

Coroner's Inquests into the London Bombings of 7 July 2005  
Pre-Inquest Proceedings - 28 April 2010 - Afternoon session

22 (2.05 pm)

23 LADY JUSTICE HALLETT: Yes, Mr Garnham?

24 MR GARNHAM: Madam, I hope I won't try your patience much

25 longer. Three short points.

1 First, in respect of independence of the  
2 investigator, can I simply invite your attention to the  
3 case of McKerr v The UK which is in D2, divider 16? So  
4 as not to take up more time than I have to, can I say  
5 that was a case concerning an investigation of  
6 misconduct by RUC officers that was conducted by RUC  
7 officers, that the DPP then intervened and instructed  
8 the RUC to bring in an outside police officer to  
9 investigate what had happened. Despite the fact that  
10 that outside officer was appointed by the  
11 Chief Constable of the RUC, nonetheless the court held  
12 that there was sufficient independence and all I'm going  
13 to do, if I may, is to give you the page references for  
14 the relevant extracts.

15 First is the first page, first paragraph which  
16 simply says that the applicant complained that his  
17 father had been shot and killed by RUC officers and  
18 there was no effective investigation.

19 I then ask you to read paragraphs 128 and 140.

20 Suffice it to say that the court there considered that  
21 the inquiry may be regarded as sufficiently independent,  
22 despite the fact that the RUC Chief Constable, who was  
23 responsible for the officers whose conduct was being  
24 investigated, also appointed the investigator. I won't  
25 trouble you by reading that all, but we invite you to

1 read it, madam.

2 The second point is to respond to your invitation to  
3 indicate what the Security Services' position would be  
4 on the particular narrow issues you raised indicating  
5 those were matters that particularly concerned the  
6 families.

7 I have instructions to this effect, madam: if you  
8 were to rule against us on the engagement of Article 2  
9 on the law, and against us on scope of a Jamieson  
10 inquiry, and on our contention that the obligation had  
11 been satisfied by the other strands -- in other words,  
12 all the points of law I've made -- then the  
13 Security Service would be willing to consider whether it  
14 can assist the inquiry with the evidence that the  
15 inquest requires and to consider whether it is possible  
16 to do that without damaging the public interest.

17 It would greatly assist, I am instructed, in us  
18 obtaining instructions as to how to do that, if we were  
19 to know, firstly, the particular factual topics you, in  
20 those circumstances, consider relevant to your  
21 fact-finding role, and, two, the breadth of the  
22 enquiries you would propose to permit in relation to  
23 them.

24 I can't go beyond that, madam, without some  
25 indication of what the topics are and then getting

1 instructions from a level of such seniority in the  
2 Security Service that I couldn't do it over lunch, but  
3 I can indicate that willingness --

4 LADY JUSTICE HALLETT: Thank you very much.

5 MR GARNHAM: -- if you are against us on the law.

6 LADY JUSTICE HALLETT: I'm grateful.

7 MR GARNHAM: Thirdly and finally, can I just touch on the  
8 allegation made by Mr O'Connor that the Security Service  
9 misled the Intelligence and -- sorry, the ISC.

10 It seems to us, with respect, that this is neither  
11 the time nor the place to deal with it in any detail and  
12 it will probably suffice if I say and put on the record  
13 that we, on behalf of the Security Service, refute the  
14 allegation that the ISC was in any way misled  
15 deliberately or accidentally by the Security Service.

16 Madam, those are my submissions.

17 LADY JUSTICE HALLETT: Thank you very much, Mr Garnham.

18 Right. I think there's a change, Mr Keith, is there, to  
19 the -- sorry?

20 MR KEITH: Madam, yes, I believe that the representatives of  
21 the Metropolitan Police Service, West Yorkshire Police  
22 and City of London Police have agreed that Mr Gibbs,  
23 I believe, on behalf of the British Transport Police  
24 will go next.

25 LADY JUSTICE HALLETT: Yes, Mr Gibbs? Thank you.

1 Submissions by MR GIBBS

2 MR GIBBS: On behalf of the British Transport Police. As to  
3 resumption, we support the victims' families who ask  
4 that their inquests be resumed.

5 On joinder, we support the victims' families who ask  
6 that their inquests not be joined with the inquests of  
7 those who killed them. The alternative, in our  
8 submission, is unseemly.

9 On scope, as a matter of law, we submit these are  
10 Jamieson, not Middleton inquests, for the reasons given  
11 by others. But on a practical level, you have, of  
12 course, a broad discretion about what you're going to  
13 investigate and what you're not going to investigate.  
14 We expect that you will be focusing in detail on the  
15 events of 7 and 8 July, on the circumstances of the  
16 explosions, the emergency response and all the deaths.  
17 As to whether you add to that a second investigation  
18 into the preventability of these crimes, we advance no  
19 submissions either way.

20 As to the summoning of a jury, this is a difficult  
21 question, especially for an organisation which has great  
22 confidence in the jury system.

23 Again, we've asked ourselves some practical  
24 questions about how this might work.

25 We submit that you have a discretion under 8(4)

1 whether to summon a jury. Plainly, you can't decide  
2 whether to summon a jury until you've determined the  
3 scope, but, if you decide that preventability should be  
4 reinvestigated in these proceedings, in practical terms  
5 that might be a powerful reason not to summon a jury,  
6 and it will have been apparent to all those who have  
7 been listening to my learned friend Mr Garnham as he  
8 describes the secrecy and the volume and the intricacy  
9 of what might, I think, on my learned friend  
10 Mr O'Connor's submissions have been 15 months' worth of  
11 MI5 raw data, that it would take months out of court for  
12 an experienced lawyer to process that material and, if  
13 my learned friend Mr Garnham is right about the  
14 material, the prospect of it being examined under  
15 questioning from interested parties, first one way and  
16 then another, at least a dozen of those interested  
17 parties represented, at least, I understand, 18 with  
18 a right to question, who are unrepresented at present,  
19 being questioned in a way, backwards and forwards, which  
20 a jury can follow with confidence is perhaps not a happy  
21 one. Quite how many months or more than months of their  
22 lives that jury would have to give up to this inquiry is  
23 anyone's guess.  
24 Again, just to be practical for a moment -- and it  
25 may be that not all the non-lawyers in the room know

1 this -- what happens in a long jury trial, with which  
2 most of us are familiar, when a juror, even one juror,  
3 is ill? Normally, we'd have, wouldn't we, eleven,  
4 probably, in an inquest like this. We can't go on  
5 without her. The proceedings are suspended until she's  
6 well again. What happens when a juror has to be  
7 elsewhere to look after a child or a parent? Again, we  
8 can't go on without him. The proceedings are suspended  
9 until he's well again. Every day lost to juror absence  
10 is a day when you could have been hearing evidence,  
11 analysing it, cross-referring it, feeding it into your  
12 reasoning and into your conclusions.

13 LADY JUSTICE HALLETT: There's another aspect to that  
14 submission, Mr Gibbs. It may be you're coming to it,  
15 I don't know. But if you have a jury in a long case, we  
16 often, these days, also change the court hours to enable  
17 jurors to carry on with their everyday life.

18 MR GIBBS: Yes.

19 LADY JUSTICE HALLETT: So in other words, you wouldn't  
20 necessarily sit the same sort of hours that a judge  
21 alone would sit.

22 MR GIBBS: No, and one wouldn't proceed at anything like the  
23 same pace. Because although, for instance, the editor  
24 and the stenographer of the LiveNote record today were  
25 no doubt able to keep up with everything from Mr Garnham

1 this morning, many of the lawyers won't have been able  
2 to and no juror could have come close.

3 LADY JUSTICE HALLETT: I was tested.

4 MR GIBBS: Yes.

5 LADY JUSTICE HALLETT: Mr Garnham was doing his best to get  
6 through a lot of material.

7 MR GIBBS: Yes. It's not a criticism; it's a practical  
8 observation upon what, in practice, it would mean to  
9 have a jury in this inquest.

10 From a jury's point of view, the demands which would  
11 be made upon any juror are very easy, we submit, for  
12 a lawyer to overlook. We lawyers are used to cruelty  
13 and horrible injuries, and when, in a criminal trial, we  
14 present a brutal murder to a jury, we take pains to  
15 disguise the raw horror of it and make it less  
16 distressing for the jury, for the members of the public,  
17 who, as jurors, are compelled under summons to serve and  
18 to listen to it, and even then they take away, in many  
19 cases, a troubling psychological legacy from the  
20 material that they have had to listen to as part of  
21 their public duty.

22 But these facts, it may be you will agree, are of  
23 a totally different order. This is not one brutal  
24 murder; this is 52. This is not one cruel maiming; it's  
25 the wholesale maiming of hundreds of people.

1 What that would mean for a juror compelled under  
2 summons to observe, it would be sensible for us all to  
3 consider.

4 In some of the arguments which you have heard, it  
5 has seemed as though preventability, and the litigation  
6 of that, and the empanelment of a jury somehow go hand  
7 in hand. That, perhaps subconsciously, is an easy  
8 combination to make. But of course, they don't.

9 You could enquire into preventability without a jury  
10 and you could have a jury and leave preventability out.

11 So given the choice, and standing back from all the  
12 other arguments in the case, it may be that -- I don't  
13 know -- pretty much everyone here would recognise the  
14 benefit to this inquiry into these facts of allowing

15 a Court of Appeal judge a free hand to pursue the  
16 evidence down every avenue which, within her powers and  
17 in her determination of relevance, she thought  
18 appropriate, confident that she was entirely

19 independent, that she was fearless and effective in her  
20 task, that, unlike a jury, she would be expected to give  
21 answers to questions about resources and policy, that  
22 any recommendations which she made about improvements in

23 procedures would carry the authority of her office so  
24 that they could not be ignored or diluted by the  
25 organisations to whom they applied, and that she would

1 provide reasoned explanations for each and every one of  
2 her conclusions in a way that's not open to a jury, even  
3 in a Middleton inquest, and that that is a sound basis  
4 for the exercise of discretion is, we submit, endorsed  
5 by the court in the Paul case, the Fayed/Wales case, at  
6 paragraph 43.

7 Public scrutiny of these events, and public  
8 confidence in the inquiry, are obviously both vital.

9 But they will flow, we submit, not from whether  
10 questions are asked in front of a judge or in front of  
11 a jury, but rather from the questioning itself.

12 What will be important, surely, is that the right  
13 questions are asked, that they are asked in public, that  
14 they are asked by those who have a right to know the  
15 answers, and that both those questions and those answers  
16 are heard by everybody, and published. That is what  
17 ensures public scrutiny.

18 Indeed, the widest form of inquiry into these sort  
19 of events, a public inquiry, if such an inquiry had been  
20 ordered, would of course be conducted by a judge or  
21 someone like a judge, and without a jury.

22 So does the law really prevent you from conducting  
23 such an inquest? It's been suggested that  
24 section 8(3)(d) forces you to summon a jury. That, in  
25 my submission, is wrong.

1 All the legal materials that you need to determine  
2 the point I submit can be found in the judgment of  
3 Lady Justice Smith in the Paul case. In your volumes  
4 it's at volume C3, tab 31.

5 LADY JUSTICE HALLETT: I think it might be C2.

6 MR GIBBS: Perhaps I have an old index.

7 LADY JUSTICE HALLETT: I have it, thank you.

8 MR GIBBS: The paragraphs which deal with this issue are 30  
9 to 40. They begin at the bottom of page 185.  
10 You will find the subsection 8(3)(d) at paragraph 31  
11 at the top of page 186. You will find the key passages,  
12 which are very short, in the three judgments in Peach at  
13 paragraph 34, and the reasoning on the facts of the  
14 Fayed/Wales case at paragraphs 39 and 40.

15 As ever, in our submission the answer is to be found  
16 in statute and in the principle. The key word in the  
17 statute, we submit, is "circumstances". The key phrase  
18 in the principle is "reasonably preventible or  
19 controllable".

20 What's important to identify is that it is not the  
21 specific incident which must be reasonably preventible  
22 or controllable, but the circumstances in which the  
23 incident occurred.

24 I'm very conscious that lawyers have done a lot of  
25 reading out of passages from statutes and that there are

1 many in this room who will not have been able to follow  
2 that, and so, if you will forgive me, and because they  
3 are very short, even though we have it in front of us  
4 I'm just going to read out what those sections, those  
5 parts of the judgment say.

6 The subsection itself, 8(3)(d) -- I'm not going to  
7 read out every word:

8 "If it appears to a coroner, either before he  
9 proceeds to hold an inquest or in the course of an  
10 inquest begun without a jury, that there is reason to  
11 suspect that the death occurred in circumstances the  
12 continuance or possible recurrence of which is  
13 prejudicial to the health or safety of the public or any  
14 section of the public, he shall proceed to summon  
15 a jury."

16 Turning to paragraph 34 in the judgment and  
17 repeating what the court said in Peach, and the passages  
18 are cited there. Lord Denning:

19 "A jury must be summoned when the circumstances are  
20 such that similar fatalities may possibly recur in the  
21 future, and it is reasonable to expect that some action  
22 should be taken to prevent their occurrence."

23 Lord Justice Bridge:

24 "The circumstances the recurrence of which is  
25 referred to are those which may reasonably and ought

1 properly to be avoided by the taking of appropriate  
2 steps which it is in the power of some responsible body  
3 to take."

4 Then Sir David Cairns. It's a longer citation and  
5 I'm not going to read it all:

6 "The reference to 'continuance or possible  
7 recurrence' indicates to my mind that the provision was  
8 intended to apply only to circumstances the continuance  
9 or recurrence of which was preventible or to some extent  
10 controllable. Moreover, since it is prejudice to the  
11 health or safety of the public or a section of the  
12 public that is referred to, what is envisaged must  
13 I think be something which might be prevented or  
14 safeguarded by a public authority or some other person  
15 or body ..."

16 Then if we pass on to paragraph 39, this is where  
17 the decision is reached on the facts of the Fayed/Wales  
18 case, and this is Lady Justice Smith, the reasoning for  
19 finding that section 8(3)(d) applied in that case -- and  
20 I'm on the last sentence of paragraph 39 -- is:

21 "It is possible that this danger [that is the danger  
22 posed by paparazzi] could be prevented by legislation or  
23 other means."

24 She continues at 40:

25 "There are a number of ways in which these events

1 could, in the words of Sir David Cairns ... be  
2 'preventible or controllable' ..."  
3 She gives them.  
4 "... whether by rules preventing newspapers from  
5 using material obtained by the paparazzi in this way or  
6 making the pursuit of people, in the way described by  
7 Didier Gamblin, an aggravated form of dangerous driving  
8 or speeding."  
9 So in our case, what are the circumstances in which  
10 our 52 deaths occurred? The circumstances which, if  
11 they continue or occur, would be prejudicial to the  
12 health or safety of the public?  
13 We suggest this, that because some of deceased  
14 survived the explosions, the circumstances and indeed  
15 your inevitable scope will include both a period before  
16 the explosions and a period after the explosions, and  
17 the circumstances, therefore, are both before and after.  
18 They are either about the planning of the explosions or  
19 the aftermath of the explosions.  
20 The circumstances before the explosions are about  
21 the desire to kill and the circumstances after the  
22 explosions are about the attempt to save.  
23 The desire to kill. There are people who want to  
24 kill and maim innocent members of society, either to  
25 make a political point or to glorify themselves. There

1 always have been and there always will be. The  
2 murderers in this case are not especially -- they're not  
3 special criminals, they're not glorious criminals,  
4 they're simply criminals. If they hadn't died, they'd  
5 now be serving life sentences, a number of life  
6 sentences, for their crimes.

7 For the purposes of the subsection, and for the  
8 principle in Paul, we ask this, though: is that desire  
9 to kill preventable or controllable in the way which  
10 Lady Justice Smith identifies, either by legislation or  
11 by professional regulation?

12 The answer of course is: if only it were. It is  
13 probably -- and I don't suggest there's a simple  
14 solution -- a matter for education and for innovative  
15 policing, just as is required in the battle to combat  
16 any other group or type of criminal.

17 The attempt to save. Where life-threatening  
18 injuries are caused to members of the public on the  
19 public transport system, there will always be a need for  
20 the ambulance services, the fire brigade, the police and  
21 the transport employees to do all that they can to try  
22 to save the injured from dying, and this is what I think  
23 we will find they all tried to do. I don't think anyone  
24 suggests the contrary. In some cases here, they managed  
25 to save lives and, in others, they did not.

1 But the desire to save life and the attempt to save  
2 life and the provision of resources to do so is not, in  
3 the words of the principle in Paul, we submit, a matter  
4 for prevention or for control. It is a matter for  
5 encouragement. It may also be a matter for improvement.  
6 Everyone can always do better, given a chance to look  
7 back on what they did. You may well make  
8 recommendations under Rule 43 about things like just  
9 that.

10 Anyone who says that that's not what Rule 8(3)(d)  
11 means must, in my submission, justify an alternative  
12 reading to you because in common sense it would be an  
13 odd reading of 8(3)(d) which mandated the summoning of  
14 a jury because of circumstances which, as is set out in  
15 the ruling in Scholes, would never be called upon for  
16 their, a jury's, recommendation, but only for yours.  
17 On the facts of the Paul case, of course, a jury was  
18 summoned because of the particular vulnerability of  
19 public figures from the dangerous behaviour of a certain  
20 section of the media. Central to the court's reasoning  
21 was the recognition that that vulnerability might be  
22 prevented by legislation or by media regulation, and  
23 that, we submit, is very different from the facts of our  
24 case, which is a good thing because it means that you  
25 have a discretion.

1 LADY JUSTICE HALLETT: Could we return to the distinction  
2 you make, Mr Gibbs, between the circumstances and the  
3 recurrence of the incident? In Diana, or Paul,  
4 Lady Justice Smith refers to a recurrence of the type of  
5 event, and I'm just trying to, in my own mind, make the  
6 distinction that you make between -- the type of event  
7 here was a bombing, and so, why do you say that's not  
8 a recurrence of an incident of bombing?

9 MR GIBBS: The subsection. One, in my submission, should  
10 never get too far away from. The subsection provides  
11 that the death occurred, one must call a jury where you  
12 have reason to suspect that the death occurred in  
13 circumstances the continuance or possible recurrence of  
14 which is prejudicial to the health and safety of the  
15 public.

16 LADY JUSTICE HALLETT: Right, so you say we go back then to  
17 the desire to kill. What about the aftermath? If the  
18 circumstances were such that the victims of the bombing  
19 were more likely not to survive because, say, help  
20 wasn't there in time or there wasn't emergency first  
21 aid, or whatever it is, why isn't that relating to the  
22 circumstances which you might be able to prevent in  
23 future?

24 MR GIBBS: It depends of course how one describes the  
25 circumstances. One can describe them in one way or in

1 another. One can probably in any situation find a set  
2 of words which could be described as circumstances which  
3 would allow you to find one way or another on 8(3)(d).

4 Our submission here is that the best description of  
5 the circumstances is one which does not require such  
6 a finding.

7 That's not to say that what took place in the  
8 aftermath and whether everyone in fact did do their best  
9 or whether their best was enough should not be enquired  
10 into. That's a matter for scope. I'm not for a moment  
11 suggesting that that shouldn't be enquired into. That's  
12 a matter of scope.

13 Just on the nice lawyer's question of whether  
14 8(3)(d) applies or not, that's a completely different  
15 question. As to whether you are forced to summon a jury  
16 or not.

17 If you have a discretion, you may still exercise it  
18 to summon a jury, but we say that, thankfully, the  
19 court -- the law is not so unfortunate as actually to  
20 require you to do so.

21 The only other topic I think is status in the  
22 inquiry.

23 As you will remember, the British Transport Police  
24 has applied both under subsections (g) and (h) to be  
25 recognised as a properly interested person and there is,

1 again, a nice academic lawyer's point in the  
2 interpretation of (g). We're not going to ask you to  
3 decide that. You plainly have quite enough by way of  
4 points of law to decide already.

5 The British Transport Police is the police force for  
6 the entire railway system and, of course, that includes  
7 the London Underground, and usually, when there's  
8 a death on the underground, we are asked to act as the  
9 coroner's officer ourselves. We haven't been asked in  
10 this case.

11 So here, just for simplicity, and for the reasons  
12 which have been identified in your team's submissions at  
13 paragraphs 188 to 191, we ask to be recognised under  
14 (h). That will save you from the distraction of having  
15 to determine (g).

16 LADY JUSTICE HALLETT: Thank you very much, Mr Gibbs.  
17 Right. Is there anybody else who would like to go  
18 out of the original suggested order? In which case, are  
19 we Mr Hill now? No -- we swapped them round. We did,  
20 yes. Thank you.

21 MR SKELT: West Yorkshire Police.

22 LADY JUSTICE HALLETT: Thank you.

23 MR SKELT: Madam, our submissions are at divider 18,  
24 together with the additional -- at 18B of the letter  
25 which I'll come on to briefly at the end, if I may.

1 MS PRZYBYLSKA: Madam, sorry to interrupt, I am a little  
2 nervous to stand up, I don't know whether you'd consider  
3 taking my very brief application out of order for  
4 Tube Lines?

5 LADY JUSTICE HALLETT: I had been alerted, Mr Skelt -- I'm  
6 afraid I'd forgotten. Do you mind if we just deal with  
7 a brief application?

8 MR SKELT: Not at all.

9 LADY JUSTICE HALLETT: Not at all, yes, of course.

10 Submissions by MS PRZYBYLSKA

11 MS PRZYBYLSKA: I will be less than five minutes, if that's  
12 of assistance. Perhaps I could begin, madam, by  
13 explaining precisely who Tube Lines are for the benefit  
14 of those who aren't represented, and indeed, probably  
15 for some other parties as well, it's not immediately  
16 apparent perhaps.

17 Tube Lines are a body, an independent body, who are  
18 responsible for some maintenance and upgrade work, but  
19 the relevant feature for these proceedings is that they  
20 are responsible for the emergency response on the entire  
21 Tube network to chiefly derailments and people under  
22 trains, but also for emergencies of this kind, and their  
23 involvement is summarised in the London Assembly report  
24 of the 7 July Review Committee which is at E3 of the  
25 agreed index, but I don't need to take you to it.

1 They said, on 7 July, the unit attended each scene  
2 and played a crucial role in the emergency response.  
3 They are experts in dealing with emergencies on and  
4 around the trains and have specialist equipment for  
5 supporting tunnels, dismantling trains and helping to  
6 rescue people from damaged trains. The unit is  
7 regularly deployed to respond to people on the tracks as  
8 well as other emergencies.

9 In my submission, madam, Tube Lines can properly be  
10 designated as an interested person. Their interest is  
11 genuinely directed to the scope of the inquest in as  
12 much as Tube Lines will be in a position to assist you,  
13 madam, by asking questions about the emergency response,  
14 to determine precisely who did what at each scene, what  
15 cordons were in place and whether they were  
16 appropriately in place, which is a matter that's already  
17 been raised, I think by Mr Coulson, the survivor, as  
18 something that he, at least, would be interested in, who  
19 was allowed down into the tunnels, how roles were  
20 apportioned, and to what extent that was done  
21 appropriately.

22 I know that you've received my written submissions,  
23 madam, I don't know if I can assist you any further.  
24 Tube Lines have no particular position on any of the  
25 matters that you are chiefly engaged with.

1 LADY JUSTICE HALLETT: Would Tube Lines -- because of their  
2 expertise -- also be able to assist on -- I think Mr and  
3 Mrs Taylor were interested to know whether -- they  
4 wanted to know whether there was delay in getting  
5 medical help to the Tube, but whether people were held  
6 back from entering the tunnel. So would the  
7 arrangements made for allowing people access to the  
8 tunnel also be within Tube Lines' expertise?

9 MS PRZYBYLSKA: It would madam.

10 LADY JUSTICE HALLETT: Thank you very much.

11 MS PRZYBYLSKA: I'm grateful to my learned friend for  
12 allowing me to go ahead.

13 LADY JUSTICE HALLETT: Yes, Mr Skelt?

14 Submissions by MR SKELT

15 MR SKELT: Thank you, madam. By way of summary, our  
16 position remains essentially as per the written  
17 submissions, so I intend to be, I hope, appropriately  
18 brief in the light of that.

19 The position has evolved only really very slightly  
20 from what's been committed to writing thus far.

21 We remain entirely neutral in relation to  
22 resumption. We remain neutral in relation to joinder,  
23 although having seen and heard, importantly, the  
24 detailed submissions on behalf of the victims, we do  
25 accept and see the force in hearing the inquests of the

1 52 first and concurrently with each other, but  
2 separately from the remaining four.  
3 We have little to say and remain neutral on scope.  
4 In relation to the jury issue, we make no submissions as  
5 to whether a jury is mandatory in this case. Insofar as  
6 it is a matter of your discretion, we respectfully  
7 submit that the discretion should be exercised against  
8 empanelling a jury.  
9 We do seek interested person status. It seems, on  
10 reflection, whilst we, too, apply under two limbs, in  
11 fact it's the discretionary limb in 20(2)(h) that best  
12 applies to our position.  
13 There is nothing I can usefully add in relation to  
14 resumption.  
15 Just in relation to joinder, then, if I may, just to  
16 explain, madam, at the time of drafting our written  
17 submissions we have not seen the detailed concerns of  
18 the victims and the proposals that they make that can  
19 best address them.  
20 Secondly, and regrettably of course, this remains an  
21 issue. We do not know and did not know the anticipated  
22 role that it was thought that may or may be sought to be  
23 played by the families of the bombers.  
24 We are now happily clear in relation to the position  
25 of the victims and if I can just for a moment, wholly in

1 isolation of the views of the victims, observe, of  
2 course, that normally there would be very strong,  
3 sensible, practical concerns that would point towards  
4 all 56 being heard concurrently, such as avoiding  
5 repetition of evidence, inconsistent evidence, the  
6 possibility of inconsistent findings, which is always  
7 a risk should juries be empanelled, fatigue and distress  
8 to witnesses and the like.

9 But those are not necessarily in isolation of the  
10 wishes of the victims, and we of course in no way wish  
11 to minimise those concerns, and, as I outlined at the  
12 start having heard and considered those submissions in  
13 detail, we accept there is attraction in not resuming  
14 the inquests of the four bombers until the conclusion of  
15 the 52.

16 How that is best addressed is perhaps uniquely  
17 a matter for you, madam, but it may be most  
18 straightforward to simply adjourn a decision whether or  
19 not to resume those until the conclusion of the 52.

20 If the main objection to that is, of course, one of  
21 delay, then really we would respectfully submit it's  
22 a matter for the victims themselves to submit whether in  
23 fact, on balance, they would rather wait a little while  
24 for the conclusion of all 56, rather than having to be  
25 subject to having all 56 heard together, and in legal

1 terms, given that five years has now passed, any  
2 additional delay by adjourning the decision in relation  
3 to the four will, in the grand scheme of things, be  
4 relatively minor. But again, it's a matter for them and  
5 not for us.

6 Obviously, of course, the most admirable aim of  
7 splitting the 56 into the 52 and the four is to, as best  
8 as could be ever achieved, minimise the distress to the  
9 victims.

10 We would simply urge that any procedure that's  
11 adopted does not itself set up such practical  
12 difficulties that may ultimately aggravate the  
13 situation, and I say that simply because we accept the  
14 submissions of Counsel to the Inquiry that the family of  
15 the bombers are not as of right entitled to apply -- or  
16 rather entitled as of right to be interested persons at  
17 the inquests into the victim, but they remain within the  
18 group of those who can apply as a matter of discretion.  
19 We obviously sound just only a word of caution.

20 From what we understand at this moment in time, that  
21 remains a possibility, that applications will be made  
22 certainly in respect of two, and whilst we are in no way  
23 whatsoever seeking to encourage or approve of any such  
24 applications -- quite the contrary in fact -- we do not  
25 entirely follow the reasoning that it is impossible to

1 consider a situation where they may indeed apply and  
2 they may seek to give some basis for playing even some  
3 limited role in the inquests of the 52.

4 I say that, but as matters stand at the moment,  
5 there is no application and any such will simply have to  
6 be dealt with on its merits.

7 LADY JUSTICE HALLETT: Well, to be strictly accurate, there  
8 are applications, but I don't know in which inquests  
9 they are seeking properly interested person status.  
10 Because that hasn't been made clear.

11 MR SKELT: Yes. Certainly in a practical sense, there is  
12 nobody making formal applications in the way that  
13 I anticipate you, madam, would require to consider them  
14 on their merits today, and perhaps all that can be  
15 reasonably said on behalf of the West Yorkshire Police  
16 is that we would simply encourage, if at all possible,  
17 that pressure is placed on those who have any standing  
18 in relation to that that any such application be made in  
19 the very near future so that everybody knows where they  
20 are.

21 In relation to scope, you have our submissions at  
22 paragraphs 9 to 16, which I do not essentially intend to  
23 add to because they are a position of neutrality.

24 If, however -- can I simply add this -- you are  
25 persuaded that a broader scope is to be adopted, we

1 would simply seek to urge that the scope should not and  
2 really could not properly extend to a consideration of  
3 wider ideological considerations, global, terrorist  
4 pictures or anything of that sort.

5 I am reassured, it seems, that nobody in this  
6 present hearing appears to be suggesting such an  
7 approach would be appropriate in any event, that such  
8 matters would simply be too remote.

9 LADY JUSTICE HALLETT: So if I were persuaded to pursue the  
10 issue of preventability, that may well involve  
11 consideration of what West Yorkshire Police knew and did  
12 and contact between the Security Services and  
13 West Yorkshire.

14 Are you going to argue as to whether or not you  
15 support Mr Garnham that it would be wrong as a matter of  
16 public policy for me to be looking into these matters  
17 and deflecting the officers of the West Yorkshire  
18 Constabulary or what?

19 MR SKELT: I am firmly adopting a stance of neutrality, and  
20 embarking on any such discussion would be, I'm afraid --  
21 whilst it is unhelpful, I recognise that, it would be  
22 necessarily to take a partisan approach, which I am not  
23 instructed to take.

24 LADY JUSTICE HALLETT: So you're not instructed to argue  
25 that I would be distracting West Yorkshire's officers if

1 I wished to explore their knowledge and what steps they  
2 took in the build-up to the bombing?

3 MR SKELT: Yes, that's an accurate summary, I am remaining  
4 neutral and there is an upside and a downside to that  
5 that has already been identified. We would urge -- it's  
6 necessarily a succession of "ifs", but if preventability  
7 does come within what is thought to be the appropriate  
8 scope, we would simply urge that some temporal limit is  
9 placed on the scope of the inquiry. Again, the focus  
10 appears to be from others from early 2004 onwards, and  
11 it may be, notwithstanding my position of neutrality,  
12 that there may be some good sense in rather than  
13 a general -- if a decision is taken to broaden scope,  
14 rather than a general decision on that being taken, that  
15 perhaps the decision could be taken in a more pointed,  
16 direct way identifying issues that perhaps are  
17 susceptible to appropriate investigation.

18 LADY JUSTICE HALLETT: Do I take it that -- we know there's  
19 been continuing investigation because of the matter  
20 you're going to come to about fingerprints.

21 MR SKELT: Yes.

22 LADY JUSTICE HALLETT: Do I take it then that West Yorkshire  
23 Police have already done a considerable amount of the  
24 work that would be required to answer the questions that  
25 have been posed for me?

1 MR SKELT: There has been an awful lot of work done. There  
2 will be an awful lot of work to do. You will readily  
3 understand, I anticipate, that this is not a problem  
4 that goes away. So the work that goes on -- I needn't  
5 speak for other agencies -- but the work that goes on is  
6 extremely extensive, is itself very labour-intensive.  
7 So work is being done in relation to the general issue.  
8 As regards specific preparation for this inquest,  
9 a lot of work has been done, but I do respectfully  
10 submit that an awful lot of work will have to be done,  
11 and whilst we wholly endorse the approach that seems to  
12 be being taken that nothing should derail the  
13 anticipated start time of perhaps early October, I'd  
14 respectfully submit that scope is important to the  
15 preparation of everybody in this case to work towards  
16 that date. So I think everybody, as regards the work to  
17 be done, would urge an early decision in relation to  
18 that.

19 Turning then, if I may, to the issue of the jury, we  
20 make no submissions on the issue of whether or not it's  
21 mandatory. We have, you will note, in paragraph 18  
22 rather obliquely referred to the definition of  
23 circumstances. We'd respectfully endorse what my  
24 learned friend Mr Gibbs has just said purely in relation  
25 to a more nuanced interpretation of what "circumstances"

1 means rather than has, I think, been urged by some  
2 parties, purely another terrorist incident. There is  
3 little that I can usefully add to his analysis of that  
4 and I note that your counsel, madam, talk of comparable  
5 events being repeated and that's not a stance with which  
6 we would take any great issue.

7 Principally, in relation to discretion, the public  
8 interest we'd respectfully submit is best served by you,  
9 madam, sitting alone and without a jury in this case.  
10 You will, I hope, readily understand that nothing from  
11 that is intended to impugn the abilities of juries in  
12 any way, shape or form, but here we have, with respect,  
13 an advantageous tribunal.

14 This tribunal -- and there is no suggestion or  
15 reasonable suggestion to the contrary -- is obviously  
16 and self-evidently independent and will be effective  
17 such that we would respectfully submit you are alone  
18 best able to perform the forensic task.

19 I would add to what my learned friend Mr Gibbs has  
20 said. You are perhaps uniquely, in a case of this rare  
21 and unusual nature, best placed to hear what will be  
22 very harrowing evidence, complicated evidence, and to  
23 consider, for example -- and there has been some  
24 reference already at length in this hearing -- what are  
25 complicated reports from differing agencies touching on

1 a variety of aspects of this inquiry that themselves  
2 have to be considered in their own unique context, and  
3 that's an extremely difficult task for a jury within the  
4 confines of a case when there is a lot of other evidence  
5 to be digested.

6 This will necessarily be something of a long case.

7 All the more acute, in a case like that, that a coroner  
8 respectfully sitting alone can most effectively manage  
9 court time in any number of respects, including more  
10 efficient questioning, less focus on the types of side  
11 issues and context that has to be given to a jury before  
12 they can reasonably understand evidential points.

13 In some way, shape or form, yet really to be  
14 determined, sensitivity of evidence will be an issue in  
15 this case. It inevitably follows, we'd respectfully  
16 submit, that that is something that, whilst perhaps not  
17 easy to manage, will be far more easily managed by you,  
18 madam, sitting alone, and there is considerable force  
19 we'd submit, in the point just made by my learned friend  
20 Mr Gibbs, that any findings resulting from this process,  
21 delivered by you, madam, are likely to carry with it the  
22 detail and quality of reasoning, and necessarily,  
23 therefore, the necessary authority for a ruling of  
24 a case dealing with such a sensitive and troubling  
25 event, and that is far better, we'd respectfully submit,

1 being delivered by you, madam, than a jury.  
2 I suppose the short point that can also be made is  
3 to ask what benefit would there be through empanelling  
4 a jury as opposed to the current tribunal, and quite  
5 simply, madam, we can identify none of any substance.  
6 In relation to our interested person status, we  
7 apply as I've submitted already. It's a matter of  
8 discretion.  
9 Madam, it seems to us this can be taken rather  
10 briefly. It's well-known three of the four bombers  
11 resided in our police area. Evidence will be given,  
12 it's anticipated, relating to that geographical area,  
13 and also the activity of the force whom I represent.  
14 There has already been mention in some of the  
15 submissions made already of the activities of the West  
16 Yorkshire Police, logically enough which perhaps  
17 underlines the need for us to be represented and,  
18 moreover, that there may be proper assistance that we  
19 can give to the inquest from a local perspective and  
20 a local community perspective. I think, to that extent,  
21 it may well be that we stand alone amongst the other  
22 parties in this inquest.  
23 So, for those reasons, we would apply under 20(2)(h)  
24 to be extended that status.  
25 Madam, can I lastly deal with the letter?

1 It's at 18B, I hope, of your bundle.

2 Madam, I make these brief points purely, I hope, for  
3 the sake of clarity.

4 You have already, madam, identified that the issues  
5 covered in that letter arose from the work being done in  
6 relation to this very inquest. What is set out in that  
7 letter are reliable facts known to us at this time.  
8 Because we could see that it may have some relevance  
9 to submissions that people may make in relation to the  
10 issues before you, madam, we felt it appropriate to  
11 disclose it as soon as we could reasonably do, albeit  
12 it's slightly unhappy in the sense that we have not  
13 completed the investigations surrounding the original  
14 issue arising following the events of July 2005.

15 But, as I say, we hope that it was more appropriate  
16 to disclose what we can reliably say we know at this  
17 time rather than wait beyond submissions having been  
18 made on these issues.

19 Can I just clarify this lastly?

20 There is no intended or inferred criticism of the  
21 Metropolitan Police intended through the terms of this  
22 letter. The reference to the request from the  
23 Metropolitan Police in March of this year is simply the  
24 event that started a process which gave rise to the  
25 identification of the other facts contained in this

1 letter.

2 There is no intention behind this letter to suggest  
3 that was the first time or the only time requests for  
4 that sort of information have been arranged by the  
5 Metropolitan Police. It is purely intended to be  
6 a statement of the appropriate facts as known to us at  
7 this time.

8 Madam, as you know, and also as set out in the  
9 letter, as soon as our enquiries into this are complete,  
10 we will immediately thereafter update you and the other  
11 parties in this case as to where we are at that stage.  
12 Unless there's anything else I can try to help you  
13 with, those are my submissions.

14 LADY JUSTICE HALLETT: Thank you very much.

15 Mr Hill?

16 Submissions by MR HILL

17 MR HILL: Madam, on behalf of the Metropolitan Police I'm  
18 grateful to Mr Skelt for what has just been said about  
19 the fingerprint. I'll come back to it, if I may, in  
20 good time. I have some brief submissions to make upon  
21 it, but the clarification is most welcome because it is  
22 important in that respect, and in other evidential  
23 respects, to make sure one sees the whole of the picture  
24 and not just one angle.

25 Can I make my way to it at a little length, but not

1 great length?  
2 Our written submissions are at A10 in your bundles.  
3 I would be grateful if you could turn that up, because  
4 I'm going to refer to the written submission and I'm  
5 going to take you, madam, to some authorities, but  
6 I think in the main, if not exclusively, to our  
7 citations within the argument as opposed to having to go  
8 to the full authorities themselves.  
9 So A10.  
10 Can I say at the outset that I make these  
11 submissions on behalf of a properly interested person,  
12 and the reason I say that is because the Commissioner is  
13 automatically entitled to such status under 20(2)(g).  
14 However, the Metropolitan Police, whom I represent, are  
15 unique in having as many perhaps as four roles in  
16 relation to the events of 7 July.  
17 The first is as the police service who undertook  
18 a very considerable criminal investigation which  
19 commenced immediately after the bombings on that day.  
20 An investigation, may I add, which has not been  
21 criticised by anyone in submissions this week and, on  
22 the contrary, has met with what may even be praise from  
23 some quarters; it being said by Mr O'Connor, for  
24 example, that the criminal justice system was involved  
25 to the limit, if I quote him correctly.

1 The second role is as family liaison officers,  
2 responsible for and, can I say, anxious to do as much as  
3 possible to assist the bereaved in this case on  
4 a continuing basis. I shall return shortly to some  
5 matters of discussion as to how that role has been  
6 fulfilled and I'll do so, I hope, in answering  
7 Mr Saunders' and Ms Sheff's observations.

8 Thirdly, as coroner's officers, in which role  
9 a dedicated team of police officers has worked extremely  
10 hard within the strict timetable which you have set thus  
11 far, producing the detailed scene reports with which  
12 we're all now in this room becoming familiar.

13 LADY JUSTICE HALLETT: Mr Hill, on that note, I would like  
14 to express my enormous gratitude. I do appreciate the  
15 amount of work that I set by that timetable and I know  
16 how hard people have worked to comply with the  
17 timetable.

18 MR HILL: Madam, that is extremely gracious and will be  
19 gratefully received by those on my team, as it were, but  
20 I reiterate that it is nothing more than fulfilling  
21 a duty as coroner's officers, which is what those police  
22 officers have done.

23 But our fourth role -- and the one which brings me  
24 to my feet -- is as a properly interested person, and  
25 that is because of the geographical or, rather, coronial

1 area in which the atrocities took place.

2 So we do hope that those four roles, as I've listed  
3 them, are not confused in the mind of any participant to  
4 these proceedings, and we do express the hope that the  
5 Metropolitan Police can be of great assistance on  
6 a continuing basis to these proceedings, however you now  
7 define them.

8 We do maintain our stance on the primary issues on  
9 this week's agenda as set out in our written submission,  
10 and we do contend that you have materials before you now  
11 to enable resolution on those issues, and for reasons we  
12 shall come to, to suggest that adjourning one or more  
13 issues, and in particular adjourning a ruling on scope  
14 of the resumed inquests, as has been suggested by some,  
15 is, we submit, not attractive and will not help with  
16 practical considerations and management of these  
17 proceedings from this point forward. I'll come back to  
18 that.

19 There are two matters, however, which may properly  
20 be adjourned today, and they are the resumption of the  
21 bombers' inquests, firstly, and, secondly, some of the  
22 matters raised by Mr Saunders and Ms Sheff relating to  
23 information and communication issues, and I'll return to  
24 those adjournment matters.

25 But I made reference just now to the resumed

1 inquests because that implies what the  
2 Metropolitan Police say about the first primary issue,  
3 which is resumption, and within our summary of  
4 submissions at 3(v) and (vi), you see, madam, what the  
5 Metropolitan Police say, and more particularly, on  
6 resumption, you see our paragraphs 5 through to 9 which  
7 I don't propose to read out.  
8 In short, the issue being whether there is  
9 sufficient cause to resume the adjourned inquests is  
10 a matter for your judgment. The Metropolitan Police,  
11 albeit in a different role than that which I now fulfil,  
12 have provided four scene reports at the request of you  
13 and your team, and the Metropolitan Police, it follows,  
14 is in possession of a great deal of information in the  
15 form of witness statements and other documents relating  
16 in particular to the immediate aftermath of the  
17 detonations.  
18 It can be seen from the content of the reports that  
19 much of the material was not created by the  
20 Metropolitan Police because much of it is in the form of  
21 witness accounts provided by others, including, of  
22 course, members of staff of other bodies represented  
23 here today -- City of London and British Transport  
24 Police, London Ambulance Service, Fire Brigade,  
25 Tube Lines and the like.

1 Can I just pause there and make the observation that  
2 the element of queue jumping that there's been this  
3 afternoon is, in our submission, appropriate. Not only  
4 do I not object to it, but I say for your note and for  
5 you to consider as we go forward that it may actually be  
6 appropriate for the Metropolitan Police not to submit  
7 last on every issue, but to submit in response to  
8 observations which are made by others which flow from  
9 material disclosed to these proceedings by the  
10 Metropolitan Police.

11 Can I put that, I hope, a little more clearly?  
12 Where there are evidential accounts which have been  
13 generated in the form of witness statements by the  
14 Metropolitan Police, but involving either members of the  
15 public or the staff of other agencies, it is we, the  
16 Metropolitan Police -- I repeat again -- in our guise as  
17 coroner's officers, who collated that material for  
18 transmission to Mr Smith and your team, and it's  
19 appropriate perhaps -- particularly if there are issues  
20 as there may be -- I don't know -- about the extent of  
21 the material and the manner in which it's been collated  
22 and stored, that the Metropolitan Police actually should  
23 come after those who represent the other agencies from  
24 whom some of the information has been gathered.  
25 So I don't object to coming last, as it were,

1 amongst the police services within the room. In fact,  
2 I say that, for what it is worth, you may think, madam,  
3 that it's appropriate.

4 Now, the majority of the material within the scene  
5 reports was compiled, of course, under the auspices of  
6 the Metropolitan Police operation "Theseus" which we've  
7 heard about this week, and it is true to say that much  
8 of the content of the scene reports, although created in  
9 the course of a criminal investigation -- namely,  
10 Theseus -- has first been provided in this compendious  
11 form and at this stage because it or some of it may not  
12 have been directly relevant to issues within the  
13 Operation Theseus trials, now concluded. Those trials,  
14 of course, on the application of the Director of Public  
15 Prosecutions, being the very reason why these inquests  
16 remain adjourned subject to your order today.

17 But now, of course, that same information is  
18 relevant to the adjourned inquests, and I say that  
19 because it is not surprising to us that some of the  
20 represented bereaved present in the room today have  
21 pointed out that those scene reports do contain material  
22 relating to their loved ones on the day, which they, the  
23 bereaved families, have not necessarily seen before.

24 We say it would be a mistake to underestimate the  
25 impact of the material and we hope we do not do so, and

1 in particular, perhaps, Mr Patterson, on Monday, brought  
2 this into focus with his observations made on behalf of  
3 the family of Mrs Mozakka who died at Kings Cross. For  
4 your note, madam, the Kings Cross report commencing at  
5 page 51 gives the detail to which Mr Patterson was  
6 alluding and the police constable who attended the scene  
7 and found Mrs Mozakka is named there.

8 We have little doubt that there are other examples  
9 where the facts as presented in the scene reports have  
10 perhaps been drawn together in a way not done before,  
11 and so although, therefore, the represented bereaved  
12 have only given one or two examples, the  
13 Metropolitan Police submit that it would not be  
14 appropriate to make any distinction between any of the  
15 52 bereaved families whom we submit should all be  
16 treated in the same way.

17 As a matter of procedure, as you know, madam, of  
18 course, each resumed inquest will result in an  
19 inquisition specific to that death, and whilst there are  
20 obviously common features, perhaps very many common  
21 features -- for example, in terms of the emergency  
22 response at a particular scene -- it will follow, going  
23 forward, that the degree of enquiry that any one death  
24 attracts will vary. But that's not a reason for making  
25 any distinction as to your decision on resumption in

1 respect of the 52.  
2 We have cited Dallaglio, the Marchioness case, in  
3 our submission, at 3(v) on page 3, and as to resumption  
4 in order to examine the immediate circumstances of each  
5 death, if I can quote our submission, the  
6 Metropolitan Police recognise and accept that for many  
7 relatives and friends of the deceased, for some  
8 rescuers, some sections of the wider public, this may be  
9 a necessary exercise and, accordingly, supports the  
10 same.

11 It's because in the language of Lord Justice  
12 Simon Brown in Dallaglio "Many of the survivors and  
13 eye-witnesses have still to give their full evidence",  
14 that we say will be achieved by resumption in all of the  
15 52 cases.

16 I'll come back, if I may, to status upon resumption  
17 particularly in respect of survivors.

18 LADY JUSTICE HALLETT: Are you in a position to give the  
19 summary I asked for, Mr Hill, as to your response to the  
20 different issues?

21 MR HILL: Yes, I'm sorry if I've failed to summarise in  
22 short.

23 LADY JUSTICE HALLETT: It's all right, it's just that I'm  
24 trying to begin each set of submissions with a little  
25 summary.

1 MR HILL: Of course. What we say is resume in respect of  
2 the 52, we say leave adjourned in respect of the four,  
3 although we have some observations about the status of  
4 those representing the four at the resumed inquest of  
5 the 52. We say as to status of survivors, there are  
6 maybe very good reasons why it is not necessary in the  
7 resumed inquests for there to be any status beyond  
8 ordinary witness status. As to scope, we do support the  
9 submissions by Mr Garnham and the stance that he's  
10 taken, although we have some particular observations to  
11 make about the scope of evidence that will, in our  
12 submission, be necessary, notwithstanding that the  
13 categorisation of the proceedings is Jamieson  
14 non-Article 2.

15 Can I avoid that becoming too Delphic by saying that  
16 we do submit that the content of the ISC reports is not  
17 lost to the resumed inquests. On the contrary, we say  
18 it will be an essential component of resumed, albeit  
19 Jamieson-only, inquests.

20 Lastly, as to jury --

21 LADY JUSTICE HALLETT: So narrow Jamieson you're saying?

22 MR HILL: Well --

23 LADY JUSTICE HALLETT: Or aren't you? Because you just said  
24 the report is relevant.

25 MR HILL: Narrow in the sense that we do not agree with the

1 preventability component of the resumed inquests as  
2 being in accordance with the legal principles that  
3 Mr Garnham has set out, but we do go on to say -- and  
4 I'll develop this -- that the scope, albeit on  
5 a Jamieson basis, is not so narrow as to take away from  
6 the proceedings any consideration of evidence running  
7 through the first six months of 2005 and indeed going  
8 earlier than that.

9 So we say that there is, in all likelihood,  
10 a necessity to look at the material and, to put it  
11 bluntly, what we say is that is the material as  
12 enshrined in the disclosed ISC reports.

13 LADY JUSTICE HALLETT: Redacted disclosed?

14 MR HILL: Yes. But we say that that goes to the necessary  
15 background to what may be the inescapable verdicts in  
16 these proceedings. It doesn't go as such to  
17 preventability.

18 I hope that has a measure of clarity. I'll come  
19 back to it a little later.

20 LADY JUSTICE HALLETT: Sorry, a little bit Delphic for me.  
21 In other words, it goes to the verdicts potentially that  
22 the bombers committed suicide?

23 MR HILL: Can I, I hope, make it abundantly clear? We can  
24 see that merely looking at the detonations leading to  
25 tragic loss of life on the day in question would not

1 allow sufficient evidential treatment for an inquest,  
2 whether resumed by you alone, madam, or with a jury, to  
3 arrive at the verdicts which many will submit are  
4 appropriate.

5 In short, any verdict of unlawful killing is one we  
6 can see that would involve a wider appreciation of  
7 events than simply starting on 7 July, and there are  
8 a number of ways, not requiring Article 2 engagement, in  
9 which you can make directions to carry that forward.  
10 One will be the consideration of the ISC reports  
11 which we say has some importance. Another will be,  
12 speaking for ourselves, the preparation of further  
13 reports and further material generated by  
14 Operation Crevice and, as is alluded to in Mr Keith's  
15 submissions, paragraph 4 at the very beginning, there  
16 are further reports as yet unprepared, but which we, for  
17 Metropolitan Police, have been advised may be required.  
18 We're not going to resist that. We are --

19 LADY JUSTICE HALLETT: Is this a possible -- I know I've  
20 asked you to give a summary and here we are discussing  
21 it, but is this a possible answer to my question to  
22 Mr Garnham as to whether there's any halfway house here  
23 or not?

24 MR HILL: Well, it may be. I wouldn't describe it as  
25 a "halfway house". I would describe it as a necessarily

1 broad Jamieson inquest which goes to background.

2 LADY JUSTICE HALLETT: Sorry, I don't mean "halfway house"  
3 in the sense of not exploring legitimate concerns.

4 I mean "halfway house" in the sense of not trawling  
5 through masses of intelligence material that is  
6 irrelevant to the issue that we're talking about.

7 MR HILL: Yes. We say it's where principle meets  
8 practicality. We've heard submissions, on our  
9 submission and the submissions of Mr Garnham, that we  
10 simply can't have any more than that which the ISC has  
11 published.

12 We say, in fact, what the ISC has published is  
13 sufficient, given the remit of the Committee, but, in  
14 fact, for the purposes of all of the interested persons  
15 to these proceedings, that can be augmented in a number  
16 of ways. The first way is already done: namely,  
17 provision of scene reports. There will be further ways  
18 in which we particularly, for Metropolitan Police, if  
19 ordered -- and we anticipate we will be -- will provide  
20 more.

21 What that is not, though, is a concession that  
22 preventability, as an issue, is on the table, because to  
23 make that concession would involve me disagreeing with  
24 Mr Garnham's submissions as to engagement of Article 2,  
25 either in its fundamental aspect or its investigative

1 aspect and I'm not in a position to disagree. In fact  
2 I've said I support those submissions.  
3 So if it's an answer, yes, I think it is probably  
4 a halfway house. Whether it's one that will satisfy all  
5 is not for us to judge.  
6 May I come back to it in good time?  
7 LADY JUSTICE HALLETT: Certainly, shall we take the  
8 afternoon break there, Mr Hill, for the sake of the  
9 ladies? Half past, please.  
10 (3.20 pm)  
11 (A short break)  
12 (3.30 pm)  
13 LADY JUSTICE HALLETT: Yes, Mr Hill?  
14 MR HILL: Madam, before you rose, I was just completing what  
15 I started with, which was our summary position.  
16 As to jury, which is the remaining principal issue,  
17 in short we support the submissions made by Mr Gibbs and  
18 so we say that it is a discretionary matter and should  
19 be exercised, albeit for practical reasons which I'll  
20 come to, in favour of resuming with yourself alone and  
21 not a jury.  
22 Can I, before going any further with the principal  
23 issue, just come to the first of the adjournment matters  
24 as I have called them, very briefly.  
25 The issues raised by Mr Saunders and Ms Sheff. We

1 entirely recognise that delay in notification to some  
2 bereaved families is an important issue. That is  
3 stating the obvious.

4 Equally important are observations as to how and to  
5 whom family liaison officers communicated within  
6 bereaved families, and Ms Sheff has made written  
7 submissions on this, although I think she didn't repeat  
8 them orally.

9 The Metropolitan Police would like to assist and  
10 would like to assist notwithstanding that Mr Keith, in  
11 his submissions, at page 29 at A1, has observed that at  
12 least one of those issues may not fall within the scope  
13 of any inquest, however you formulate it.

14 We note, of course, that identification as such, as  
15 an issue for the inquisition, is not in dispute. We  
16 imagine that's precisely where Mr Keith is coming from,  
17 when he says that, if that is not -- let's put it this  
18 way -- a live issue, then delays in identification are  
19 unlikely to be an inquest issue.

20 Now, the Metropolitan Police by virtue of its  
21 multiplicity of roles is, of course, able to set up  
22 direct lines of communication with the affected families  
23 on the two issues that Mr Saunders and Ms Sheff have  
24 raised.

25 However, as these proceedings are on foot, it seems

1 to us that it may be better if we invite Mr Saunders and  
2 Ms Sheff, on behalf of their clients, to repeat and  
3 expand upon their concerns in writing and to Mr Smith.  
4 We would then hope, of course, that he would  
5 immediately convey to us those issues in as much as they  
6 touch on the Metropolitan Police and we would do our  
7 best to answer those concerns.  
8 So if you're minded to say today, as it were, that  
9 one or more of those matters is not within the ambit of  
10 any inquests, so be it, and Mr Keith may even invite you  
11 to do so. But we would like to deal with the matters,  
12 we hope, to the satisfaction of the affected bereaved  
13 families.  
14 If, therefore, you adjourn ruling upon those matters  
15 in principle, you may approve that we shall address them  
16 upon the basis that either Mr Saunders and/or Ms Sheff  
17 can then withdraw the matters if satisfied or, if not,  
18 we can return to them in a discrete submission during  
19 the next scheduled hearing in mid-June, and if that  
20 finds favour, we are willing to act in that fashion.  
21 Now, can I return to the principal issues before us  
22 today? I've made a submission as to resumption in  
23 respect of the 52. There are two consequences of  
24 resumption thus far, and they are what to say or do  
25 about survivors and/or first responders such as

1 Mr John McDonald who gave selfless and brave assistance  
2 in horrific circumstances at Edgware Road.  
3 Secondly, what to do about the bombers and their  
4 families. Can I take those two in reverse order and so  
5 turn to the bombers and the bombers' families first?  
6 Shortly, we think it may be unavoidable but that  
7 there is an entitlement to be present and represented  
8 with properly interested persons status at the resumed  
9 inquests of the 52 deceased.  
10 May I invite your attention to 3(iii) on page 2 of  
11 our submissions to make an observation which it may be  
12 you will not wish, madam, to dwell on today, but which  
13 is potentially a matter for resolution hereafter?  
14 In 3(iii) we expressed the view that the bombers  
15 themselves appear to be entitled to properly interested  
16 person status under (2)(d). We know that's not  
17 a contention that finds favour with Mr Keith and he  
18 would take it, if I read his submission correctly, that  
19 the bombers, no longer being live persons, are not  
20 entitled under (2)(d) and therefore the only entitlement  
21 that one needs to look at is under (2)(h), the  
22 discretionary provision. The bombers are not  
23 represented here today, nor indeed are their families.  
24 We, for our part, are not clear and are not able to  
25 take you to any decided authority on whether subsection

1 (d) is properly to be interpreted as limited to live  
2 persons or not.

3 Now, I don't wish to take time up on it because it  
4 may be hereafter that this is something that you, madam,  
5 will have to deal with, but can I say that it does seem  
6 to us that in the case, for example, of a deceased  
7 perpetrator of an event which has led to the deaths of  
8 others and on which there is to be an inquest, and in  
9 a case where that perpetrator, for example, does not  
10 have a next of kin or any family members, because there  
11 may be the possibility of proceedings being taken  
12 against that deceased person's estate, we beg to  
13 question whether notwithstanding the death of the  
14 perpetrator 20(2)(d) would still have some application.  
15 I'm sorry to place this, as it were, before you  
16 without a clear resolution. It's something that we can  
17 turn to in future and no doubt Mr Keith has heard what  
18 we submit.

19 But that's why we chose to identify 20(2)(d) in  
20 respect of the bombers, albeit that we've then gone on  
21 to consider the properly interested status of family  
22 members who we know are represented by  
23 Imran Khan & Partners.

24 LADY JUSTICE HALLETT: Is that submission that they might be  
25 entitled to ask questions if there were a suggestion

1 there might be a claim on the bombers' estate predicated  
2 on the assumption that there might be a member of the  
3 bombers' families who wished to argue that they were not  
4 bombers?

5 MR HILL: Well --

6 LADY JUSTICE HALLETT: What if -- just supposing it were  
7 accepted and common ground, even amongst the bombers'  
8 families, that they were responsible.

9 MR HILL: We think it's possible. Clearly what comes into  
10 view in respect of families as soon as one moves from  
11 bomber to bomber's family, the discretionary provision  
12 under (h) is of application, and so if there were that  
13 attitude towards the events of 7 July on the part of  
14 members of the family, that would be one reason why they  
15 would be entitled to come before you and say that they  
16 would wish status under subsection (h).

17 Even without that, of course, they would be entitled  
18 to submit, as the resumed inquest touched the deaths of  
19 members of their family, they were entitled to invite  
20 you to trigger the discretionary provision to give them  
21 status.

22 LADY JUSTICE HALLETT: Putting to one side the question of  
23 whether the bombers' families wished to dispute that  
24 they were indeed bombers, if it's accepted they were  
25 bombers, and if I resumed, say, on the two main areas --

1 preventability and emergency response -- I ask you as  
2 I've asked others: what legitimate questions would the  
3 bombers' families be able to ask in such inquests?

4 MR HILL: We say that it is, at present, very difficult to  
5 identify any legitimate line of questioning on behalf of  
6 either the bombers or their families within the scope  
7 contended for.

8 LADY JUSTICE HALLETT: Of course, properly interested  
9 person, if it's discretionary status, is all about the  
10 right to ask questions.

11 MR HILL: Yes.

12 LADY JUSTICE HALLETT: It's not about the right to make  
13 submissions to me or suggest lines of enquiry; it's  
14 about the right to ask questions.

15 MR HILL: Yes. So whilst, as it were, we, as with many  
16 others, would wish, all things being equal, to say that  
17 there's no conceivable role within these resumed  
18 proceedings -- the bombers and/or their families -- we  
19 can't say that, but what we can say is that we do not  
20 give any encouragement or succour to the families upon  
21 the basis you've predicated because we can't identify  
22 any legitimate lines of questioning.

23 So to that extent, it may be that is taken as some  
24 form of encouragement to some of those who are listening  
25 and who wonder what shape these proceedings may take and

1 who may be asking questions.

2 We recognise, as it were, beyond that statement of  
3 principle, the possibility, even if there were any lines  
4 of questioning -- which we can't formulate -- that those  
5 lines would be narrow only. Mr Keith goes that far in  
6 his submission to you at paragraph 68 on page 23.

7 So we agree that any susceptibility to posing  
8 questions, as opposed to any other input, would be  
9 narrow at most. We notice that Mr Keith hasn't  
10 formulated what those matters may be, albeit narrow, and  
11 we certainly can't do so.

12 So we, all of us, have the framework under Rule 20.

13 We accept that full argument has to be postponed until  
14 such date as submissions are, as they may be, received  
15 from Messrs Imran Khan & Partners or others. We observe  
16 that the absence of such submissions to date is a matter  
17 of surprise and regret, may we say.

18 LADY JUSTICE HALLETT: It's a breach of my order.

19 MR HILL: Indeed such, and we repeat it is difficult to  
20 identify any legitimate purpose which could be used as  
21 a justification for posing questions.

22 But it means that our submission as to your ruling  
23 today is clear. We do submit resume in the cases of the  
24 52. Do not resume, or at the very least do not at  
25 present resume in the case of the four, and you note,

1 madam, that there's no currently pursued application for  
2 status under either subsection (d) or (h).

3 LADY JUSTICE HALLETT: Presumably you would encourage me, if  
4 I did have to face the possibility of an application not  
5 made in accordance with my timetable, then I should  
6 insist that that happens within a reasonable period so  
7 that the families and the survivors are going to know  
8 the position sooner rather than later.

9 MR HILL: Yes. Insofar as any application later made comes  
10 within your discretionary ambit under (h), then it must  
11 follow as part of the exercise of that discretion, that  
12 you should set timetables or say whatever you are minded  
13 to say as to the need for expedition, given that all  
14 other interested persons to these proceedings are acting  
15 according to a timetable.

16 If and to the extent that there's any residual  
17 susceptibility under subsection (d), matters may be  
18 different. I underline "may". It depends whether you  
19 are operating within a discretionary regime or one of  
20 automatic or mandatory entitlement, and that's why we  
21 have felt constrained at least to mention subsection  
22 (d), because we're concerned as to whether it may have  
23 a continuing application. It may be that Mr Keith will  
24 expand upon his assertion, which we understand to be  
25 that subsection (d) actually doesn't apply in these

1 cases of death by perpetrator themselves.  
2 Now, can I come back to survivors? We accept that  
3 they have a very real interest and investment in the  
4 events which scarred so many of them, either physically  
5 and/or mentally, and it is not for us to draw any lines  
6 under or to limit their participation in these resumed  
7 inquests. Indeed, it is the Metropolitan Police who are  
8 the first to recognise, may we say, the survivors' vital  
9 role in telling the dreadful tale of events on 7 July.  
10 That said, we have set out at paragraph 13 in our  
11 submission, some observations on that undoubted role.  
12 May I invite your attention to paragraph 13 at the  
13 top of our page 8? For the benefit of those who don't  
14 have the documents in front of them, we do say, or make  
15 the observation for you to consider, that participation  
16 as a matter of principle and precedent need not extend  
17 to the right to question witnesses.  
18 We say that because these are inquest proceedings.  
19 They are not some other form of judicial or other  
20 proceeding. The focus of each of the inquests we invite  
21 you to resume must, by statute, be directed towards the  
22 deaths of the victims, and although we would not seek to  
23 do anything to deny the survivors, we must recognise  
24 that -- and as we said in paragraph 13 -- the court will  
25 wish to give the closest attention to any view or wish

1 the bereaved may express.

2 It's clear that shaping the resumed inquests in such  
3 a way that the bereaved have properly interested person  
4 status, whilst the survivors play another role by giving  
5 vital evidence, would meet the wishes of the majority of  
6 the bereaved who have spoken on this subject and would  
7 also meet the purpose of these proceedings.

8 In our written summary at 3(iv), at the top of  
9 page 3, at the end of that subparagraph, we suggested  
10 that there is likely to be significant correspondence of  
11 interests between the deceased and the survivors. Well,  
12 having heard what is now submitted, we suggest that the  
13 word "significant" in that sentence should be replaced  
14 by "complete", and indeed we heard from Mr O'Connor that  
15 there is a uniformity of interests with the bereaved.

16 At another stage in his submission, he said, if  
17 I quote him correctly, no distinction between the  
18 deceased and the survivors. That, in our submission,  
19 makes the point good.

20 By way of illustration, when tested by you, madam,  
21 as to the survivors' potential input, Mr O'Connor did  
22 draw on an example of a witness he identified by initial  
23 only, and so shall I, EK at Aldgate.

24 May I just for a moment go to that report, the  
25 Aldgate report, to illustrate the point that I'm making?

1 In the Aldgate report -- for the avoidance of doubt,  
2 can I say I'm not going to read out publicly any part of  
3 this report -- if you turn to it, you will find the  
4 references in that scene report to this witness at  
5 pages 29 and 94.

6 I'm going to dwell on 94, but just passing through  
7 page 29 at paragraph 7.2.6 we see the first reference  
8 there.

9 Passing then on to page 94, we see in a more  
10 detailed form a recitation of part of the witness  
11 statement provided by that witness at paragraph 13.5.2.  
12 Now, with that paragraph in view, Mr O'Connor's  
13 submission in favour of granting status to the survivors  
14 of which this is a prime example, was on the basis that  
15 this witness -- quoting him again -- could assist with  
16 a highly informed view of what difference could have  
17 been made by proper first aid equipment.

18 We do agree with that as a proposition, and we do  
19 recognise the valiant assistance given by this witness  
20 whose occupation, in fact, you will note in the report,  
21 the first line of 13.5.2.

22 But the potential assistance identified by  
23 Mr O'Connor on the issue of first aid equipment is, we  
24 submit, quite evident from the content of the witness  
25 statement already encompassed within this report, and

1 when one looks at the middle of paragraph 13.5.2 -- I'm  
2 not going to read it out -- one can see, I hope, what  
3 I mean.

4 So we respectfully agree with you, madam, if we  
5 detect your view -- if it was a view -- that the inquest  
6 team, assisted, let it be said, by the  
7 Metropolitan Police, not as interested person but as  
8 coroner's officer, can ensure that this witness plays  
9 a valuable role within these proceedings, but one which  
10 does not require or depend upon properly interested  
11 person status. So that's what we say.

12 LADY JUSTICE HALLETT: So you say the inquest team, with any  
13 assistance as required from the Metropolitan Police,  
14 can, as Mr O'Connor put it, tease out from these  
15 traumatised witnesses any additional information they  
16 may have to give?

17 MR HILL: We do. We don't suppose for a moment that that's  
18 an easy task as conducted by your team any more than  
19 it's an easy task were it conducted by Mr O'Connor's  
20 team -- he recognises that -- by virtue of the trauma  
21 occasioned to these witnesses.

22 But we do say, with the greatest of respect to  
23 individuals in this category, that their value to these  
24 proceedings, undoubted though it is, and necessary  
25 though it is, doesn't depend upon status under Rule 20.

1 Madam, that's what we say on the primary issues of  
2 resumption, joinder and interested person status.  
3 Can I come on to scope and then jury consideration  
4 finally.

5 As to scope, much has been submitted and submitted  
6 in detail, and we don't seek to repeat.

7 We would like to remind you of our paragraph 24 for  
8 the assistance we hope it gives, at the bottom of  
9 page 11 of our document, because we attempted to set out  
10 the key components of the ISC reports. For all  
11 practical purposes, this week everyone has referred to  
12 ISC2, that published in 2009. But we all know that  
13 there was ISC1 published in 2006, and that is part of  
14 the publicly available material that forms a background  
15 to these proceedings.

16 Looking at those reports, there are three questions:  
17 one, what was the intelligence at the relevant time?  
18 Two, what was done with it? Three, what resources were  
19 available at that time?

20 We refer to those three components in our  
21 paragraph 24 as "the core findings" of the ISC.

22 Can I pause and say that, in a sense, these  
23 submissions -- although I'll develop them a little  
24 further -- are not our dispute, and it's perhaps  
25 important that I say so. I do propose to go further out

1 of an attempt by the Metropolitan Police to assist you  
2 with the rulings that you make. But when mentioned --  
3 as it has been during the course of this week -- it's  
4 been said that the Metropolitan Police Service  
5 investigation, after the bombings, and leading to the  
6 Operation Theseus trials, did everything that could have  
7 been done to put relevant and remaining persons before  
8 the courts, and we would say similarly with respect to  
9 Operation Crevice, which, too, has been praised for its  
10 intervention in that conspiracy.

11 We do have two points to make here. The first is  
12 a small point which follows from the correction Mr Skelt  
13 made before I rose to my feet, and I repeat that we're  
14 grateful for the correction.

15 We know, however, that there are people within the  
16 room who have sight to some documents and not others.  
17 May I just be forgiven for pointing out that the West  
18 Yorkshire Police letter at 18B in tab A, although  
19 factually accurate, should not be read in isolation, and  
20 the basis on which I make that good is simply by going  
21 briefly to ISC report 2 which is at E2/10. Madam, you  
22 needn't turn it up, I will be corrected if I misquote.  
23 At page 66 of ISC report 2, we are in the middle of the  
24 published detailed timeline so-called relating to 2004  
25 and 2005 as compiled by the ISC in the light of

1 completing their function.

2 At the top of page 66, it is stated in terms that on  
3 11 July 2005, the Metropolitan Police asked West  
4 Yorkshire Police to investigate their primary suspect,  
5 that being Mohammed Sidique Khan.

6 So, as Mr Skelt has absolutely correctly identified,  
7 the question of antecedent history and information known  
8 about Khan is one that was rapidly identified by the  
9 Metropolitan Police. Physical steps were taken,  
10 officers were dispatched to Yorkshire to ask that  
11 enquiries be made, and it's simply a repetition within  
12 these proceedings of such an enquiry that has generated  
13 the letter at 18B.

14 Now, we are sure nobody misunderstands that, but  
15 wanted to make it clear.

16 Secondly, as to a general submission on Article 2  
17 engagement, we've heard, and we do support, the  
18 submissions by Mr Garnham. We reiterate that engagement  
19 does require real and immediate risk within the Osman  
20 definition, and that failings alleged must amount to  
21 something more than missed opportunities on the part of  
22 the Security Service.

23 LADY JUSTICE HALLETT: Real and immediate risk to whom?

24 MR HILL: To identified persons.

25 LADY JUSTICE HALLETT: To what extent do you say they have

1 to be identified?

2 MR HILL: We say that identification, in the sense that is  
3 argued by Mr O'Connor and Mr Coltart -- namely  
4 individuals observed in February or March 2004 -- cannot  
5 on any sensible analysis amount to identification for  
6 the purpose of Article 2 engagement. There are a number  
7 of reasons for that. Mr Garnham has dealt with them.  
8 But, for example, it could not be said, in our  
9 observation, that the conspiracy later executed  
10 in July 2005, was formed in the sense of planning in  
11 detail at the time of the observations from which  
12 Messrs O'Connor and Coltart derive their criticism.

13 In other words --

14 LADY JUSTICE HALLETT: So you say it's only when you get  
15 a fully- or nearly fully-formed plot that you can  
16 identify the individuals placed at risk?

17 MR HILL: Yes.

18 LADY JUSTICE HALLETT: Supposing your plot was to send  
19 someone to London with a suicide bomb who didn't care  
20 where he or she set it off, anywhere on the streets of  
21 London, provided they took a number of people with them?  
22 Would that be sufficiently identified?

23 MR HILL: As Mr Garnham has observed, we suggest it would  
24 not, and it would not because that would be an  
25 identification in a way that it is impossible for the

1 body that bears the burden -- here the  
2 Security Service -- to meet it, and to discharge the  
3 burden.

4 LADY JUSTICE HALLETT: So it has to be that the state can do  
5 something; in other words, they have to know not just  
6 it's a shopping centre, it's the Bluewater shopping  
7 centre, so they can close it down, yes?

8 MR HILL: Yes.

9 LADY JUSTICE HALLETT: So if they knew it was the number 30  
10 bus, what they do there is, what, close down all  
11 number 30 buses?

12 MR HILL: Well, potentially. Clearly you would there have  
13 a situation where a class or body of people is  
14 identified -- namely, those on board number 30 buses --  
15 and we do agree that it's not necessary, for engagement  
16 purposes, to go on to identify by name whomever those  
17 customers may prove to be on a given day, but you must  
18 be able to identify the class, and that would be, to  
19 take your example madam, those on that bus line on  
20 a given day.

21 LADY JUSTICE HALLETT: Although the bus line will be very  
22 long. I mean, I don't know the exact journey that the  
23 number 30 bus takes, but it's going to be a long  
24 journey --

25 MR HILL: Yes.

1 LADY JUSTICE HALLETT: -- and lots of people are going to  
2 get on and off during the course of its journey, during  
3 the course of several journeys in the day.

4 MR HILL: Yes.

5 LADY JUSTICE HALLETT: But that would be sufficient, would  
6 it, in your submission?

7 MR HILL: It would appear to be so. I repeat, it's not  
8 necessary to name who the potential victims are, but it  
9 must be necessary to identify them.

10 I appreciate that giving a wide example and then  
11 gradually narrowing it is a very difficult way of  
12 testing what is a proposition of principle.

13 We say, for what it is worth, and for example, that  
14 the way in which the assertion is made by  
15 Messrs O'Connor and Coltart is based on nothing  
16 approaching the sort of examples, either of them, that  
17 you've just asked me about, madam, and, indeed, is  
18 removed in time and place -- time, by some 15 months,  
19 place, because we don't even know that London is, as it  
20 were, in view -- and for that matter, the  
21 Operation Crevice plot was not one, on what the ISC  
22 report tells us, that was either to do with an intention  
23 to deploy suicide bombs or to deploy on the public  
24 transport network in London.  
25 So the components of a plot which became the

1   appalling events of 7/7 were not the components of the  
2   plot which became the Operation Crevice trial.  
3   Therefore, with all the more reason, we say, it cannot  
4   be right to simply point the finger at March 2004 and  
5   identification on one or more occasions through  
6   surveillance of individuals, then to extrapolate that  
7   into what it is said was sufficient awareness of a plot  
8   so that it should have been stopped.

9   LADY JUSTICE HALLETT: In that line of argument, if, in  
10   Operation Crevice, the authorities -- be it the  
11   Security Service, the Special Branch, whoever it is --  
12   had discovered Omar Khyam in possession of 600 kilograms  
13   of fertiliser and had seen him plotting with a bomb  
14   expert and did nothing, they wouldn't be identified  
15   individuals, because you wouldn't know where he was  
16   going to use the fertiliser.

17   So would that mean that -- if they did nothing,  
18   would that mean it wouldn't trigger an enquiry because  
19   the individuals couldn't be identified?

20   MR HILL: Taken in isolation, that may be right. The word  
21   "brilliant" has been used on more than one occasion --  
22   not my word -- in terms of the interception of Crevice,  
23   and it may be that what those who have used the word  
24   mean is that the interception was actually at  
25   a comparatively early stage, certainly early in the

1 sense of not as late as just narrowly avoiding  
2 deployment and execution of the plan on a given day.  
3 We would add that in the Crevice plot, of course,  
4 the fertiliser bomb plot, as it's often called, was,  
5 although undoubtedly a plot connected to explosives --  
6 explosive devices -- not one that was in any sense  
7 similar to the 7/7 plot, because, as you know --  
8 LADY JUSTICE HALLETT: I don't think that's quite the point  
9 I'm putting to you, Mr Hill, with respect.  
10 MR HILL: I accept that.  
11 LADY JUSTICE HALLETT: The point I'm putting to you is I'm  
12 trying to grapple with the use of the word "identified"  
13 and the definition -- Mr Garnham seems to be going  
14 further than you. He seems to be saying you have to  
15 have a name and a place. You don't seem to be going  
16 quite that far, but I'm still troubled with, if Crevice  
17 hadn't gone the way it had -- let's suppose another  
18 country, another jurisdiction, an inadequate  
19 Security Service, and an inadequate Security Service  
20 discovers that there's a man who's got all this  
21 fertiliser, who's meeting with a bomb expert, and they  
22 do nothing and, sadly, it's placed and people die.  
23 Because the individuals weren't identified, on your  
24 argument and Mr Garnham's argument, we're not in  
25 Article 2 territory.

1 MR HILL: It's not just individuals that haven't been  
2 identified. There is no focus at all on the class of  
3 people whom it is necessary to protect. There's no  
4 susceptibility to protection, without -- and I'll come  
5 to it -- what may actually be argued for, which is  
6 a triggering of Article 2 upon the basis of a far more  
7 generic threat, and for good reason -- and Mr Garnham  
8 has addressed this -- we say that's not the way that  
9 Article 2 could properly be generated.  
10 Can I try to make that good?  
11 It is because -- I'm repeating him, I'm afraid --  
12 Article 2 is just one of the many guaranteed rights  
13 under the European Convention that Article 2 has to find  
14 its limits and find its place within the Convention.  
15 If you are to act, to take your example, on generic  
16 threat without any identification of the class of  
17 persons as to whom you could possibly protect, then,  
18 albeit, as it were, those on one side of the argument  
19 might say that that is proper engagement of Article 2,  
20 it would potentially so trample other articles within  
21 the European Convention that it cannot be right.  
22 Can I give an example of that, because there is one,  
23 we submit, at least inferentially, which is found in the  
24 ISC report number 2. If you would be kind enough to  
25 turn to E2/10, at page 40, it may be that on reading

1 just two paragraphs of ISC2 the answer to your last  
2 question, madam, may come into focus.

3 LADY JUSTICE HALLETT: Page 40, did you say?

4 MR HILL: Page 40, paragraphs 142 and 143.

5 So the case for engagement of Article 2 is  
6 encapsulated in paragraph 142, argued by some that MI5  
7 should put everyone they come across under surveillance,  
8 gathering intelligence on them until sure they didn't  
9 pose a threat. Mr O'Connor took you -- or was it  
10 Mr Coltart -- forgive me, I can't remember which -- took  
11 you to 142. They didn't read on to 143, in which the  
12 Committee said:

13 "For MI5 to have carried out consistent surveillance  
14 on the very large numbers who fell into the same  
15 category as these three [that's UDMs C, D and E] it  
16 would have needed to be a very different organisation  
17 [that's the resources point], both in terms of its size  
18 and how it operates, which would have huge ramifications  
19 for our society and the way we live."

20 It's that last phrase, that it may be inferentially  
21 Mr Garnham meant when he said that to be expected to act  
22 against a generic threat as opposed to specific threat  
23 cannot be the correct interpretation of Article 2  
24 because it would cut across other articles.

25 LADY JUSTICE HALLETT: Sorry to interrupt you. I think

1 Mr Coltart and Mr O'Connor would say that 142 doesn't  
2 put their argument as they would wish it to be put  
3 because -- and others who support them. They argue that  
4 they're not saying that MI5 should have put everyone  
5 they came across under surveillance. What they're  
6 saying is they should have put these men under  
7 surveillance because of certain factors.

8 MR HILL: Yes.

9 LADY JUSTICE HALLETT: To be fair to them, I don't think  
10 this quite encapsulates their argument.

11 MR HILL: I accept that and I'll come to that, because  
12 resource and comparative exercises come sharply into  
13 focus, if that is what's being said.

14 LADY JUSTICE HALLETT: Operation Crevice, the  
15 Metropolitan Police were running Operation Crevice?

16 MR HILL: Yes.

17 LADY JUSTICE HALLETT: Omar Khyam becomes the subject of  
18 Operation Crevice?

19 MR HILL: Yes. I'm pausing because it was Operation Crevice  
20 that was prosecuted by the Crown Prosecution Service,  
21 evidence being gathered by the Metropolitan Police. I'm  
22 not sure that it had its genesis with the  
23 Metropolitan Police. It had its genesis with the  
24 Security Service.

25 LADY JUSTICE HALLETT: We start with Qayum Khan.

1 MR HILL: Yes, this is Security Service not  
2 Metropolitan Police.

3 LADY JUSTICE HALLETT: No, we start with Omar Khyam as  
4 a runner, it's thought. Then we have Qayum Khan, who's  
5 an identified terrorist. So it starts with the  
6 Security Service, and then Metropolitan Police come  
7 along and pursue the investigation.

8 MR HILL: Yes, subsequently, but it was not  
9 a Security Service operation from its outset -- sorry,  
10 it was a Security Service operation, run by them, which  
11 was ultimately taken over by the Metropolitan Police.  
12 Charges were brought and, courtesy of the Crown  
13 Prosecution Service, the trial has proceeded.

14 LADY JUSTICE HALLETT: I don't ask for specific dates at  
15 all, but roughly the Met Police become involved how long  
16 before the Operation Crevice arrests?

17 MR HILL: 14 February 2004.

18 LADY JUSTICE HALLETT: Thank you.

19 MR HILL: I'm coming on to what Mr O'Connor and Mr Coltart's  
20 complaints amount to in the way that we put it, but just  
21 to complete my use of that particular section on page 40  
22 of ISC2, what Mr Garnham was saying was the alternative,  
23 as it were, if Article 2 is engaged at such a remove of  
24 time and place, is a police state and we do think that  
25 that inferentially is what the ISC meant by the final

1 sentence of paragraph 143.

2 So moving now beyond the general submission as to  
3 engagement in principle, it does seem to us, with  
4 respect, that the submissions by those representing the  
5 bereaved seek to express opinions -- undoubtedly they  
6 do -- on the existing intelligence at the time, but they  
7 do not add to that intelligence. That's a truism, but  
8 that's the position that we're dealing with.

9 Our question for you, madam, is whether it would  
10 really help to repackage or to go over the existing  
11 material again and, in deciding that in part, you will  
12 want to bear in mind what the ISC said about resources,  
13 effectively in the section I've just referred you to,  
14 and other references to the coverage of desirable  
15 targets.

16 Just to avoid any confusion -- I think we've looked  
17 at it once before -- it's page 41, under the heading  
18 "The Constraints on MI5", in which ISC report 2 provides  
19 a table headed "MI5's Capability to Cover Targets".

20 Now, I stress that this is MI5 material, not  
21 Metropolitan Police material, but it does seem, doesn't  
22 it, from the statistics of target coverage on page 41  
23 that only small percentages of outstanding targets were  
24 capable of any coverage, given resources available to  
25 the Security Service at that time.

1 As Mr O'Connor has rightly observed in footnote 46  
2 on that same page, it is stated that it is no longer  
3 possible even to retrieve and set out again all of the  
4 underlying material from which that table was created.  
5 Now, that's not our assertion, but we observe that  
6 that is what was being said a year ago when ISC2  
7 reported, and yet it's said that you should go into this  
8 material again now.  
9 We simply submit that would appear to be a real  
10 problem, if not a fundamental problem.

11 LADY JUSTICE HALLETT: If it is a real problem, whoever  
12 installed the new IT system should be shot.

13 MR HILL: I say nothing about that. Mr Garnham, of course,  
14 has submitted orally, today or yesterday, in addition to  
15 that, as it were, that nothing more can be put into the  
16 public domain than is already recorded by the ISC  
17 reports.

18 So it must be clear that any inquest in 2010,  
19 following a ruling on Article 2, and as it were  
20 empanelled or resumed as a Middleton inquest, or  
21 following a ruling as to the non-engagement of  
22 Article 2, but being resumed in a wide sense under  
23 common law Jamieson principle, such an inquest this year  
24 could only proceed on conditions and information before  
25 7 July 2005 being set before you and/or the

1 fact-finders, if it's a jury who are the fact-finders,  
2 and hindsight, as has been said before, doesn't help  
3 anyone.

4 Before I go further, can I just identify in our  
5 paragraph 11 what we said -- page 6 of our  
6 submissions -- about the practical difference between an  
7 Article 2-engaged Middleton inquest and a wide Jamieson  
8 inquest.

9 We said in paragraph 11 it's recognised and accepted  
10 that the court is likely to take an identical approach  
11 to all practical issues, whether or not the  
12 circumstances technically engage Article 2.

13 We are anxious that we should concentrate on the  
14 word "identical" in the second line, and we're not sure,  
15 on reflection, that we were correct to use the word  
16 "identical". What we say is that our submission in  
17 paragraph 11 should not be taken in isolation, but  
18 should be taken as part of the whole that it represents,  
19 and in this context paragraphs 21 to 24 inclusive are on  
20 the same matter.

21 What I'm coming to, madam, is the halfway house  
22 possibility as you have put it.

23 We agree, as a matter of law -- it seems to us that  
24 we need to declare this -- that preventability -- which  
25 is the issue identified on behalf of the bereaved --

1 cannot come in via the back door as was being discussed  
2 earlier -- in other words, for the purpose of Rule 43 --  
3 if the front door, being Article 2, is closed, and we  
4 think, with respect to all the other arguments, that  
5 Mr Garnham is right about that.

6 We do, however, maintain that there is an evidential  
7 sense in which, within a non-Article 2 Jamieson inquest,  
8 evidence can still be called before you and/or a jury  
9 even though, being a Jamieson-only inquest -- which is  
10 what we submit is appropriate here -- the test is to  
11 examine by what means the deceased lost their lives so  
12 tragically as opposed to by what means and in what  
13 circumstances.

14 In order to answer that issue, by what means the  
15 deaths were caused, it is necessary for there to be  
16 sufficient evidence deployed to allow the interested  
17 persons to address you on the verdicts that you may  
18 eventually leave for a jury or consider for yourself,  
19 and I'm not speaking out of turn, I trust, when I say  
20 that it's quite evident to all of us that the verdicts  
21 in mind, even on a Jamieson basis, would be unlawful  
22 killing times 52, and nobody plainly shies away from  
23 that.

24 Clearly the verdict of suicide would be available,  
25 were one to resume in the case of the four, in addition

1 to the 52. Our submission is that you shouldn't do that  
2 at this stage and it may be that that time will never  
3 come.  
4 So it's unlawful killing to which we direct our  
5 submission, and it does seem to us that, in order to  
6 make that a properly susceptible verdict on the resumed  
7 inquests for the 52, it would be necessary to go  
8 further -- possibly far further -- than simply examining  
9 the events on the morning of 7 July and their aftermath.  
10 So for the avoidance of doubt, we submit that events  
11 on the day, absolutely germane to a Jamieson inquest.  
12 Aftermath and emergency response, absolutely germane,  
13 particularly in the light of your powers under Rule 43.  
14 Events before 7 July to be discussed, but we  
15 absolutely see the relevance.  
16 We say that the ISC report is a very important  
17 component in that evidence and we do say that, when it  
18 is identified in paragraph 4 of Mr Keith's submission  
19 that there should be further reports compiled, we agree  
20 with that.  
21 Can I just read from paragraph 4(1) on page 3 at A1:  
22 "In the event that the inquests are resumed  
23 [Mr Keith says] further reports will be prepared  
24 addressing the backgrounds of Khan, Tanweer, Hussain and  
25 Lindsay, the movements of the four prior to the

1 explosions and forensics relating to the explosions."  
2 What he means by that, we assume, is that, in their  
3 guise of coroner's officers, you should require the  
4 Metropolitan Police to prepare those reports in as much  
5 as they can be compiled from Operation Crevise material.  
6 We say that such reports must only be on --  
7 can I use the term a "needs led" basis. You will want  
8 to apply focus and you will want to filter the necessity  
9 for further information according to what you deem is  
10 required in order to inform potential verdicts, but we  
11 do see that the verdict, even under a Jamieson  
12 proceeding, of planned killing or planned terrorist  
13 detonations of explosive devices -- and we think one of  
14 those two formulations or something rather better than  
15 that would be what you have in mind -- that would  
16 require much more than just an exploration of what  
17 happened on the day.  
18 So if that's a halfway house, we support it.  
19 LADY JUSTICE HALLETT: That would mean taking the material  
20 as provided to the public in the ISC reports as read,  
21 coupled with any additional information the  
22 Metropolitan Police can add properly?  
23 MR HILL: Yes.  
24 LADY JUSTICE HALLETT: Not making any findings on the  
25 judgment calls of the Security Services, but recording

1 as a fact recorded meetings and contact?

2 MR HILL: Yes, so it's the factual content as opposed to the  
3 opinion of the Committee, but the factual content as  
4 recorded in the reports.

5 LADY JUSTICE HALLETT: As amplified, if there is any  
6 amplification by anything else that the  
7 Metropolitan Police have?

8 MR HILL: Yes, and it's amplified already by the content of  
9 the scene reports and the underlying material and may be  
10 amplified yet further by the matters Mr Keith has  
11 identified in paragraph 4 and, who knows, perhaps more.

12 LADY JUSTICE HALLETT: What you have there is an airing,  
13 potentially, of what was known without any finding, is  
14 that right?

15 MR HILL: Yes. Insofar as the ISC is concerned, it's  
16 a reiteration. I can't say any more than that. I'm not  
17 submitting that the material redacted by the ISC should  
18 be aired within these proceedings, but I am saying that  
19 the content factually of those reports and other  
20 material generated in the course of these proceedings  
21 would all form a proper basis for you or a jury -- my  
22 submission would be you, madam -- on a Jamieson basis.

23 LADY JUSTICE HALLETT: What it doesn't necessarily do is  
24 answer the questions that have been posed. For example,  
25 how many other people met the bomber on his visit? But

1 you would say that's going beyond the proper scope  
2 because we're just looking at the bombers. Is that what  
3 you say?

4 MR HILL: Yes, we would say that clearly, as it were,  
5 approaching the matter from a distance, you would be  
6 right to identify the need for material, factual  
7 material, sufficient to enable the verdict, and if that  
8 verdict included planned terrorist bomb-making, then  
9 there may be further submissions as to what would be  
10 requisite as the evidence from which that finding could  
11 be made.

12 But for all of the reasons that Mr Garnham has put  
13 forward, which we agree with, with respect, that that  
14 can't include -- partly, it can't include, because of  
15 all his practical submissions, anything, as it were,  
16 closed that went to the Intelligence and Security  
17 Committee. But it can include the published reports.

18 LADY JUSTICE HALLETT: It can't, on yours and Mr Garnham's  
19 submissions, encompass where people argue the ISC didn't  
20 ask the right questions?

21 MR HILL: No. We would not, as it were, be engaged with the  
22 manner in which the ISC went about its task any more  
23 than we would the manner in which the Security Service  
24 went about its task, but we would be considering the  
25 product evidentially of those tasks.

1 LADY JUSTICE HALLETT: Thank you.

2 MR HILL: Madam, I'm only too content to go on.

3 LADY JUSTICE HALLETT: How long do you think, Mr Hill,  
4 without rushing you?

5 MR HILL: I'm not going to be very long, but I think we'll  
6 be here close to 5.00 if I proceed tonight.

7 LADY JUSTICE HALLETT: Is there another subject you could  
8 conveniently get out of the way, or are we right in the  
9 middle and it's hard to -- if it's too difficult to  
10 separate matters --

11 MR HILL: Can I indicate what I have left, as it were,  
12 subject to any questions that you have?

13 LADY JUSTICE HALLETT: Of course.

14 MR HILL: I'm going to suspend my submissions on deployment  
15 before these proceedings of targeting and resource  
16 information, unless you wish to hear from me, because we  
17 do defer to Mr Garnham on what he said.  
18 What I am going to go on, in brief, is to consider  
19 practical considerations to address submissions you've  
20 heard on behalf of the bereaved families about PII, to  
21 put it simply, and I am then going to make some  
22 submissions about jury. That's what's left.

23 LADY JUSTICE HALLETT: I suspect jury is not going to take  
24 you terribly long.

25 MR HILL: No, it isn't.

1 LADY JUSTICE HALLETT: Shall we just get jury out of the  
2 way?

3 MR HILL: Yes. Insofar as jury is concerned, our  
4 submissions are at paragraphs 30 to 34. We preface what  
5 we say, briefly and orally, by just identifying that  
6 jury function is the cornerstone of Metropolitan Police  
7 work in the criminal jurisdiction and that does need to  
8 be said. It is the Metropolitan Police within London  
9 who investigate and in conjunction with the Crown  
10 Prosecution Service who charge and then place cases  
11 before juries. So we are not to be taken as making any  
12 tilt against the ability of juries generally, because  
13 they are, as I've already said, the weathervane for so  
14 many of the important cases brought by the  
15 Metropolitan Police.

16 We do question, however, whether it is appropriate  
17 in these proceedings for there to be the summoning of  
18 a jury.

19 In short, we agree with Mr Gibbs' submissions as to  
20 non-application of any mandatory order requiring you to  
21 summon a jury under 8(3)(d), and it therefore remains  
22 a discretionary matter under 8(4). All we say in  
23 amplifying what Mr Gibbs has said is, as we identified  
24 earlier in our submission at paragraph 19, we draw  
25 attention to Lord Justice Pill's observations in the

1 case of Scholes.  
2 We say that, particularly where Rule 43 is  
3 envisaged, what his Lordship said in that case is that  
4 a jury cannot be expected to give answers to questions  
5 of resources and policy, and over the page -- that's  
6 paragraph 69 of the judgment in Scholes. Over to our  
7 page 10, paragraph 70, the value of a jury's views as  
8 a tool for assessing and approving procedures were, in  
9 his Lordship's view, also limited. We simply say --  
10 this follows Mr Gibbs -- that that is right, and there  
11 is, as it were, an alternative jurisdiction available to  
12 you -- namely, under Rule 43 -- which we have, for your  
13 assistance, set out at our paragraph 20.

14 So what I think that leaves are some practical  
15 submissions about PII, some of which touch on the jury  
16 issue, but I don't know whether it's convenient to leave  
17 those to tomorrow or to simply go on.

18 LADY JUSTICE HALLETT: It is quite warm. I think we've had  
19 a full day.

20 What time would anyone like me to sit tomorrow?

21 We have how long left, you say, about half an hour  
22 left?

23 MR HILL: I would think less than that.

24 LADY JUSTICE HALLETT: Mr Keith, do you have any thoughts as  
25 to how long we suspect -- I don't know if you've had an

1 opportunity to discuss with your colleagues who are yet  
2 to come?

3 MR KEITH: Madam, I have. I've canvassed with the remaining  
4 representatives -- that's to say City of London Police,  
5 London Ambulance Service, London Fire Brigade and  
6 Transport for London -- and each claim not to require  
7 more than 5 or 10 minutes of your time each.

8 That does, however, I'm afraid, ignore the vexed  
9 issue of my response, which, I'm afraid, in the light of  
10 the many issues which have been raised, is likely to  
11 occupy you for at least two to three hours.

12 LADY JUSTICE HALLETT: So shall I sit at 10.15 again? Would  
13 that be convenient? Because we still, of course, have  
14 in hand, if it's necessary, Friday as well.

15 MR KEITH: Yes, and may I raise in the morning some  
16 suggestions, if I may, as to how you may wish to go  
17 about seeking points in reply to the other advocates  
18 and, of course, to submissions from your own counsel?

19 LADY JUSTICE HALLETT: Certainly. Thank you very much,  
20 10.15 tomorrow.

21 (4.30 pm)

22 (The case adjourned until 10.15 am the following day)

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