

Coroner's Inquests into the London Bombings of 7 July 2005  
Pre-Inquest Proceedings - 26 April 2010 - Morning session

1 Monday, 26 April 2010

2 (10.30 am)

3 LADY JUSTICE HALLETT: Yes, Mr Keith?

4 Submissions by MR KEITH

5 MR KEITH: Good morning madam. Today, we are all here for  
6 the pre-inquest hearing and specifically the legal  
7 argument that you ordered earlier in the year, on  
8 25 February, should take place today.

9 Madam, you know that the matter is provisionally  
10 listed for the next three days, but Thursday and Friday  
11 are also available if you require them.

12 A list of all the families who are represented is  
13 contained in annex A, which I hope you have received --

14 LADY JUSTICE HALLETT: I have.

15 MR KEITH: -- as are the names and details of all their  
16 legal representatives, and you should also find in  
17 annex A I hope details of the lawyers acting for the  
18 various police forces, organisations and departments.

19 Madam, if you consent, for ease of reference I'm  
20 simply going to call all the families, whether  
21 represented or not, and the organisations parties to  
22 these proceedings. Madam, I know you know that it's  
23 a legal term of art, but for the wider public and  
24 families, may I say I intend no disrespect by referring  
25 to them in that way.

1 Madam, I believe that all the counsel named in  
2 annex A with the exception of Mr Mian who appeared on  
3 the last occasion instructed by Imran Khan, are present  
4 in court this morning, and so, with your consent,  
5 I won't read them all out.

6 LADY JUSTICE HALLETT: Certainly.

7 MR KEITH: I hope you've also received, as have all the  
8 parties, a copy of annex B. Annex B contains a list of  
9 all those who have applied under Rule 20(2) of the  
10 Coroners Rules for the right to examine witnesses at the  
11 inquests, if they are resumed.

12 There have been one or two changes and corrections  
13 since the list was sent out last week, and we are very  
14 grateful to the various firms of lawyers who have  
15 emailed in with those corrections. Of course, we  
16 apologise where there have been some errors and a couple  
17 have crept in. May I just highlight the most important  
18 ones? Indeed, they are all that have been received.

19 In relation to Sonn Macmillan Walker, we're grateful  
20 to them for pointing out that in annex A a stray "Y" had  
21 crept in in place of an "I" in relation to Miriam,  
22 Miriam Hyman. In relation to Lovells, on annex B, there  
23 was an error, if you look at Russell Square, and  
24 number 58 on the third page of annex B, Nader Mozakka  
25 was Behnaz's husband, and I apologise that there was

1 a typographical error there.

2 In relation to Russell Jones and Walker, going back  
3 to number 8 on annex B, and Fiona Stevenson, Mr and  
4 Mrs Stevenson are in fact represented by Russell  
5 Jones & Walker. That should have been corrected on the  
6 version that's available in court this morning, and  
7 copies will be made available in due course on the  
8 website.

9 Also on the website -- and I think copies are  
10 available also in court this morning -- will be found in  
11 due course copies of the legal arguments which Counsel  
12 to the Inquests have prepared and I'm very grateful to  
13 Mr O'Connor and Mr Hay for their skill and hard work in  
14 preparing those submissions.

15 In relation to those who are legally represented,  
16 can I give you a broad breakdown of the figures today?  
17 There are around 51 applicants for Rule 20(2)  
18 applications and they arise in connection with 29 of the  
19 52 deceased family members.

20 There are one or two applications to be confirmed,  
21 and, as you know, those legally represented family  
22 members are spread between the five legal firms, the  
23 names of which are contained on both the annexes.

24 All have served written submissions in accordance  
25 with your order.

1 There are a further 24 other applicants who are  
2 not legally represented by those five firms and they  
3 include four applicants represented by French lawyers.  
4 This group of applicants relates to a further 16 of  
5 the 52 deceased. Applications haven't been made in  
6 relation to seven of the deceased.  
7 One further former matter, if I may. A formal  
8 application has now been received from the City of  
9 London Police for the designation under Rule 20(2)(g).  
10 And in relation to Mohammed Sidique Khan,  
11 Shehzad Tanweer, Hasib Hussain and Jermaine Lindsay,  
12 Khan's wife and brother have applied for status as  
13 properly interested persons, as have Hussain's parents,  
14 Mr and Mrs Hussain.  
15 Khan's wife and Hussain's parents, are legally  
16 represented by the firm Imran Khan. I'll return to the  
17 matter of Imran Khan in a moment, but may I say that no  
18 applications have been received from any member of  
19 Lindsay or Tanweer's families.  
20 Madam, the purpose of the hearing this week is for  
21 you to hear legal argument in relation to the issues  
22 that we discussed on the last occasion. Firstly,  
23 whether some or all of the 56 inquests over which you  
24 have jurisdiction, should be resumed, whether those that  
25 are resumed should be joined to each other, the scope of

1 such inquests as are resumed, the issue of who qualifies  
2 under Rule 20(2) as being entitled to examine witnesses,  
3 and, lastly, whether you must or should sit with a jury.  
4 The lawyers, all of whom have served helpful  
5 summaries of their arguments, are all ready to address  
6 you. You instructed that a batting order be sent out,  
7 and it proposes that Mr Coltart, who's instructed by  
8 Kingsley Napley, should start. There's no magic in the  
9 order. The five legal firms appear on the batting order  
10 alphabetically. I will address you, if I may, following  
11 the first round of legal submissions, in order, I hope,  
12 to summarise the position. You may then wish to hear  
13 further submissions from all the parties in response to  
14 any new matters that have been raised in the course of  
15 oral argument.

16 LADY JUSTICE HALLETT: I should say, Mr Keith, that the only  
17 amendment I have made to the proposed batting order is  
18 that, after you have designated a slot for Mr O'Connor  
19 to address me on behalf of the represented survivors, it  
20 seemed to me I ought to put in there a slot for  
21 unrepresented survivors.

22 MR KEITH: Yes, thank you very much.

23 Madam, before you hear submissions from them and  
24 from all the lawyers, may I, for the benefit of the  
25 unrepresented families, who have not had access

1 necessarily to the full legal arguments, just bring you  
2 up to date in relation to the progress that has been  
3 made since the last occasion and, also, because of  
4 a very recent development in relation to the position of  
5 Khan and Hussain, make some short submissions in  
6 relation to the issues of resumption and joinder insofar  
7 as the inquests of the four men are concerned?

8 The orders you made on 25 February have been almost  
9 without exception complied with.

10 The Metropolitan Police Service, in their role as  
11 your independent coroners officers, have worked very  
12 hard to complete the four scene reports. They were then  
13 copied and served by the inquest team on the families of  
14 the deceased and all the other potentially interested  
15 persons in the sequential way that you ordered be  
16 carried out, and I'm very grateful to the coroners  
17 officers and also to Mr Smith, the solicitor to the  
18 inquest and his colleagues, for their hard work in this  
19 regard.

20 The reports, as you know, cover each of the four  
21 bomb explosions.

22 May I mention funding? You will be aware that the  
23 five legal firms have been in discussion with the Legal  
24 Services Commission in relation to the scope and level  
25 of legal aid that would be made available.

1 We anticipate that that discussion will continue for  
2 some time, but it is of little practical note today  
3 because, of course, all are represented and in  
4 attendance before you, and the difficulties that were  
5 undoubtedly encountered in relation to legal aid,  
6 I should say, did not prevent any of the written  
7 arguments from being served by the legal teams as you  
8 ordered, although there was a slight delay in one case.  
9 There has, however, been one exception. In relation  
10 to Imran Khan, who represent, as I said, Khan's wife and  
11 Hussain's parents, they, you will recall, did instruct  
12 counsel to attend on the last occasion in advance of  
13 legal aid being granted. Indeed, I recall that they  
14 gave an indication there may not in fact be an  
15 application for legal aid thereafter.  
16 They did, in fact, make an application, to which  
17 I'll return in a moment.  
18 Regrettably, despite attending on the last occasion,  
19 and despite of course receiving your order which you  
20 will recall made provision for those who wished to apply  
21 to be potentially interested persons under 20(2)(h) to  
22 file written submissions by 11 March and also to file by  
23 1 April the grounds on which they consider they are so  
24 designated and to file written submissions generally by  
25 21 April, nothing was received by them at all, despite

1 repeated emails and telephone calls to Mr Smith.

2 Mr Smith was then informed last week, on Friday,

3 that legal aid had been refused in relation to

4 Hasina Patel and Mr and Mrs Hussain.

5 The Ministry of Justice, whose responsibility it is

6 in inquest cases to decide whether funding should be

7 recommended, declined to so recommend.

8 We have been informed that it's likely that

9 Imran Khan will challenge that refusal, but it's unclear

10 whether it will do so by way of a fresh application or

11 by way of a legal challenge and, if so, how long that

12 will take.

13 LADY JUSTICE HALLETT: I did ask that a message be sent to

14 Mr Khan requesting the date when legal aid was applied

15 for. Do we know when that was, when he applied?

16 MR KEITH: The answer, madam, is that --

17 LADY JUSTICE HALLETT: It looks as if it's not until

18 22 March.

19 MR KEITH: The letter which Imran Khan wrote to Mr Smith on

20 Friday says that applications for completion -- that's

21 to say completion of the applications for legal aid --

22 were dispatched to their clients on 25 February, so the

23 day of the last hearing -- received back by Imran

24 Khan from their clients on 9 March and submitted on

25 22 March.

1 The letter then informs Mr Smith that there was then  
2 delay in relation to whether or not the  
3 Ministry of Justice would recommend funding, and  
4 although they received, I think, a message by telephone  
5 in the middle of the week, it wasn't until Friday  
6 afternoon that they received written confirmation that  
7 their application had been refused.  
8 Madam, after we received that letter on Friday,  
9 further communication was made with Imran Khan and their  
10 counsel and we were informed further that, had funding  
11 been made available in the sense that a recommendation  
12 had been approved, they would have sought to argue today  
13 before you that the inquests relating to the deaths of  
14 Khan and Hussain be resumed and joined to the 52.  
15 As you will also recall, there is, in any event, an  
16 outstanding application under Rule 20(2) to examine  
17 witnesses at the 52 inquests on behalf of Khan's brother  
18 and, as I say, Khan's wife, Hasina Patel and Mr and  
19 Mrs Hussain if those inquests are resumed.  
20 The two matters are obviously connected because,  
21 even if there's no joinder of the four to the 52,  
22 families may be equally offended by the presence of  
23 representatives from the four men and any participation  
24 in the inquests of the 52.  
25 LADY JUSTICE HALLETT: Mr Khan doesn't condescend to detail,

1 so I don't know the grounds upon which he says the  
2 inquests should be resumed. I don't know the grounds  
3 upon which he says they should be joined, and I don't  
4 know in which inquests he seeks designated interested  
5 person status, he just says "in some".

6 MR KEITH: He does, that's quite right, and I indeed spoke  
7 to Mr Mian, their counsel, and I don't know whether or  
8 not he continues to be instructed in the absence of  
9 legal aid being granted, but I'm afraid no further  
10 information was forthcoming.

11 Madam, two issues therefore arise. There is, of  
12 course, the issue of the failure to respond to your  
13 order, perhaps I can put that to one side. But the  
14 absence of positive submissions from them does have  
15 a wider impact.

16 Assuming that you do resume the inquests into the 52  
17 deceased -- and there are, as you will know from the  
18 written submissions, very powerful arguments in favour  
19 of resuming -- the question then arises as to whether to  
20 resume the inquests into the deaths of the four men and,  
21 if so, whether they should be joined.

22 You will know from the written submissions that this  
23 is an issue on which strong views understandably have  
24 been expressed on account of the distress that joinder  
25 would cause.

1 In our written submissions, we had in fact suggested  
2 that one option, which was to resume and join together  
3 the 52 inquests into the deceased family members, but  
4 adjourning the decision as to whether to resume and, if  
5 so, to join the four men to the 52 might be undesirable  
6 because it would be arguable that, if there was good  
7 reason to resume the 52, and you were in a position to  
8 so decide, then it would be curious if you declined to  
9 make any decision in relation to whether to resume and  
10 join the four.

11 But that argument was predicated on our assumption  
12 that Imran Khan would advocate and put forward positive  
13 reasons for resuming and joining the four, which, as  
14 you've observed, is entirely absent from the  
15 correspondence that we've received.

16 So the absence of that assistance changes the  
17 position somewhat. Because no reasons have been  
18 advanced for resuming and joining the four to the 52,  
19 although some might be advanced in due course, it is now  
20 more appropriate in our respectful submission that the  
21 decision on the four be adjourned generally, as are the  
22 applications by Hasina Patel, Mr and Mrs Hussain and  
23 Gultasab Khan, Khan's brother.

24 It's obviously regrettable that you should be placed  
25 in a position of considering whether to adjourn those

1 two legal issues. The lack of certainty is unfortunate  
2 because the families and the wider public are entitled  
3 to know where they stand in relation to these important  
4 issues, but I think that, in the circumstances, with  
5 respect, you may have been left with little room in  
6 relation to that matter.

7 But in the course of your ruling in due course, may  
8 we invite you to make three matters clear, if you do  
9 decide to adjourn the question of the four and their  
10 joinder?

11 Firstly, we would suggest the greater any delay in  
12 advancing any submissions in support of resuming and  
13 then joining the four inquests to the 52, the greater  
14 the likelihood that such applications might have to be  
15 refused, given the need to start making practical  
16 arrangements following upon any decision by you to  
17 resume the 52.

18 Secondly, the absence of any assistance as to what  
19 issues might have been sought to be raised at any  
20 inquests into the four must logically render it more  
21 likely that you will have to proceed on the basis that  
22 there are no common issues between the 52 and the four,  
23 or alternatively no significant wider issues in relation  
24 to the four that will be so raised, and so the public  
25 interest, in having all 56 inquests joined together, is

1 lessened, as will be the practical disadvantages of not  
2 joining the four to the 52, and that is because, if you  
3 proceed on the basis that there are fewer issues to be  
4 dealt with in relation to the four, and/or that there  
5 are no common issues, then it makes it much less likely  
6 that you would be placed in the position, if you resumed  
7 the four, to have to call duplicated evidence and to  
8 replicate in terms of time and expense the evidence and  
9 the work done in relation to the 52.

10 Thirdly, lastly, in the absence of positive reasons  
11 as to why Hasina Patel and Mr and Mrs Hussain and  
12 Gultasab Khan should be designated as properly  
13 interested persons under Rule 20(2)(h) at the inquests  
14 of the 52 deceased, such applications are likely to be  
15 refused.

16 We hope that if those proposals find favour with  
17 you, that they will send a clear message to those  
18 persons that, if they wish to play a role, or at least  
19 apply to play any role in these proceedings, they must  
20 do so.

21 Madam, that is, for the moment, all that I think  
22 I need to say.

23 LADY JUSTICE HALLETT: Thank you very much, Mr Keith.

24 Mr Coltart, I believe you're going first.

25 May I say that it would assist me, if it's possible,

1 for each advocate to give me a summary of their position  
2 in relation to what I see as the five issues at the  
3 beginning of their submissions, and I have, as I'm sure  
4 all counsel would expect, read all the written  
5 submissions, I have read the Greater London Assembly  
6 reports, and I have read the Intelligence Committee  
7 reports.

8 Submissions by MR COLTART

9 MR COLTART: I'm extremely grateful for that indication.  
10 Can I say then, at the outset, that in relation to  
11 the topics which fall for resolution this week, we do  
12 urge resumption upon you? We submit that there should  
13 be an extended Middleton-type inquest to resolve the  
14 issue of whether more could have been done to prevent  
15 the bombings in July 2005.

16 We respectfully submit that the issue of jury is  
17 likely to follow the issue of scope, and I know that  
18 others advance legal arguments as to the mandatory  
19 nature of a jury in this case, but I will leave them to  
20 develop those.

21 We say that, no matter how it's done -- and it might  
22 be done in a number of different ways -- the inquests  
23 into the deaths of the 52 victims should be heard  
24 separately from the inquests into the deaths of the four  
25 bombers. In relation to potentially interested persons,

1 I have one discrete application in relation to the  
2 sister of one of the deceased, and I'll come and deal  
3 with that, if I may, in the course of my submissions as  
4 I advance them.

5 Can I say, madam, at the outset of my submissions  
6 that we received some helpful guidance last week from  
7 your office as to the way in which you wish us to  
8 approach our submissions this week, and can I provide  
9 some reassurance at the outset, then, as to the length  
10 of the submissions which I'm proposing to advance?

11 The first point is this: that the lawyers for the  
12 legally represented families met last week. There is  
13 a great deal of consensus in the issues that we seek to  
14 advance and we will, as far as possible, avoid any  
15 duplication in that regard.

16 Secondly, in advancing these submissions, I'm  
17 intending only to add to my earlier written arguments  
18 where I consider it may be helpful to do so and to  
19 respond to the arguments which have now been advanced by  
20 others and, in particular, those represented on behalf  
21 of the Secretary of State.

22 In keeping, I hope, with that undertaking,  
23 can I indicate now that I have nothing further to add to  
24 my submissions on resumption as set out in chapter 1 of  
25 the document which I have earlier provided, and I will

1 have little to add to the topics of jury, joinder and  
2 potentially interested persons. Indeed, almost the  
3 entirety of my submissions today will be concentrated on  
4 the issue of scope.

5 In that regard, I've set out at chapter 2 of my  
6 written submissions a potted summary of the evolution of  
7 the law in relation to the potential scope of an  
8 inquest. I have to confess that was done as much for  
9 my benefit as for anybody else's, because it's not an  
10 easy path to travel, but unless there's any specific  
11 issue in relation to that chapter upon which you would  
12 like my assistance, I'm not proposing to say anything  
13 more about that topic either.

14 LADY JUSTICE HALLETT: That's fine.

15 MR COLTART: In which case we can move straight to chapter 3  
16 of the submissions, which start at page 14 of the  
17 documents.

18 This is the chapter which is headed "Arguable  
19 Breach", and, madam, would you permit me, in order to  
20 put these submissions into some kind of context, for all  
21 present today, including perhaps some of the  
22 unrepresented families, just to give a very brief  
23 summary, no more than a minute or two, of what the  
24 issues are in this regard and what position we adopt in  
25 relation to them.

1 We say on behalf of the bereaved families that we  
2 represent that in the 15-month period or so leading up  
3 to the bombings in July 2005, MI5 and the police were,  
4 between them, in possession of a significant amount of  
5 information about the bombers, two of them in  
6 particular, Mohammed Sidique Khan and Shehzad Tanweer.  
7 If, we submit, appropriate available and proportionate  
8 action had been taken at an earlier stage, it may have  
9 been possible that the events of 7 July could have been  
10 avoided.

11 The failure to take such action places the state in  
12 breach of its obligations to the citizens of this  
13 country under Article 2 of the European Convention on  
14 Human Rights to protect the lives of those who live in  
15 this country.

16 As a result, there should now be a full and public  
17 investigation of what went on. The vehicle for that  
18 investigation being a so-called Middleton inquest. In  
19 other words, an inquest which is sufficiently wide in  
20 its scope that it can consider what Mr Keith has  
21 helpfully termed in his written submissions as the  
22 preventability issue.

23 The Secretary of State opposes that course. His  
24 position is that there are no grounds for suggesting  
25 that either the Security Service or the police were in

1 breach of their obligations and that such enquiries,  
2 which have already been conducted to date -- in  
3 particular, that conducted by the Intelligence and  
4 Security Committee in the House of Commons -- has been  
5 sufficient to discharge any investigative obligation  
6 which may arise.

7 That, in short, is the issue which falls to be  
8 resolved in relation to the question of scope.

9 Turning to the detail of those submissions and  
10 starting perhaps with the legal analysis which has been  
11 deployed by the Secretary of State, he says two things  
12 in relation to whether or not there is or might have  
13 been any breach of the obligation to protect life.

14 The first thing he says is, as a matter of law, the  
15 facts of this case are incapable of founding any  
16 liability for a breach of that obligation.

17 Secondly, he says the facts of this case, even if  
18 he's wrong about that, are insufficient for any argument  
19 breach to be established.

20 Taking those submissions in turn, are the facts of  
21 this case capable of giving rise to a breach of the  
22 obligations?

23 What the Home Secretary says is this: in order to  
24 found any such liability, it's necessary that the victim  
25 of a possible attack is capable of being identified in

1 advance of that attack taking place.

2 In other words, if the Security Service or the  
3 police are to be subject to the positive obligations  
4 under Article 2 of the Convention, they must know who it  
5 is, by reference to an identification, that they are  
6 supposed to protect.

7 Well, madam, you may take the view that that is  
8 a bold proposition in the context of a terrorist attack.  
9 Terrorist attacks are, by their very nature, totally  
10 indiscriminate. It is a matter of chance who might be  
11 caught up in such an atrocity. It will depend upon  
12 which train you get in the morning or which bus you  
13 choose to ride or where you might choose to carry out  
14 your shopping on any given day.

15 If the Secretary of State is right in insisting on  
16 a prior identification of victims, the inevitable  
17 upshot, in my submission, is to provide the state with  
18 a blanket immunity for any breach of its Article 2  
19 obligations in terrorist cases, even in circumstances  
20 where the standard of the police or other investigative  
21 work may have fallen far short of what is required.

22 That would be a surprising outcome in my submission.  
23 Small wonder, I suggest, that Counsel to the Inquests  
24 casts serious doubt upon this aspect of the  
25 Home Secretary's submission, and we go one stage further

1 and say that it is plain wrong.  
2 The second submission, as I've mentioned, advanced  
3 by the Secretary of State, is that the facts of this  
4 case are, in any event, insufficient to amount to  
5 a breach, and if one wanted to encapsulate in a sentence  
6 or two what his position is in relation to the level of  
7 intelligence which was in the possession of the  
8 Security Service and the police in advance of the July  
9 bombings, it can be found in his written submissions at  
10 page 10, paragraph 28, where it's put as follows:

11 "At its highest, as the ISC report identifies, the  
12 Security Service was aware of Khan as being on the  
13 periphery of terrorist-related activity. That is on no  
14 view sufficient to found an Osman obligation or to  
15 establish that the Security Service ought to have been  
16 aware of a real and immediate risk to the lives of  
17 identified individuals."

18 LADY JUSTICE HALLETT: I'm sorry, Mr Coltart, I thought  
19 I had the right page. We're looking at submissions of  
20 the Secretary of State for the Home Department and the  
21 Security Service?

22 MR KEITH: Yes, at page 10.

23 LADY JUSTICE HALLETT: Dated 16 April 2010?

24 MR KEITH: Yes. I have it at page 10, paragraph 28, (iii).

25 LADY JUSTICE HALLETT: I have it at (iii), thank you.

1 MR COLTART: Forgive me, it appears in the body of some  
2 other points, the detail of which we will have to come  
3 back to in due course. That's what he says about the  
4 level of the intelligence or information which was held.  
5 Khan, no mention of Tanweer at all, but Khan being  
6 on the periphery of terrorist-related activity.  
7 Well, we say with respect that, as a critical  
8 analysis of the situation, that is wholly deficient and  
9 doesn't begin to do justice to what, in fact, was known  
10 about both of those men in advance of the bombings  
11 in July 2005.  
12 As will be plain, madam, from the written  
13 submissions I've put in of very great significance for  
14 the purpose of establishing exactly what was known about  
15 these men and the significance of it, is an operation  
16 which was in progress by MI5 during the course of 2003  
17 and 2004 called Operation Crevice.  
18 Now, putting it as shortly as I can, the position is  
19 this, that although Crevice started in 2003, for reasons  
20 which I'll come back to in a moment or two, early in  
21 2004, the Security Service, MI5, got wind of an Islamic  
22 terrorist plot which was intending to detonate a massive  
23 bomb either in a shopping centre or a nightclub in this  
24 country.  
25 The individual at the heart of that plot was a man

1 by the name of Omar Khyam, and from the moment when the  
2 Security Service received the information in question,  
3 which was early February 2004, until his arrest at the  
4 end of March 2004, his every move was scrutinised by the  
5 Security Service. Indeed, it became, as we now  
6 understand it, one of the biggest investigations and  
7 operations which they have ever embarked upon.  
8 It was during that very window in February and March  
9 of 2004 that two of the July bombers --  
10 Mohammed Sidique Khan and Shehzad Tanweer -- repeatedly  
11 came to the attention of the Security Service through  
12 a series of meetings which they held with Omar Khyam,  
13 the primary suspect of it.  
14 That is what Operation Crevice became, but, as  
15 I have already indicated, what is also of significance  
16 is how it started, and for that purpose, can I ask you,  
17 please, in chapter 3 of my written submissions, page 18,  
18 to look at paragraph 17 at the bottom of that page:  
19 "In early 2003, MI5 received intelligence that an  
20 individual named Mohammed Qayum Khan, who was based in  
21 Luton, was the leader of an Al-Qaeda facilitation  
22 network in the United Kingdom. He was assessed as being  
23 a 'desirable' target and placed under investigation and  
24 the operation was codenamed 'Crevice'. "  
25 Just dealing with some of the terminology, the

1 Security Service at the time, although they've now  
2 amended their systems, ranked potential or suspected  
3 terrorists in descending order from "essential" to  
4 "desirable" to "other".

5 Mr Khan, this particular Mr Khan,  
6 Mohammed Qayum Khan, was assessed as being only  
7 a desirable rather than an essential target, and, as  
8 leader of a suspected facilitation network, that means  
9 he wasn't assessed at the time as being an attack  
10 planner, but rather he was assessed as someone who was  
11 providing logistical support to terrorists, whether by  
12 way of finance or otherwise.

13 In any event, he was placed under investigation, and  
14 that was the genesis of Operation Crevice, and over the  
15 page at paragraph 18:

16 "In January 2004 MI5 identified an individual named  
17 Omar Khyam as being a courier for that network. He too  
18 was placed under limited surveillance in order to glean  
19 more information about it."

20 So at this stage, Omar Khyam was only considered to  
21 be a runner for the facilitation network that was being  
22 organised by Mohammed Qayum Khan. It was only later  
23 that he became a more significant target.

24 Well, what is the relevance of all of that?

25 When MI5 subsequently appeared before the

1 Intelligence and Security Committee to explain what  
2 information they had about the July bombers and what was  
3 or was not done about it, the thrust of their  
4 explanation for not putting either Mohammed Sidique Khan  
5 or Shehzad Tanweer under any form of surveillance after  
6 the arrests in Crevice was that surveillance at that  
7 stage was reserved only for essential targets and not  
8 merely those who were deemed to be desirable.  
9 In fact, what they told the ISC was that desirables  
10 didn't even get close to obtaining a share of the  
11 available surveillance resources.  
12 That raises a legitimate issue for exploration, in  
13 my respectful submission, as to, if that was the case,  
14 why was it that for the entirety of 2003 a desirable  
15 target, who was only a facilitator, not an attack  
16 planner, was under surveillance by MI5? Not only was he  
17 under surveillance, but his phone calls were being  
18 monitored -- I won't take you to it, madam, but for your  
19 note, if you look at page 19 of the ISC report, it will  
20 be clear that the monitoring of the phone calls was an  
21 intensive one -- and why, if resources were so scarce,  
22 was it that even the runners for the facilitation  
23 network were under surveillance, as Omar Khyam was in  
24 late January and early February 2004 before his greater  
25 involvement came to light?

1 Now, it may be that the Security Service will say  
2 that there was a significant escalation in 2004 in  
3 terrorist activity which led to a redistribution of the  
4 available resources, and indeed, in part that's the  
5 explanation which is provided to the ISC.  
6 But, as we've pointed out in the course of our  
7 written submissions, that explanation itself is not  
8 without its difficulties. A great deal of reliance, for  
9 example, is placed upon the necessary devolution of  
10 resources in relation to Operation Rhyme, which was  
11 another and separate investigation which was ongoing in  
12 2004. But that came to an end, that particular  
13 operation, in August 2004, nearly twelve months before  
14 the bombings.  
15 In addition, we understand from the first report of  
16 the Intelligence and Security Committee that the reason  
17 why the threat levels, the national threat levels were  
18 reduced in May 2005 is because there was no intelligence  
19 of a credible plot to attack the United Kingdom at that  
20 time and, indeed, there had been no intelligence of  
21 a credible plot to attack the United Kingdom  
22 since November 2004.  
23 Now, it's not suggested for a moment that MI5  
24 weren't working extremely hard on a number of  
25 investigations throughout that period. Of course

1 I wouldn't make that suggestion. But whether the  
2 intensity of those other investigations was such as to  
3 mean automatically there was no possibility of  
4 surveillance cover in relation to Mohammed Sidique Khan  
5 and Shehzad Tanweer is an issue which requires further  
6 explanation.

7 In addition, of course, it highlights this analysis,  
8 the danger of accepting at face value explanations which  
9 have been provided before they've been properly tested  
10 in the forum of an Article 2 investigation.

11 That is, after all, the whole point of an Article 2  
12 investigation: to secure a public account of what has  
13 happened and to subject it to a suitable degree of  
14 scrutiny.

15 It also raises issues, this particular analysis,  
16 about the rigour with which the ISC did in fact conduct  
17 its own investigation, and this is a topic which I will  
18 return to on a number of occasions, if I may, during the  
19 course of these submissions, but not a single question,  
20 on the face of it, appears to have been asked by the ISC  
21 in relation to what, on the face of it, is a glaring  
22 inconsistency in the explanation which has been  
23 provided.

24 I'm going to move on, but before I do so, could  
25 I make one further limited observation in relation to

1 this topic so the record is quite clear so far as my  
2 position is concerned?

3 I do not align myself at present to the positive  
4 case which is advanced by others that MI5 actively  
5 sought to mislead the Intelligence and Security  
6 Committee. I would prefer to see how the evidence  
7 emerges before making any submissions to that effect.  
8 But there are, I would suggest, legitimate lines of  
9 enquiry which ought now to be pursued.

10 As I've mentioned, one of the crucial issues, which  
11 will fall for you to resolve this week, madam, is  
12 whether the assessment of the quality and nature of the  
13 information held by MI5 as provided for or now urged  
14 upon you by the Secretary of State is an accurate one.  
15 We say it's not, and in that regard, we rely in  
16 particular on the context and duration of a number of  
17 meetings which Mohammed Sidique Khan and  
18 Shehzad Tanweer attended with Omar Khyam during the  
19 course of February and March 2004.

20 I've set out something of a chronology in my written  
21 submissions dealing with those meetings, and so I'll  
22 summarise them shortly, if I may, as I go through and  
23 make some additional observations which don't appear  
24 necessarily on the face of the document.

25 The first such meeting was on Monday,

1 2 February 2004. On that day, Omar Khyam, suspected  
2 runner for the facilitation network, was under  
3 surveillance by the Security Service. He and his  
4 brother, Shujah Mahmood, drove from their home in Slough  
5 to a car park in Crawley, where they met with the  
6 occupants of a separate vehicle, which was a Honda,  
7 which had been driven from Leeds to Crawley by  
8 Mohammed Sidique Khan. Passengers in the car with  
9 Mohammed Sidique Khan were Shehzad Tanweer and a man by  
10 the name of Shipon Ullah, who was later to be one of the  
11 defendants in Operation Theseus, and it was said against  
12 him in those proceedings that he had gone on  
13 a reconnaissance trip with Jermaine Lindsay and  
14 Hasib Hussain in December 2004 to various landmark sites  
15 in London which the Crown said during the course of that  
16 trial were potential targets for the bombings which  
17 later followed.  
18 Once in the car park, Omar Khyam gets out of his car  
19 and gets into the Honda car driven by  
20 Mohammed Sidique Khan. The two men proceed to drive up  
21 and down the A23 for a while before returning to the car  
22 park where the other men have been waiting. The two  
23 groups go their separate ways, and the Honda, having  
24 spent a period, I believe, of some 40 or 45 minutes in  
25 Crawley, drives all the way back up to Leeds, thereby

1 completing a 500-mile round trip. Tanweer and Ullah are  
2 dropped off in Dewsbury, and Mohammed Sidique Khan  
3 continues back to his home address which is noted by the  
4 officers who are following.

5 But in due course, the conclusions reached by the  
6 Intelligence and Security Committee was that there was  
7 nothing suspicious about that meeting. As we've set out  
8 in the body of our document, we say that that is  
9 a deficient analysis of the situation, but it raises  
10 three further matters for consideration.

11 If that is the level of critical analysis deployed  
12 by the ISC, has their investigation been an effective  
13 one for the purposes of Article 2? What does and does  
14 not constitute an Article 2-compliant enquiry is an  
15 extremely elusive concept and it's one which has  
16 occupied the Court of Appeal and the House of Lords for  
17 many a long hour over the course of the last few years,  
18 and I suspect that we'll hear some further submissions  
19 on that topic during the course of this week.

20 But one thing which we will all agree upon is that  
21 if it is to comply with the provisions of Article 2, it  
22 has got to be effective, and an effective investigation  
23 is one which reaches sensible and proper inferences on  
24 the basis of the evidence which confronts it, and to  
25 suggest that there was nothing inherently suspicious

1 about the circumstances of this particular meeting  
2 perhaps falls short of the mark.  
3 The second observation which one might make in  
4 relation to this is that if one assumes that the  
5 conclusions reached by the Intelligence and Security  
6 Committee reflect the explanation which was given to  
7 them by the Security Service -- and of course we don't  
8 know because the entire hearing was conducted behind  
9 closed doors -- but assuming that's right, then it  
10 raises issues of competence on the part of the  
11 Security Service.  
12 But in any event, the quality of conclusion-making  
13 by either the ISC or MI5 was significantly compounded by  
14 a failure to re-evaluate the significance of that  
15 meeting in the light of a dramatic change of events  
16 a few days after it took place, because it was within  
17 but a few days of that meeting on 2 February that the  
18 Security Service received intelligence that Omar Khyam,  
19 far from being a mere courier for the facilitation  
20 network, was himself planning a mass terrorist atrocity  
21 and the information was that it was going to happen  
22 soon.  
23 For that purpose, Mr Khyam had a 600-kilogram bag of  
24 fertiliser in a storage unit in west London, and he flew  
25 in, on the weekend of 20 and 21 February 2004, from

1 Canada, an explosives expert to assist him in the  
2 mechanics of assembling his device.  
3 Nearly all of that activity took place in Crawley,  
4 the location of the meeting on 2 February of 2004, and  
5 in any event, it gave rise to a dual obligation on the  
6 part of the Security Service, I suggest, firstly,  
7 urgently to re-evaluate the significance of the meeting  
8 which had taken place a few days later and, secondly, to  
9 ensure that any evaluation of the meetings taking place  
10 thereafter involving Mr Khyam were coloured with that  
11 knowledge.

12 LADY JUSTICE HALLETT: Do we have any idea how many meetings  
13 Omar Khyam had during this period with other people from  
14 different areas that might have alerted someone to  
15 anything, what was going on?

16 MR COLTART: I don't know is the short answer to that  
17 question. Certainly there's reference in the  
18 Intelligence and Security Committee report to the fact  
19 that he was, of course, meeting other people during this  
20 period. He was in contact with other vehicles. He was  
21 under surveillance the entire time, as I understand it,  
22 and I'm not suggesting for a moment that these were the  
23 only meetings in which he was engaged.

24 LADY JUSTICE HALLETT: But it's one thing to meet your  
25 neighbours, but your point here is that he's meeting

1 with people who have driven all the way from Leeds for  
2 a rather odd meeting where you go up and down the A23.

3 MR COLTART: Yes.

4 LADY JUSTICE HALLETT: Do we know the material on whether  
5 any other, you would say, suspicious meetings were  
6 occurring with other people?

7 MR COLTART: The only one which I am aware of through my  
8 reading of the Intelligence and Security Committee  
9 report is that which took place on 21 February in  
10 Crawley.

11 Now, in fact, Mohammed Sidique Khan and  
12 Shehzad Tanweer did attend this meeting. This was the  
13 farewell dinner for Mr Khawaja, the explosives expert,  
14 who had flown in for the weekend and was flying out back  
15 to Canada the next day. It was held at a house in  
16 Crawley -- we don't know whose house that was or what  
17 the significance of it may be -- and it was attended by  
18 somewhere between seven and ten males, amongst whose  
19 number we now know were Sidique Khan and Tanweer.  
20 The Security Service explained to the ISC that they  
21 were unable at the time to establish that either  
22 Mohammed Sidique Khan or Shehzad Tanweer were present at  
23 that meeting, and although I reserve my position in  
24 relation to this matter, in due course, if necessary,  
25 and if it comes to it of course, one can have a certain

1 sympathy with that. If you look at the observations  
2 which are made, the recordings which are listened to at  
3 the time which were subsequently listened to in far  
4 greater detail.

5 But putting that issue to one side, that was another  
6 meeting which did take place, I suppose, in objectively  
7 suspicious circumstances, given what was known about  
8 Khyam at the time. I'm not aware of others. I don't  
9 suggest for a moment that there weren't others. There  
10 may well have been. But, madam, your point, may  
11 I respectfully suggest, is the one which requires  
12 examination. What was the nature of the meetings with  
13 which we are concerned? This was not Omar Khyam meeting  
14 Mohammed Sidique Khan in a coffee shop for half an hour  
15 and then the two men going their separate ways, perhaps  
16 in circumstances where they lived in the same town  
17 together. This was both men leaving their respective  
18 home towns to drive huge distances for very short  
19 meetings which took place, one might suggest  
20 objectively, in highly suspicious circumstances. If  
21 ever there was an example to illustrate that fact, one  
22 need look no further than the meeting on  
23 28 February 2004 which was the next of the meetings with  
24 which we're concerned.

25 On this day, the men met up again in Crawley.

1 Mohammed Sidique Khan and Shehzad Tanweer having driven  
2 from Leeds to Crawley.  
3 Crawley, I should add, was the home of at least one  
4 of the known suspects in Operation Crevice. Although  
5 I don't know the identity of the person at whose house  
6 the farewell dinner was met, there was a Crevice  
7 plotter, whose name, I am afraid, for the moment escapes  
8 me, but who did live in Crawley, and they were seen to  
9 visit this address or at least Omar Khyam was on  
10 occasions.  
11 But once in Crawley on 28 February, the men then  
12 undertook a significant journey. That involved going  
13 via various builders merchants, which, as I now  
14 understand matters, may have been to do with  
15 fund-raising for terrorist purposes. They drove to  
16 Omar Khyam's home address in Slough.  
17 They then went -- and this receives only passing  
18 comment in the Intelligence and Security Committee  
19 report -- all of them together in convoy to Toddington  
20 services off the M1 where they met with  
21 Mohammed Qayum Khan, the original suspect in  
22 Operation Crevice. From there, they went to  
23 Wellingborough in Northampton. I have no idea what they  
24 did there, because there is no detail about it at all in  
25 the Intelligence and Security Committee report. I don't

1 know who they visited, whether the address was deemed to  
2 be of any significance and what inferences one might  
3 draw from the pattern of behaviour they demonstrated  
4 whilst there.

5 LADY JUSTICE HALLETT: So it's not that what happens in  
6 Wellingborough has been redacted; it's just that there's  
7 an absence of information?

8 MR COLTART: Well, it's very difficult for me to say. On  
9 the face of it, it's just simply not there. Now,  
10 I don't know whether that's because the ISC asked no  
11 questions about it, or I don't know if, on the other  
12 hand, they did and they know all about it but we  
13 shouldn't be told about it at least for the time being,  
14 or whether they were told about it and deemed it  
15 irrelevant. We simply don't know. This is one -- this  
16 is the mischief caused, of course, by having conducted  
17 the entire hearing in private.

18 In any event, from Wellingborough the party drove  
19 back to Slough, dropping off Omar Khyam at about  
20 midnight, at the end of which Mohammed Sidique Khan  
21 drove from Slough back to Leeds, and he was in the  
22 company of Omar Khyam for about 15 hours on that day.  
23 He completed a round trip of some 600 miles, with the  
24 conclusion reached by the Intelligence and Security  
25 Committee was that there was nothing necessarily

1 suspicious about any of that.

2 Now, what is important, he recalls, is that, on  
3 29 February, the day after this meeting, the  
4 Security Service quite properly carried out further  
5 checks on the Honda owned by Mohammed Sidique Khan.  
6 They had previously carried out some checks which had  
7 revealed an address at 10 Thornhill Avenue in Leeds, but  
8 they carried out a more in-depth check and that revealed  
9 that the car was registered to a man by the name of  
10 Sidique Khan and it provided two addresses:  
11 11 Gregory Street, Batley and 99 Stratford Street in  
12 Leeds.

13 Now, according to the ISC report -- and it's  
14 paragraph 63 for your note madam -- MI5 then ran checks  
15 on those addresses which we are told revealed nothing of  
16 significance.

17 Well, of course, it all depends on what one defines  
18 as being significant or otherwise, but on one view, both  
19 of those addresses were highly significant. The address  
20 at 11 Gregory Street had come up previously during the  
21 course of a police surveillance operation -- in fact, it  
22 was a joint West Yorkshire Police and MI5 surveillance  
23 operation in 2003 where a car registered to that address  
24 was seen driving a known extremist as his passenger, and  
25 it should be said immediately that that was a journey of

1 very short duration and perhaps at the time wasn't of  
2 any great significance, but might have assumed a far  
3 greater significance, if the cross-check of the MI5 and  
4 police database had elicited that fact.  
5 But the other address of 99 Stratford Street in  
6 Leeds is, I suggest, even more important.  
7 Before I make my submissions in relation to this  
8 point, can I make a general observation? I'm not  
9 suggesting for a minute that we're making these  
10 submissions with one arm tied behind our backs, but we  
11 are inevitably hampered to an extent by not having had  
12 access to any of the material which the ISC reviewed.  
13 I'm not suggesting necessarily that we're even entitled  
14 to it at this stage, but, madam, it is a point  
15 I respectfully suggest that you are able to take into  
16 account in our favour when considering our submissions  
17 on arguable breach, that, if we had had access to some  
18 of that material, it may be that our submissions would  
19 have been greatly fortified.  
20 Having said that we don't necessarily -- others  
21 might not share this view -- but that we don't  
22 necessarily have any entitlement at this stage to any  
23 further disclosure, if there are matters in the  
24 possession of the Security Service which plainly would  
25 assist us in advancing these submissions and which no

1 longer perhaps have the sensitivity that they did once  
2 have, if, indeed, they were sensitive at all, then  
3 I would invite the Secretary of State to make any  
4 further disclosure during the course of this week which  
5 he feels is appropriate and which may assist us in that  
6 regard.

7 This perhaps is a particularly good example of where  
8 such further disclosure could assist, because what was  
9 the relevance or significance of that address at  
10 99 Stratford Street in Leeds?

11 Madam, could I invite to you turn, please, to the  
12 ISC report? Page 57.

13 LADY JUSTICE HALLETT: Could someone remind me what letter  
14 it is? What letter file?

15 MR KEITH: Part E, 2 of 2.

16 LADY JUSTICE HALLETT: Thank you. Yes, sorry, which tab?

17 MR COLTART: E10, please, madam.

18 Madam, at page 57 of that report, at the top of that  
19 page, we have the timeline that was produced by the  
20 Intelligence and Security Committee dealing with events  
21 covering the entirety of this period.

22 What we can see is that on 3 February 1993 -- so way  
23 back when -- a man named Sidique Khan who gave his date  
24 of birth to the police of 20 October 1974, which is the  
25 date of birth of the Mohammed Sidique Khan with which we

1 are concerned, was arrested for a minor assault  
2 committed in December 1992.  
3 As is normal procedure, a police record was created  
4 and his photograph was taken. Previous addresses shown  
5 on the West Yorkshire Police records are given as  
6 30 Brunswick Place in Holbeck and 99 Stratford Street,  
7 Leeds, as at 1993.  
8 The committee go on to observe this incident was not  
9 related to national security, and so the information is  
10 not passed by West Yorkshire Police to MI5. Well, with  
11 that, we can all agree and understand why that might be  
12 so.  
13 Then, if we move through to page 60, please, of the  
14 report.  
15 At the bottom of that page, 29 February 2004, so  
16 this is the day after the meeting on 28 February 2004,  
17 the very long road trip via Wellingborough and Slough  
18 and everywhere else, the Metropolitan Police Service  
19 check on the Honda Civic. In fact, I think -- I'll  
20 check this perhaps when we have a break at some point,  
21 but I think in the body of the report it's suggested  
22 that it's MI5 that carry out this check, but perhaps it  
23 matters not.  
24 They check on the Honda Civic and find it's  
25 registered to Sidique Khan who lives at

1 11 Gregory Street, Batley, West Yorkshire. That's the  
2 address we've just been looking at.  
3 The date of birth is given as 20 October 1974 and  
4 the car is linked to two previous addresses:  
5 10 Thornhill Park Avenue and 99 Stratford Street in  
6 Leeds.  
7 Then, if we go over the page to the top of page 61,  
8 two days later, after these checks have been undertaken,  
9 MI5 ask West Yorkshire Police about a storage facility  
10 at that same address, 99 Stratford Street, that may be  
11 linked to Omar Khyam. The Metropolitan Police's  
12 investigation of the address names three individuals,  
13 including a Mohammed Sidique Khan with a date of birth  
14 of 20 October 1974.  
15 Now, the Met Police note in their own records that  
16 they have a reservation as to whether that's the real  
17 name or not, but in any event, one way or another, this  
18 is an address which is linked and has been linked to  
19 Mohammed Sidique Khan in a number of different ways by  
20 now, and MI5, at precisely the same time, are making  
21 enquiries about a storage facility linked to Omar Khyam.  
22 Now, that information about the request made by MI5  
23 only features in the timeline of the ISC report and  
24 there's nothing about it in terms of MI5 making the  
25 request or the link to Omar Khyam in the main body of

1 the report. You have to dig it out from the timeline in  
2 the annexes at the back.

3 But a number of obvious questions arise, in my  
4 respectful submission, in relation to this storage  
5 facility.

6 Firstly, what was Omar Khyam's link with this  
7 storage facility at an address associated with  
8 Mohammed Sidique Khan?

9 But perhaps more significantly, what did MI5 think  
10 that he was storing there? We only know of one other  
11 storage facility linked to Omar Khyam, and that was in  
12 west London where he had 600 kilos of fertiliser that he  
13 was proposing to blow up in a nightclub.

14 What further enquiries were carried out in relation  
15 to this storage facility, and what did those further  
16 enquiries produce, and what significance did MI5 attach  
17 to the fact that Mohammed Sidique Khan was sufficiently  
18 close to Omar Khyam that an address which may be  
19 associated with him was being used for storage purposes?

20 In my respectful submission, we're entitled to the  
21 answers to those questions, subject to issues of  
22 sensitivity which perhaps could be resolved by Counsel  
23 to the Inquests. Because the answers to those questions  
24 may have a significant impact on the way in which we're  
25 able to frame our submissions now on the question of

1 arguable breach.

2 In any event, even if we get the answers to those  
3 questions and they demonstrate nothing of significant  
4 interest as far as these submissions are concerned, this  
5 point still reinforces two important issues in my  
6 submission. The first is, again, it calls into question  
7 the effectiveness of the ISC investigation because,  
8 again, on the face of it, not a single question appears  
9 to have been asked in relation to this topic.

10 Secondly, even if questions were asked and  
11 satisfactory answers provided, we can't tell. It  
12 reinforces again the mischief of conducting the entirety  
13 of this investigation behind closed doors.

14 The meetings continued and I can take them quite  
15 shortly. But the next one, which I haven't put under  
16 a separate heading in the body of my written  
17 submissions -- but, on reflection, probably merited  
18 one -- was on 21 March 2004.

19 On that day, Mohammed Sidique Khan was back in  
20 Crawley. He was driving a hire car on this occasion,  
21 a green Vauxhall Corsa. He picked up Omar Khyam from an  
22 address in Crawley. I don't believe we know whose  
23 address that was, and he drove him around in that car  
24 for 40 minutes before dropping him off and driving back  
25 to Leeds again.

1 By this stage, we are only days away from the  
2 arrests in Crevice. As far as the Security Service were  
3 concerned, this bomb was imminent, and yet no  
4 significance at all appears to have been attached to  
5 that fact in the ISC report.

6 Two days later on 23 March, Mohammed Sidique Khan  
7 was back in Crawley again, in the Corsa. On this  
8 occasion he again had Shehzad Tanweer and Shipon Ullah  
9 with him. Another road trip is embarked upon with the  
10 cars in convoy. The men end up back at Omar Khyam's  
11 flat where the Security Service are able to overhear  
12 some discussion about fraudulent fund-raising schemes,  
13 but also the so-called success of the bombings in  
14 Madrid, which have only very recently taken place. But  
15 the conclusion reached by the ISC was it was only at  
16 this point that Mohammed Sidique Khan could be  
17 considered suspicious, and only then in the context of  
18 financial fraud, and that is a conclusion we suggest  
19 that is open to challenge.

20 A question which Mr Keith in his written submissions  
21 has posited for consideration -- and quite properly  
22 so -- is this: even if more had been done, might it have  
23 made any difference?

24 I've set out in the body of my written submissions  
25 the legal analysis of the test which has to be applied

1 in this case. I don't propose to repeat now what I've  
2 written there, but, madam, you will know that the  
3 so-called "but for" test doesn't have to be applied in  
4 this case. The test is a different one: is there  
5 a reasonable prospect of a different outcome having been  
6 achieved?  
7 Mr Keith has encapsulated that test in a question  
8 which he's posed at page 46 of his written submissions.  
9 He said this:  
10 "The question is whether, if closer attention had  
11 been paid to them [in other words, in particular perhaps  
12 Mohammed Sidique Khan and Tanweer], would there have  
13 been a real prospect of the bomb factory in Leeds, or  
14 the reconnaissance trip in London, coming to light?"  
15 Whilst I largely agree with that analysis, I don't  
16 adopt it entirely, because the question arises: well, if  
17 the spotlight had been focused on those two men more  
18 intently, might other matters in advance of either of  
19 those events have come to light which of themselves  
20 might have intensified the focus of the investigation?  
21 So by way of example, once the spotlight was very  
22 firmly on Mohammed Sidique Khan in the aftermath of the  
23 bombings, within a few weeks, the police and the  
24 Security Service had been able to establish that he had  
25 attended extremist training camps, both in this country

1 and abroad.

2 What else might have been discovered? Shipon Ullah

3 was one of those men who had accompanied

4 Mohammed Sidique Khan and Shehzad Tanweer on most of

5 those meetings, I think three of them out of the five.

6 He was the man who was said to have gone on the

7 reconnaissance mission. Now, the Security Service may

8 say, I don't know, "Even if there was something to go on

9 as far as Mohammed Sidique Khan and Shehzad Tanweer is

10 concerned, what of Jermaine Lindsay and Hasib Hussain?"

11 Almost nothing seems to have been known about them.

12 Well, of course, they were the men that Mr Ullah met

13 when he went on his reconnaissance trip to London.

14 In fact, what we know -- and I take this from the

15 official report into the London bombings which was

16 commissioned by Parliament -- what we know from that

17 report is that, in the months leading up to the

18 bombings, Khan, Tanweer and Hussain had been observed by

19 others -- not the Security Service, but by those who

20 knew them -- spending much of their time together and we

21 know that Mohammed Sidique Khan had formed a close

22 association with Jermaine Lindsay.

23 The bomb factory, which was discovered by the

24 authorities within a week or so of the bombings was in

25 a ground floor flat in Leeds at 18 Alexandra Grove.

1 That was a flat which the bombers had rented  
2 from May 2005, two months before the bombings took  
3 place. They had started to purchase the materials for  
4 their bomb or bombs even earlier than that.  
5 31 March 2005 is the first recorded time that any such  
6 materials are purchased.  
7 It's quite plain, in my respectful submission, that  
8 the men were spending a great deal of time at the flat  
9 in Alexandra Grove. Not only was the DNA of all four  
10 bombers later recovered from that flat, but  
11 Mohammed Sidique Khan and Shehzad Tanweer had been  
12 spending so much time at it that the chemicals in the  
13 flat from the constituent parts of the bomb was even  
14 starting to discolour their hair. It was having  
15 a bleaching effect on their hair. There was a strong  
16 smell in the flat from the chemicals. The plants were  
17 dying on the window sill outdoors, and the net curtains  
18 had been permanently taped into position so that they  
19 were never open.  
20 Even a limited surveillance operation, even if one  
21 accepts for a moment that there might not have been the  
22 resources available to conduct a permanent surveillance  
23 operation, but one cannot say in my respectful  
24 submission that such a surveillance operation will have  
25 had no prospects of uncovering what was going on at that

1 flat.

2 The Security Services have ways and means -- which  
3 I have no intention of exploring unless it becomes  
4 absolutely necessary -- of obtaining access to  
5 properties. It had been done in relation to  
6 Omar Khyam's flat, we know that, there was a bugging  
7 device in there. One might have thought that a cursory  
8 look inside that flat at some point between May  
9 and July 2005 would have uncovered precisely what it was  
10 that was going on.

11 The conclusion reached by the official report into  
12 the London bombings was that it was also likely that the  
13 group would have needed to carry out at least one test  
14 explosion, although when and where that may have taken  
15 place is not known. I accept that, but of course, it  
16 might have been known had a surveillance operation been  
17 in place.

18 But in analysing whether or not any of this was  
19 likely to have made any difference, even the ISC formed  
20 the view eventually that it would, because this is what  
21 that committee had to say on the topic. At page 40 for  
22 your note, madam, they say this:

23 "Had MI5 put the unknown males, being C, D and E  
24 [that being Ullah, Tanweer and Khan respectively], under  
25 surveillance for the next 15 months, it is very possible

1 that they would have heard them talking about their plan  
2 to bomb London and they could have stopped them."  
3 Now, it is important to observe that that  
4 observation was made in the context of a conclusion  
5 reached by the Committee that the decision not to put  
6 the men under surveillance was a reasonable one. But if  
7 one arrives at a different conclusion on that point,  
8 then these are the findings of the ISC, that it would  
9 have made the difference which I've just articulated.  
10 That, I suggest, is the answer to the question which  
11 is being posed by Mr Keith.  
12 I've made various submissions in my document about  
13 so-called systemic breach. I've added in relation to  
14 each item that I've highlighted the relevant  
15 cross-references from the ISC report. Unless you wish  
16 me to do so, I'm not proposing to say anything further  
17 about those.  
18 LADY JUSTICE HALLETT: Thank you, Mr Coltart.  
19 MR COLTART: During the course of my submission on breach,  
20 I've made a number of references already to the adequacy  
21 of the ISC investigation, but those have been framed  
22 primarily in the context of the effectiveness of that  
23 investigation and, madam, as you know, there are  
24 separate legal considerations which fall for resolution  
25 in considering whether the Committee was even capable of

1 being Article 2 compliant.

2 LADY JUSTICE HALLETT: This is the independence or lack of  
3 independence, you would say?

4 MR COLTART: Yes. There are a number of issues which arise.  
5 This is now chapter 4 of my written submissions.

6 I'm not proposing, madam, to take you to any of the  
7 authorities at this stage. The requirement for doing so  
8 can perhaps be reviewed after we've heard from the  
9 Secretary of State.

10 LADY JUSTICE HALLETT: It's a statutory body.

11 MR COLTART: Yes.

12 LADY JUSTICE HALLETT: Are all the members appointed by the  
13 Prime Minister? The chairman is, certainly.

14 MR COLTART: All the members are. In conjunction, it should  
15 be said, with the leader of the opposition.

16 If I could turn to deal with the independence issue,  
17 can I hand up, for fear of adding to what is already  
18 a formidable array of paperwork on your desk, one  
19 further document, if I may, which I've provided to my  
20 learned friends for the Secretary of State this morning?  
21 It's a printout from a page on the MI5 website.

22 LADY JUSTICE HALLETT: Just before we go to this, going back  
23 to the appointment of the members, is there any  
24 convention as to how the Prime Minister and the leader  
25 of the opposition decide on who's going to sit on the

1 Committee?

2 MR COLTART: I'm afraid I simply don't know the answer to  
3 that question. I'm sure that enquiries can be made, but  
4 at present I'm simply unable to answer.

5 MR O'CONNOR: It's the Prime Minister's decision solely, but  
6 reached in consultation with leaders of the opposition.

7 LADY JUSTICE HALLETT: But are there any conventions that  
8 dictate which members of Parliament will be placed upon  
9 the Committee?

10 MR O'CONNOR: None at all.

11 LADY JUSTICE HALLETT: Thank you.

12 MR KEITH: Madam, may I just say -- it's of some topical  
13 interest -- in fact, the Prime Minister, in consultation  
14 with the leaders of the two main opposition parties,  
15 appoints the ISC members.

16 LADY JUSTICE HALLETT: Quite right, Mr Keith.

17 MR COLTART: They are probably hung in relation to most of  
18 the decisions which they reach.

19 LADY JUSTICE HALLETT: Right, so we were looking at the  
20 Security Service setting out the responsibility to the  
21 Prime Minister.

22 MR GARNHAM: I hesitate to interrupt, but only to say the  
23 obligation to consult the leader of the opposition is  
24 statutory. Section 10, subsection 3 of the 1994 Act.

25 LADY JUSTICE HALLETT: Thank you.

1 Yes, Mr Coltart, you wanted me to look at this page  
2 on the website.

3 MR COLTART: Yes, please. I've mentioned in the course of  
4 my written submissions that there is a conflict, or  
5 potential conflict, between the Prime Minister's duties  
6 in relation to the Security Service and in relation to  
7 his powers of appointment on to the Committee, and  
8 I thought it would be helpful to provide this document  
9 to clarify precisely the position both in law and also  
10 as a matter of practicality, because one can see from  
11 the third paragraph down on this document that the Home  
12 Secretary by statute has responsibility for the  
13 Security Service. He is accountable to Parliament and,  
14 therefore, to the public for the work of the service,  
15 and he appoints the Director General in consultation  
16 with the Prime Minister.

17 But above that, the assessment of MI5 is that the  
18 Prime Minister is responsible for the UK intelligence  
19 machinery as a whole, and at the bottom of the page  
20 under the heading "key points", the Home Secretary and  
21 the Prime Minister have overall responsibility for the  
22 work of MI5.

23 From a legal standpoint and from the standpoint of  
24 the European Convention, where does that leave us in  
25 respect of the issue of independence?

1 As I set out in my submissions, it is essential that  
2 the body which investigates any potential failing on the  
3 part of the State and any potential breach of its  
4 obligations to protect life, must be independent from  
5 a constitutional and hierarchical perspective.  
6 What is the position here? We say in essence that  
7 the Prime Minister is ultimately responsible for the  
8 work of MI5 -- that's certainly MI5's assessment of the  
9 position -- and the Prime Minister has the power or at  
10 least a very significant say in the composition of the  
11 Committee which will investigate that work.  
12 One questions the extent to which the fact that he  
13 shares that power with the leader of the opposition  
14 parties makes any practical difference to the outcome,  
15 because there's nothing to stop a Prime Minister from  
16 identifying for suitability to sit on that Committee  
17 those whom he suspects, privately or otherwise, may be  
18 sympathetic to his position, either through loyalty,  
19 perhaps, in the case of old and trusted friends, or who  
20 may be influenced through aspiration in the case perhaps  
21 of a young MP with visions one day of a seat in the  
22 Cabinet.  
23 I've set out the quote in my written submission from  
24 Lord Justice Laws dealing with the effect of what he  
25 describes as unconscious bias.

1 It's in chapter 4 of the submissions, page 31.  
2 "This test was recently assessed by  
3 Lord Justice Laws in a case alleging insufficient  
4 independence ... he paid particular attention to the  
5 concept of 'unconscious bias'. [He said]:  
6 "'Some care, I think, is needed in relation to  
7 unconscious bias. Unconscious bias, if it is  
8 demonstrated, is strictly speaking a species of actual  
9 bias. It moves the mind of the decision-maker as surely  
10 as does a prejudice or animus against a party in the  
11 case. But since even the decision-maker is unaware of  
12 it, it is unlikely to be demonstrated. Its true  
13 importance is as to the principal focus of apparent bias  
14 claims. As was said in [the case of] *Lawal*, '[p]ublic  
15 perception of the possibility of unconscious bias is the  
16 key'. And this must be what Pitchford J had in mind in  
17 the case of *P v Secretary of State for Justice* [2009]  
18 EWHC 13 (Admin) when he said:  
19 "'It seems to me, for example, that it would hardly  
20 be appropriate for a retired Detective Chief  
21 Superintendent to investigate and make recommendations  
22 upon the force policy of a Chief Constable under whom he  
23 had served, whether in the same force or not. The risk  
24 of unconscious bias one way or the other is obvious'."  
25 I submit that the risk is far greater in the case of

1 serving politicians in the same party, either who have  
2 known each other for a very great length of time or  
3 where one is in position of far greater superiority over  
4 the other and is in a position to make decisions which  
5 may affect the progress of that younger politician's  
6 career.

7 In addition to that, of course, the Prime Minister  
8 has unfettered access to those who are conducting the  
9 investigation, whether he is bumping into them down the  
10 corridors of Westminster, sharing a drink with them at  
11 a Christmas party, or having a quiet word at the end of  
12 a parliamentary meeting of some description, he is in  
13 a position to discuss the nature of the ongoing  
14 investigation into the work of a body for which he  
15 remains responsible.

16 Indeed, of course, he has an opportunity to discuss  
17 the parameters of the investigation at the very outset  
18 when he invites those MPs to sit on the Committee.

19 I should make it plain, if it's not already -- and  
20 I hope that it is -- that I'm not making any specific  
21 allegations in this case. Of course I'm not. But what  
22 is important is the public perception. Has this been  
23 a properly independent investigation into what went on?  
24 In my respectful submission, there's only one answer to  
25 that question and it's "no".

1 LADY JUSTICE HALLETT: I think that for the sake of those  
2 who are taking a note, Mr Coltart, we'll have a short  
3 break so they can rest their hands. I shall return at  
4 12.15 pm.

5 (12.05 pm)

6 (A short break)

7 (12.15 pm)

8 LADY JUSTICE HALLETT: Yes, Mr Coltart?

9 MR COLTART: Madam, I've nothing further to say on the issue  
10 of independence.

11 As you know, there are other essential features of  
12 an Article 2-compliant investigation. Most importantly,  
13 for our purposes, that it must be subject to  
14 a sufficient degree of public scrutiny, and that it must  
15 involve the next of kin to a degree capable of  
16 protecting their legitimate interests.

17 LADY JUSTICE HALLETT: Where you have an Article 2  
18 investigation which is investigating material that of  
19 its very nature may be sensitive and, therefore, not  
20 disclosable, how do you say that those factors balance?

21 MR COLTART: This is an issue which the Secretary of State  
22 relies upon, quite significantly so, and we say this:  
23 that there's nothing new about courts handling sensitive  
24 material. It happens day in, day out, up and down the  
25 country in criminal trials. Some of those trials are of

1 the most sensitive nature, dealing with terrorist  
2 activity, and the reality is that there are a number of  
3 different ways in which this situation can be managed.

4 This court has the ability to sit in private, if it  
5 felt that it would be in the interests of national  
6 security to do so. This court has the power to issue  
7 certificates of public interest immunity on application  
8 by the Secretary of State to withhold information from  
9 the public domain.

10 For the purposes of reviewing any such material, we  
11 have the benefit in this case of a senior member of the  
12 judiciary, familiar with this type of issue, assisted by  
13 leading counsel and two junior counsel, the leader being  
14 qualified as special counsel for other purposes and  
15 security cleared to the appropriate level, and of  
16 course, if all else fails, the court could appoint  
17 special counsel to represent the families' interests in  
18 any event to ensure that only that which was properly  
19 disclosable was disclosed to the families, and that  
20 nothing was done which might jeopardise the interests of  
21 national security.

22 So we say in reality this is a position which can be  
23 managed. Whilst one understands why aspects of the ISC  
24 enquiry were conducted in private, given the breadth of  
25 the material which they were then subsequently prepared

1 to commit to writing and to publish, it's difficult to  
2 see why large sections of their investigation could not,  
3 in fact, have been conducted in public, and any  
4 suggestion now made that this is an insuperable obstacle  
5 to this court conducting the sort of inquest for which  
6 we contend we suggest is unsustainable.

7 Whilst I'm dealing with this topic, can I deal with  
8 a related one, which is the suggestion made, as  
9 I understand it, in the Secretary of State's skeleton  
10 argument, that it would somehow be either burdensome or  
11 unfair to ask the government to embark upon this  
12 investigation.

13 In support of that contention, the Secretary of  
14 State has relied upon the case of Cummins. For your  
15 note, madam, this is at paragraphs 59 to 61 of his  
16 written submissions.

17 That was a case where the British Government was  
18 asked in 1999 to assist in a further enquiry into events  
19 which had taken place in Dublin some 25 years previously  
20 in 1972, and the government refused to participate in  
21 that further investigation on the basis that it was too  
22 time-consuming to research all of its records.

23 One might have a certain sympathy for that  
24 observation. The European Court certainly did and held  
25 that the government wasn't in breach of its obligations

1 by refusing to participate. But whether any meaningful  
2 comparison can be drawn between the facts of that case  
3 and the facts of this case I suggest is seriously open  
4 to doubt.

5 We're dealing with events five years ago, not  
6 25 years ago.

7 We now have the benefit of all of the information in  
8 question being stored electronically and instantly  
9 retrievable, and it may be disappointing for the  
10 families to hear that, as far as the government is  
11 concerned, the work involved in retrieving that  
12 information is too much to make the effort worthwhile.

13 I suggest it can be done without the level of  
14 disruption for which the government contends, and  
15 I suggest that it should be done.

16 I don't propose at this stage to say anything  
17 further on the adequacy of the ISC enquiry. I reserve  
18 the right to respond in due course to the submissions  
19 which are made on behalf of the Secretary of State. But  
20 unless I can assist you further on that topic, I'm  
21 proposing to move on to deal with the next issue, which  
22 I've described in my document under chapter 5 as the  
23 alternative arguments in relation to scope.

24 Now, madam, as will be perfectly plain from the  
25 submissions I've made already, our primary submission in

1 this case is that there is sufficient evidence of an  
2 arguable breach of the obligation to trigger an  
3 Article 2 investigation, a Middleton inquest. But in  
4 the body of this chapter I set out two ways in which the  
5 same end may be achieved, even in the absence of any  
6 arguable breach, if that were to be the court's finding.  
7 It appears, in fact, having read the submissions  
8 submitted on behalf of the Secretary of State, and those  
9 helpfully provided by your team, that there may not be  
10 a great deal of difference between the parties on what  
11 is the proper scope of a so-called Jamieson inquest, the  
12 narrower type of inquest, and whether there's any  
13 meaningful difference between the scope of such an  
14 inquest and the Middleton inquest for which we contend.  
15 The real difference lies in the verdicts that are  
16 available at the end of it.  
17 A Jamieson inquest in relation to the 52 victims  
18 would, one can be sure, return verdicts of unlawful  
19 killing in relation to those victims, but could go no  
20 further, whereas a Middleton inquest would permit the  
21 jury to pass its views on the central issue in the case,  
22 if it were to be the central issue in the case, as to  
23 whether it's unlawful killing, contributed to by the  
24 failings of the state.  
25 But it may be that there is scope for both forms of

1 inquest to cover the same ground, and that's certainly  
2 the position for which we contend. The Secretary of  
3 State disputes that contention. Whilst he agrees that,  
4 in principle, the scope of the two inquests is the same,  
5 he seeks to argue that going back to the events of 2004  
6 is too remote in time, certainly for a Jamieson inquest.  
7 He even seeks to argue that it's too remote in time for  
8 the purposes of a Middleton inquest, and I'll reserve my  
9 position until I've heard that submission expanded upon  
10 in due course.

11 But I suggest there are two insurmountable hurdles  
12 to the legal contention which he advances. The first is  
13 that it flies in the face of judicial authority from the  
14 House of Lords to the contrary, and I've cited in my  
15 written submissions a passage from the judgment of  
16 Baroness Hale in the case of Hurst.

17 You will recall Troy Hurst was killed by a neighbour  
18 on his estate and there was an allegation made that the  
19 police should have done more to prevent it, and the view  
20 taken by Baroness Hale, and indeed by Lord Mance, in  
21 that decision was that an ordinary Jamieson inquest  
22 would be capable of considering the failings of the  
23 police, not just on that day, but going back earlier in  
24 time. That's the first hurdle to the position for which  
25 the Secretary of State contends.

1 But the second hurdle, I respectfully suggest, is  
2 that his position simply fails to give sufficient weight  
3 to the overwhelming public interest in exploring the  
4 preventability issue, whatever labels attach to this  
5 inquest.

6 A number of the written submissions which you have  
7 received contain the famous quote from Lord Lane in the  
8 case of Thompson where he refers to the duty of the  
9 coroner being to seek out and record as many of the  
10 facts concerning the death as the public interest  
11 requires.

12 So the scope of an inquest is, by its very nature,  
13 a flexible concept, and to what extent this inquest  
14 chooses to explore topics going back in time will be  
15 dictated to an extent by what this inquest considers to  
16 be in the public interest.

17 For all the reasons which have been set out in all  
18 of the written submissions, I suggest that the public  
19 interest in this case militates in favour of an  
20 extensive and wide-ranging inquiry, and that it would be  
21 possible to achieve that aim, that laudable aim, in the  
22 context of a Jamieson inquest if that was viewed as  
23 being the appropriate way forward.

24 Can I proffer another suggestion as well, which  
25 I shall, in the spirit of the forthcoming election,

1 describe as the third way?

2 It may be the case -- and I've touched upon this in  
3 my written submissions but I'd like to expand upon it,  
4 if I may -- that seeking at this juncture to label any  
5 resumed inquest either Middleton or Jamieson is  
6 premature in any event.

7 If the court was troubled by the issue of arguable  
8 breach, but not persuaded at this stage that the  
9 position was so clear that it ought to order a Middleton  
10 inquest, there's no need necessarily to condemn the  
11 nature of the inquest to being a Jamieson inquest quite  
12 so early on.

13 In other words, it would be open to you,  
14 I respectfully suggest, to rule on scope as a matter of  
15 principle and if you took the view that whichever form  
16 of inquest was appropriate it would be correct, legally  
17 correct, to explore the so-called preventability issue,  
18 then it may be possible to reserve your position at this  
19 stage as to what form -- either Jamieson or Middleton --  
20 the inquests should eventually take.

21 The great advantage of that approach would be that  
22 you would not have to circumscribe at this stage, this  
23 early stage, before any evidence has been heard, as to  
24 what verdict may be available in due course. Rather,  
25 you could review the position at the end of all of the

1 evidence. If satisfied that arguable breach is made  
2 out, the jury can be invited to return a Middleton  
3 verdict, whether by way of questionnaire or whatever  
4 form it takes.

5 If you're not satisfied, having heard all the  
6 evidence, that the arguable breach is made out, then  
7 short-form traditional Jamieson verdicts could be  
8 returned instead.

9 I do emphasise that that isn't my primary  
10 submission. We say it's plain on the face of what we  
11 have already that there's sufficient to establish  
12 an arguable breach and that the explanations provided by  
13 the Security Service should be tested publicly. But,  
14 madam, if you're not persuaded of that, it doesn't mean  
15 that the only viable alternative is to label it as  
16 a Jamieson inquest now.

17 I've made reference in the course of my written  
18 document to the relevance of conspiracy theories in this  
19 case. I can deal with this point shortly. There are  
20 a number of unfounded conspiracy theories, we would  
21 suggest, circulating both on the internet but also in  
22 the national media as well, in relation to the events of  
23 7/7. Those are inevitably distressing for the families  
24 of those who died on that day, but I've highlighted in  
25 the course of my submissions that there may be some

1 legal basis upon which those conspiracy theories now  
2 fall to be considered.

3 As I have set out in the so-called Diana inquest,  
4 the inquest into the death of the late Princess of  
5 Wales, the coroner in that case, Lord Justice Baker,  
6 appeared to have taken the view -- and I will be  
7 corrected on this if I'm wrong, because there are others  
8 in this room who were far more closely involved in those  
9 proceedings than I -- but he appeared to take the view  
10 that the importance of quashing unfounded conspiracy  
11 theories was sufficiently important to justify  
12 a Middleton-type inquest, even in the absence of any  
13 arguable breach by the state of its obligations under  
14 Article 2.

15 What he said in that case was that there was no  
16 evidential basis for those assertions. They relied  
17 solely upon the theories that were being propounded by  
18 Mohammed Al-Fayed, and yet he was prepared to engage in  
19 a wide-ranging and extensive review of what it was that  
20 was said to have gone on.

21 So query, does that provide a basis in these  
22 proceedings for conducting an extended inquest? I make  
23 it quite plain, in case anyone is alarmed by this  
24 prospect, that I am not advocating for a minute that  
25 those conspiracy theories are aired during the course of

1 these proceedings, but if one examines the extent to  
2 which Mohammed Sidique Khan and Shehzad Tanweer were  
3 already in 2004 associated with now convicted  
4 terrorists, then those theories can be quashed by  
5 implication.

6 But even if, madam, eventually that's a submission  
7 which proves too bold and to be a step too far -- in  
8 other words that it provides a freestanding basis for  
9 a Middleton inquest, then I would respectfully suggest  
10 that the importance of quashing those conspiracy  
11 theories is one of the significant public interest  
12 factors in conducting an investigation on as broad  
13 a basis as possible, whatever label is eventually  
14 attached to the inquests.

15 Madam, I have some very brief submissions to make on  
16 the final three topics which will take me no more than  
17 a few minutes: jury, joinder and interested persons.

18 I've got nothing to add to what I've put in my  
19 written submissions on the question of a jury.

20 I maintain that the appropriate course is for the court  
21 to resolve first the issue of scope and then to return  
22 to the question of jury in due course, unless, of  
23 course, madam, you're persuaded by others that it's  
24 mandatory to summon a jury in this case in any event,  
25 and I'm neutral on those submissions.

1 In relation to the issue of joinder, we are  
2 handicapped by the lack of information which has come  
3 from the families of Mohammed Sidique Khan and the  
4 others, but for the time being, I simply repeat the  
5 observation I made in my opening comments: namely, that  
6 however it's done, the families whom I represent would  
7 not want, under any circumstances, for the inquests into  
8 their loved ones to be conducted at the same time as the  
9 inquests into the deaths of the bombers.

10 Madam, that leaves only one topic to cover in my  
11 case, which is a short and discrete one, which is the  
12 question of the status of one of my clients. This is at  
13 page 42 of my written submissions.

14 LADY JUSTICE HALLETT: Essentially, it comes to this, that  
15 Miss Sharifi, you would say, is the only member of the  
16 family available to represent the interests of her  
17 brother.

18 MR COLTART: She is, I'm afraid. Their parents died in  
19 Afghanistan. There's no-one else who's available to  
20 represent his interests and I invite you to exercise  
21 your discretion in her favour.

22 There are other matters that I can mention, if it's  
23 necessary, but I'm in the court's hands.

24 LADY JUSTICE HALLETT: I have your submissions well in mind,  
25 Mr Coltart. I don't think we need to -- I understand

1 the position very much of Miss Sharifi and I'm grateful  
2 to her for being prepared to help.

3 MR COLTART: I'm grateful, thank you.

4 LADY JUSTICE HALLETT: As far as the survivors are  
5 concerned, you don't wish to add anything to your  
6 submissions?

7 MR COLTART: No, thank you.

8 LADY JUSTICE HALLETT: So query neutral, but with  
9 reservations as to whether or not an inquest is the  
10 appropriate forum for the survivors' interests to be  
11 aired?

12 MR COLTART: Yes.

13 LADY JUSTICE HALLETT: Thank you.

14 MR COLTART: Madam, those are my submissions.

15 LADY JUSTICE HALLETT: Thank you very much indeed,  
16 Mr Coltart. I'm very grateful.

17 Right, Mr Patterson, I think you're going next.

18 Submissions by MR PATTERSON

19 MR PATTERSON: May it please you, madam, the submissions  
20 document which we served on Friday, 16 April is at  
21 divider 9 of the submission bundle, and having been  
22 instruct by Lovells solicitors, I represent four of the  
23 bereaved families, all of whom lost loved ones as  
24 a result of the bomb on the Piccadilly Line, and, madam,  
25 what I intend to do in these oral submissions is to

1 limit myself to amplifying those matters that I feel  
2 need to be amplified from the document and perhaps  
3 responding to one or two of the points made by others in  
4 their documents, and, as for a summary, madam, of the  
5 position that we take on the five key points, it's set  
6 out in the document at page 2.

7 On resumption, we say there is a strong need for  
8 resumption in this case. On joinder, we say that the  
9 inquests into the deaths of the four bombers should not  
10 be joined.

11 On scope, we urge you to hold a wide review into the  
12 circumstances involving a Middleton-type inquest looking  
13 at issues such as preventability as well as issues  
14 focused more closely to 7 July itself and failures of  
15 the emergency services, if there were any.

16 On jury, madam, our position is that a jury should  
17 be summoned, and finally, on properly interested persons  
18 you will have seen, madam, how we stated in the  
19 document, in one sense neutral, although we do have  
20 concerns as to the scope of the inquests, once it's  
21 determined, being the true scope, and we're anxious that  
22 the inquests should not be diverted from that scope.

23 Madam, I noted that Mr Coltart didn't deal in any  
24 great detail with the question of resumption, so could  
25 I begin with the resumption, please?

1 LADY JUSTICE HALLETT: Certainly.

2 MR PATTERSON: As you will know, some 70 per cent of the  
3 bereaved families who have expressed an opinion have  
4 asked you to resume the inquests into their loved ones  
5 and this clear expression of their opinions is, I would  
6 submit, a significant factor.

7 Speaking for ourselves, the four families that we  
8 represent strongly urge you to resume the inquests.  
9 They respectfully ask you to enquire into the details of  
10 the circumstances of the deaths of their loved ones.  
11 A central issue is the emergency response, and perhaps,  
12 madam, by way of example, if I can simply deal with one  
13 family for whom I act, the Mozakka family.

14 I've touched upon this briefly in the document, but  
15 the position is this, that Mrs Mozakka had left her  
16 family in Finchley on the morning of the bombs. She was  
17 travelling to work at Great Ormond Street when the bomb  
18 exploded, and for nearly five years the family have been  
19 under the misapprehension that she died instantly.  
20 When the scene report was disclosed recently, the  
21 family learnt for the very first time that, in fact,  
22 their wife and mother was still alive. It seems, madam,  
23 she was alive for some -- as we can calculate it,  
24 something in the region of 35 to 40 minutes after the  
25 explosions. We've learnt just now with the disclosure

1 in the scene reports that there was a named police  
2 officer who spoke to Mrs Mozakka. His name appears in  
3 the reports. So the family respectfully ask you to have  
4 an inquest into the death of Mrs Mozakka to find out  
5 what happened to her in those crucial moments after the  
6 blast, whether Mrs Mozakka might have survived, had  
7 there been a better response from the emergency  
8 services. If there wasn't an adequate and timely  
9 response, why was that?

10 They note that Mrs Mozakka was quite close to the  
11 bomber, Jermaine Lindsay, who set off that bomb, but  
12 clearly others, it seems, who were quite close to the  
13 bomber also survived, albeit with very serious injuries.  
14 So that's the sort of key issue that I would  
15 respectfully ask you to consider when considering the  
16 need for resumption.

17 On those sorts of issues, madam, everyone clearly  
18 has enormous sympathy for those who attended and for  
19 those who did their best, in harrowing circumstances, to  
20 deal with the aftermath of the explosion. Everyone is  
21 very grateful for that assistance. But there is reason  
22 to believe that there may have been failings and clearly  
23 we would invite you to look into that potential.

24 Amongst the unanswered questions that the Mozakka  
25 family have, by way of example: at what time did the

1 police officer find Mrs Mozakka alive? This particular  
2 officer was part of a roving team that was in place, it  
3 seems, as a result of the G8 summit taking place in  
4 Scotland that day.

5 The way in which London was being protected is  
6 something that some of the families have concerns about.  
7 The speed or otherwise with which teams responded and  
8 got to the scene. By way of example, the  
9 London Assembly report found clear delays in attending  
10 at the scene. The major incident at Piccadilly, for  
11 example, the Piccadilly Line explosion wasn't declared  
12 until 9.38. So clear delays in that respect.

13 For example, at 9.39, there were no police officers,  
14 it seems, at Kings Cross station. Is that correct, the  
15 Mozakka family ask?

16 This is concerning, given that it was at 8.56 am  
17 that the Metropolitan Police were aware of the  
18 explosion.

19 What about the officers at Russell Square? It seems  
20 that there may have been officers at Russell Square more  
21 quickly than at Kings Cross, but the sorts of questions  
22 that arise are: when did they first get to the relevant  
23 carriage, the first carriage of the train in which the  
24 explosion had taken place?

25 At 10.27 am -- so an hour and a half after the

1 explosion -- it seems that the London Ambulance Service  
2 manager was indicating that there were still 50 people  
3 trapped in the train, and, as we know, there were some  
4 27 who died in that explosion. Clearly all of them were  
5 not killed instantly, and so, what did the officer do in  
6 the case of Mrs Mozakka, for example, what did he do  
7 when he found her alive, spoke to her, found her  
8 breathing and talking? It seems he then moved on to the  
9 next person in the carriage. We'd like to know who did  
10 he tell about this person who he had found alive, what  
11 steps did he take? Clearly every second counted.  
12 By way of example, madam, in the London Assembly  
13 report, there are some summaries of the evidence given  
14 by some of the survivors. One of them got to hospital  
15 at a time when she reckoned she had something like  
16 4 minutes of blood left in her body. She was expected  
17 to die but she was thankfully resuscitated. She  
18 explained to the investigators, "I am here literally by  
19 the skin of my teeth".  
20 So the sorts of questions that arise include really  
21 an analysis of what was going on at the scene, who took  
22 charge, when did they take charge, and if there was  
23 confusion and a lack of leadership, what were the  
24 reasons for that?  
25 So, madam, that example that I've given is

1 a significant one perhaps, but it's not unusual. We can  
2 find no mention of anybody else taking any steps to deal  
3 with that particular casualty, Mrs Mozakka, in the  
4 minutes and hours that followed that conversation when  
5 she was still alive. The next reference to her is the  
6 following day, 8 July, when it seems that her apparently  
7 dead body was removed.

8 I mention other similar examples exist of those  
9 sorts of situations. One that we've seen recently is  
10 a letter that has been sent to the inquest applying for  
11 designation for one John McDonald, an individual who  
12 comforted a passenger for some 40 minutes at  
13 Edgware Road before that passenger died and in the  
14 letter from the NUT solicitors we read that Mr McDonald  
15 would like to know whether that man that he comforted  
16 might have survived if the rescuers had reached him more  
17 quickly. So it is a theme that occurs in a number of  
18 instances.

19 As for this need for resumption, madam, the  
20 post-mortem examinations also arise as an area of  
21 concern for the families. In the case of Mrs Mozakka,  
22 for example, no post-mortem examination was held until  
23 13 July, some six days after the bombs, and yes, of  
24 course the loss of life that was being addressed here  
25 was considerable, was unprecedented, but the question

1 that arises is: could these post-mortems not have been  
2 carried out perhaps more quickly than they were? Are  
3 there lessons to be learnt?

4 In particular, as to the post-mortems, we have now  
5 discovered from the scene reports that there were no  
6 internal examinations and, again, a question that arises  
7 is: why was the decision taken that there would be no  
8 internal examinations? Although the cause of death was  
9 clearly the explosions, the precise mechanism of death  
10 was not explored, and so that makes the question of  
11 survivability all the more difficult for us now and for  
12 the families when asking whether or not their loved one  
13 might have survived.

14 LADY JUSTICE HALLETT: If that decision was taken by  
15 a judicial officer, how do you say an inquest is going  
16 to explore that?

17 MR PATTERSON: It may be that your predecessor made that  
18 decision. I simply don't know. Doubtless, there were  
19 very good reasons, and it was carefully considered, but  
20 the fact remains that in looking now at survivability,  
21 we have to, for instance, in this case, assume that  
22 there were perhaps no internal injuries and that,  
23 therefore, sadly, this might be a case where this person  
24 was dealing with loss of blood and that Mrs Mozakka, for  
25 example, if she hadn't had any internal injuries that

1 would have been insuperable, could have survived if the  
2 response had got to her quickly enough. We've read  
3 about tourniquets being applied and the like, and how  
4 often those very seriously injured did survive.

5 LADY JUSTICE HALLETT: I understand that argument. My  
6 question was how -- you said that one of the matters  
7 that you might wish to explore is why the decision was  
8 taken to have no internal investigation, and my question  
9 really was, how do you explore that aspect? It's one  
10 thing to explore what we do or don't know or what might  
11 have happened, given what we do or don't know, but it is  
12 a fact that no invasive post-mortems were held. If I am  
13 right in thinking that that decision was taken by  
14 a judicial officer, I just don't see how you end up  
15 exploring it unless you're going to ask to cross-examine  
16 him.

17 MR PATTERSON: I don't know what reasons were recorded at  
18 the time, whether they have been recorded somewhere.

19 LADY JUSTICE HALLETT: As far as whether or not -- as I see  
20 it, the aftermath can be divided into two categories.  
21 One is the response of the emergency services and  
22 whether or not that has impacted on people's chances of  
23 surviving the explosion. There's another aspect which  
24 you've just mentioned, which is: could the post-mortems  
25 have been carried out more quickly, are there lessons to

1 be learned?

2 Do you say -- which is almost a follow-on from the  
3 immediate aftermath, which is, what happens? Were the  
4 families notified quickly enough? Were the post-mortems  
5 carried out quickly enough?

6 Could you help me on how you say those aspects  
7 impact or can be legitimately covered within the context  
8 of an inquest into the circumstances of the death as  
9 opposed to the circumstances of the investigation  
10 thereafter and the telling the families?

11 MR PATTERSON: I agree that there is a limit in the scope of  
12 the inquest, and the statute makes that clear, and the  
13 Coroners Rules make that clear, and clearly you have  
14 a discretion.

15 All I can say in relation to those aftermath issues,  
16 where there is a legitimate argument to say that a line  
17 has to be drawn, and that they shouldn't be explored --  
18 and, madam, we are realistic about this, and we know  
19 that, for instance, issues as to the way in which the  
20 family liaison officers communicated, it may be that  
21 some of those issues will be deemed to be beyond the  
22 scope of your inquest. We recognise that. It's  
23 a discretionary matter for you, and it may be that  
24 a clear, bright line can be drawn in relation to some of  
25 these issues by focusing on certain issues but not

1 others, so that the recovery and the identification  
2 issues can be covered, the issues of the mortuary and  
3 the post-mortems can be covered, but that thereafter  
4 there may be a line that has to be drawn, and  
5 I recognise that and we are alive to that.  
6 All we would say is that this is a very good  
7 opportunity -- if you do resume the inquest, this is  
8 a very good opportunity to deal with those issues, if  
9 you take the view that they can be concisely and easily  
10 dealt with in the scope and in the course of your  
11 inquest.

12 LADY JUSTICE HALLETT: Even if I have a discretion,  
13 Mr Patterson, I'm bound to exercise that discretion in  
14 accordance with the law --

15 MR PATTERSON: Yes.

16 LADY JUSTICE HALLETT: -- and at some stage I would welcome  
17 greater assistance on -- you say that it might be a good  
18 idea to get these matters disposed of, but this is not  
19 a public inquiry; it is an inquest, if it's resumed.

20 MR PATTERSON: Absolutely, and we recognise that.  
21 Certainly, in the hours and days that followed the  
22 explosions, there were concerns that the families had as  
23 to the whereabouts of their loved ones and telephone  
24 calls that were made, enquiries that were made, didn't  
25 get the answers that it was hoped they would get and,

1 for example, many of the families that I represent have  
2 concerns that, for instance, clear identification of the  
3 loved ones was found at the scene. In one case there  
4 was medication found with the name of the injured  
5 person, in another case there were identification cards  
6 found on the body. Yet, for many days, they were  
7 anxious and worried and telephoning hospitals and  
8 visiting hospitals enquiring into whether or not their  
9 loved one might still be alive.

10 LADY JUSTICE HALLETT: I totally understand. The anguish  
11 they must have gone through is horrific. But I do need  
12 help on whether I can, as a matter of law, exercise my  
13 discretion to cover matters like that, which is, some  
14 may think, technically beyond the bounds of even  
15 a broad-ranging inquest.

16 MR PATTERSON: I am aware of no specific guidance on this in  
17 the authorities other than in the Jamieson case and in  
18 the Dallaglio case, the High Court dealt with the  
19 discretionary nature of the approach to scope and  
20 essentially said that it is a matter for the coroner to  
21 fashion the scope and there will be a degree of  
22 flexibility, having regard to the humanity of the  
23 situation, and, madam, I can put it no higher than that.  
24 Before I leave this topic, another matter that  
25 arises and into which we would invite questions to be

1 asked is the triage process and what happened at the  
2 scene, and the emergency response and the speed with  
3 which the victims were prioritised.

4 Again, questions that arise are: was there a triage  
5 process carried out in relation to, in this case,  
6 Mrs Mozakka, who it seems was still alive? We know that  
7 at some of the bomb sites there was effective triaging  
8 and, for example, at the Tavistock Square site those who  
9 attended from the British Medical Association building  
10 very helpfully engaged in that exercise, but at the  
11 Piccadilly Line bomb it seems that there may be failings  
12 in that respect.

13 Madam, the question arises whether the  
14 London Assembly reports have dealt with any of these  
15 issues, and the simple answer is that, although they did  
16 deal with a number of headline factors, in particular  
17 communications in the aftermath, those reports did not  
18 provide specific answers to the questions about each of  
19 the individual victims, and that's my essential point in  
20 relation to that.

21 We're grateful for the work of that committee.  
22 We're grateful for their recommendations and the work  
23 they carried out. But for each of the individual  
24 victims there was no analysis of the circumstances of  
25 their deaths.

1 That committee, as I understand it, heard evidence  
2 from only a handful of the 700-odd survivors. They  
3 didn't hear evidence from all of those who attended at  
4 the scene, so the examples of the police officer who  
5 I've mentioned, and individuals like that. The focus of  
6 the evidence seems to have been on senior police  
7 officers and the like.

8 LADY JUSTICE HALLETT: It's systems the GLA has focused on  
9 systemically.

10 MR PATTERSON: Exactly. Clearly, if it were to be suggested  
11 that the investigation by that committee removes any  
12 need for resumption, I would suggest that it doesn't,  
13 because the details of the deaths that you are  
14 considering weren't analysed.

15 Nor, it seems, did they analyse the issue of triage  
16 on the train, which we say is an important issue. Also  
17 worth noting, we would suggest, is that of the various  
18 recommendations that they did make, many of them have  
19 not been implemented, and so it may be that, at the end  
20 of the resumed inquest, you may want to consider in any  
21 Rule 43 report dealing with any outstanding needs for  
22 improvement in relation to any of these sorts of issues,  
23 and a Rule 43 report is an important reason, we would  
24 submit, in favour of resuming the inquests and perhaps  
25 is highlighted by the fact that only in February of this

1 year the threat of a terrorist attack was raised by the  
2 House of Commons Home Affairs Committee from substantial  
3 to severe. The report is in your bundles, madam, but  
4 the conclusion of that committee was that another  
5 terrorist attack is highly likely and with the threat  
6 coming principally from Al-Qaeda. So a further reason,  
7 we would submit, for resuming these inquests and looking  
8 into the various issues that have arisen.

9 I've touched upon other matters, madam, and I'll not  
10 dwell on those. I've mentioned identification and I've  
11 dealt with notification and I simply leave that for you  
12 in your discretion.

13 Our conclusions, therefore, on resumption are set  
14 out in the printed document and so I'm not going to go  
15 through them. I hope they are clear, madam, but of  
16 course this is a case where the public inquiry that was  
17 sought by many of those involved in these situations, in  
18 these bombings, where that request was denied. We would  
19 submit that it would be remarkable, if there had been  
20 loss of life on this unprecedented scale followed  
21 neither by a public inquiry nor by a public inquest.

22 The questions that I've highlighted provide, I would  
23 submit, a real need for resumption and clearly amounts  
24 to sufficient cause which is the test in the statute.

25 The resumed inquest would serve a real and worthwhile

1 purpose to help the families to understand what went on,  
2 to help them come to terms with their grief and, indeed,  
3 moving away from the families' perspectives and focusing  
4 on the public at large, if the public at large learn  
5 that you have decided to resume these inquests, we would  
6 submit that that will provide reassurance, which is one  
7 of the important functions of the inquests, a powerful  
8 public interest, we would submit, in shining a spotlight  
9 over these unprecedented events, highlighting lessons to  
10 be learnt. If need be, preparing a Rule 43 report so  
11 that everyone can benefit.

12 So far as resumption is concerned, it seems, madam,  
13 that none of the parties represented have advanced any  
14 submissions against resumption. The Metropolitan Police  
15 Service, it seems, positively encourage you to resume  
16 the inquests. Transport for London, it seems from their  
17 written documents, encourage it and Counsel to the  
18 Inquest has listed many arguments in favour in his  
19 written document and, indeed, this morning referred to  
20 very powerful reasons for resumption.

21 Madam, may I say a few words about scope?

22 LADY JUSTICE HALLETT: Would you rather do that now or would  
23 you rather --

24 MR PATTERSON: I see the time. It may be more appropriate  
25 after the short adjournment.

1 LADY JUSTICE HALLETT: Very well. I should say to those who  
2 are present who are unrepresented -- unrepresented  
3 bereaved families or unrepresented survivors -- what  
4 I shall do, when I've heard the lawyers representing the  
5 families and then the lawyers representing the  
6 survivors, I will adjourn for a short time so that  
7 Mr Martin Smith, who is solicitor to the inquest, can  
8 discuss with any of those who are still unrepresented  
9 whether there are any issues that they feel haven't been  
10 raised that they'd like to address me on, but he'll be  
11 able to help anybody who needs help at that stage.  
12 Very well, 2.05 pm, please.  
13 (1.00 pm)  
14 (The short adjournment)