slippage is a point well made, Mr Mansfield, and I have got it.

MR MANSFIELD: Thank you.

LORD HUGHES: Sobeit. Thank you, all, very much.

This kind of preliminary hearing tends usually to be a mixture of the helpful and the inconclusive and this is not an exception. As far as I am concerned, it seems to me that it has been helpful to me at least.

On the two topics which have been raised I want everybody to understand that one of my tasks, as I see it, is to pursue the efficiency of disclosure. Efficiency includes speed, but also includes accuracy and effectiveness. Now, those may sound conventional platitudes, but the object of the exercise is to get the job done and it certainly is not to defer it.

Today's discussion I think has been helpful and you may rest assured, those of you who cannot be there when the closed hearing ensues, that one of my tasks that I shall set myself is to investigate the question of what the reasons are for even a modified preliminary security review. They may be well justified. But it is finding out whether they are which is part of my task.

The restriction order applications were prompted early with, as it seems to me, good reason and it has been helpful to have the discussion that we have had. Whether, in the end, the making of any orders that may be necessary soon is the best course or is premature, and best considered when relevance has been better determined, is something that I want to think about; that there has been enough in today's discussion, I hope, to focus my mind fairly clearly on the issues that need addressing. What I will aim to do is to announce at any rate some conclusions, whether in the form of an order or not and whether in the form of a ruling or not, soon after the closed hearing which is now in prospect. So, you should have that at the early part of the holiday.

All right. Thank you very much indeed for your help. I am very grateful. I do hope that those who have had to listen to all this through the electronics have been able to follow enough of it. It is better that you should have that opportunity than that you should not have it and this is a place where you can bring people together. We will think about whether it is the only place and which kind of hearings are better held anywhere else. Thank you very much indeed.

(3.48 p.m.)

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