Inquests into the deaths arising from the Fishmongers' Hall and London Bridge terror attack

Day 1

March 25, 2021

Opus 2 - Official Court Reporters

Phone: 0203 008 6619
Email: transcripts@opus2.com
Website: https://www.opus2.com

Thursday, 25 March 2021

(10.00 am)

JUDGE LUCRAFT: Good morning, Mr Hough. Mr Hough, I'm just going to say a couple of things at the beginning, rather as I did on the last occasion that we had a pre-inquest review using CVP.

Because I think all of our experience with CPV is that the sound can occasionally be lost for those who are on a remote link, can I simply ask everyone who is not speaking please to make sure they remain on mute until their time is to speak.

The second thing is that I know that a transcript will be made of this hearing in due course, and I hope anyone who loses part of the dialogue will be able to at least read the transcript in due course.

Again, my experience borne out in another jurisdiction, but reinforced by the last hearing we held on this particular -- these particular inquests, is that in due course a note will be produced of the matters which have been discussed and of course a ruling in relation to any matters that I'm asked to rule on will be given in due course.

I say that by way of simple introduction because I'm so conscious that we've got quite a number of people who are participating in this hearing through the CVP link.

The final thing I was going to say at this stage is simply to make clear to everyone that I received quite a volume of the closed material last week. I have not, thankfully, been sitting in court every day all day since the material arrived, and so I have had a good period of time to familiarise myself firstly with that material and also the submissions which have been received by me, both for the open part of the hearing this morning and indeed in relation to the closed part of this hearing to take place this afternoon.

I say that by way of introduction simply so people are aware that I'm not coming to this entirely cold. I have had plenty of time to look at the material and indeed to read and re-read the statement of Witness A which touches upon many of the points which are made in the written submissions that I have received for today.

MR HOUGH: Thank you, sir. This is, as you know, sir, the third pre-inquest review hearing in these inquests concerning the deaths resulting from the attack at Fishmongers' Hall on 29 November 2019. As you have alluded to, the hearing will consist of an open session this morning followed by a closed session this afternoon.

All interested persons are participating in this morning's part of the hearing by remote links and you, sir, gave directions on 16 March to provide for such links and an audio broadcast for the press. Some members of the press sit in court behind me.

I stress that it remains a contempt of court to photograph or make an audio or video recording of any part of this hearing.

May I deal with representation and the representatives' ability to see and hear these proceedings has been checked.

I appear with Aaron Moss as counsel to the inquest. For the family of Saskia Jones, Henry Pitchers QC, Philip Rule and Ramya Nagesh. For the family of Jack Merritt, Nick Armstrong and Jesse Nicholls. Mr Nicholls will be making the oral submissions. For the family of Usman Khan, Jude Bunting. For the Metropolitan Police Service, Matthew Butt QC and Genevieve Woods. For the City of London Police, Fiona Barton QC. For the Staffordshire Police, Gerard Boyle QC and Louisa Brown. For the West Midlands Police Jason Beer QC and Georgina Wolfe. For the Secretary of State for the Home Department and Secretary of State for Justice, Neil Sheldon QC, Samantha Leek QC and Francesca Whitelaw. For the London Ambulance Service, Gemma Brannigan. For Barts Health NHS Trust, Sebastian Naughton. For Cambridge University

Nicholas Griffin QC. For the Fishmongers' Company Sarah Le Fevre. For the City of London Corporation, Stephen Morley. For Staffordshire Police Prevent Team Officers, Kevin Baumber; and representing the IOPC, Danny Simpson. I hope I haven't missed anyone out.

The following topics, sir, are to be addressed in this open part of the hearing.

First of all, the public interest immunity, PII, claims for the Secretary of State and West Midlands Police.

Secondly, adequacy of investigation. If the PII claims are entirely or substantially upheld, should you proceed with these inquests or call for a public inquiry.

Thirdly, anonymity and special measures application of Witness A, the MI5 witness. Should the witness be granted anonymity, and if so, from whom should they be screened?

Fourthly, should you call for statements from Security Service witnesses other than Witness A?

Fifthly, should accredited press see the screened witnesses other than Witness A?

Sixthly, any remaining case management issues, including a selected number of issues about witnesses and disclosure items.

We have provided written submissions addressing these issues and those IPs with an interest in them have provided their written responses.

Subject to your preference, sir, I prefer to go through all items on the agenda, summarising our submissions for the benefit of all attending and answering points in the submissions of others. It may then be sensible to ask each advocate to address all items. Finally, I would intend to reply briefly.

JUDGE LUCRAFT: I'm just going to remind people please to be on mute if you're not speaking.

MR HOUGH: Finally, I would intend to reply briefly to any points requiring a response. Would that approach be convenient?

JUDGE LUCRAFT: Very much so thank you, Mr Hough.

Submissions by MR HOUGH

MR HOUGH: Turning to item 1, the PII claims, we address these from page 2 of our document.

Sir, as you know, the Home Secretary and the Chief Constable of West Midlands Police have made PII claims objecting to the disclosure of some documents to interested persons and seeking to justify redactions of other documents. The principal claim is that of the Home Secretary and is supported by a ministerial certificate. Because some of the submissions suggest

that the PII claims are all about withholding documents, and the consideration has not been given to providing documents in redacted form, I should stress that a significant element of the PII claim concerns justifying redactions. These include redactions to various police documents such as those of Staffordshire Police and Prison Service documents such as the Mercury intelligence record from Khan's time in prison.

Sir, the background to the PII claim is summarised from paragraph 4 of our submissions. To summarise briefly, first of all, MI5 was involved in the investigation which led to Usman Khan being imprisoned in 2010 and he remained under investigation in his early years in prison. An investigation was re-opened in August 2018 in preparation for his release and he then remained under investigation as a subject of interest until the time of his death. MI5 worked with West Midlands Police CTU and Staffordshire Special Branch in that investigation.

Secondly, from an early stage we recognised that MI5 was likely to hold relevant material about this investigation and that MI5 information was likely to be in police material as well. We also recognised that security sensitivities are likely to exist because secrecy attaches to subjects such as MI5's operational

capabilities, its investigations into other subjects of interest and its sources.

Thirdly, we therefore adopted a process which is set out at paragraph 7 of our document. We reviewed MI5's post-attack review report and the underlying investigation documents. In a series of discussions we identified topics and information relevant to the inquest adopting a low threshold of relevance. MI5 then produced a witness statement of a senior officer, Witness A, providing evidence of its investigations into Khan and what it knew about him before and after the attack. The statement contains an extended gist or summary of the investigation materials prepared, MI5 says, to avoid harming national security interests. The statement went through drafts as we sought to encourage the provision of ever more information.

We then identified material which we considered should be disclosed on relevance grounds alone if national security concerns were not a factor, again applying a low threshold of potential relevance. And that triggered the current PII claims.

We should stress that nothing about this process has been cursory or deferential. It was and is our aim to press for as much information to be made available as possible.

JUDGE LUCRAFT: Just pausing there for a minute, Mr Hough, it may just help obviously from my review of the material, I can say that from what I have seen there appears to be a very lengthy, very detailed process that's been undertaken in dialogue between the team for the inquest and those representing the Home Secretary.

MR HOUGH: Sir, we would agree with that characterisation.

In addition, we've been inventive in pursuing our objective of maximum openness. As I have said, some documents have been disclosed with redactions and those redactions have been usually very limited and the gisting statement of course has been produced. In addition, we devised the in camera disclosure process, a new process, which you, sir, approved at the last hearing to enable disclosure of material which the government is prepared to have deployed within in camera hearings.

Turning then to the legal principles, we set those out from page 4 of our submissions and I can take them relatively briefly because they are not controversial, although different interested persons inevitably give emphasis to different principles.

As we say at paragraphs 10 to 11, a coroner may refuse disclosure of otherwise relevant documents on the basis of a valid PII claim and in doing so should apply

the rules of PII as applying to legal proceedings generally, but with proper account taken of the nature of inquest proceedings.

At paragraph 13 we refer to the Binyam Mohamed case where Lord Justice Thomas classically proposed a four-stage approach for PII. First, is there public interest in disclosure? Second, would disclosure bring about a real risk of serious harm to an important public interest? Third, can the risk be protected against by other means or more limited disclosure? And fourth, if there is no adequate alternative, where does the balance of the public interest lie between allowing or refusing disclosure? That is the Wiley balance.

As we point out at paragraph 14, there is in general a public interest in disclosure of relevant material in inquests to serve the purposes of the inquest process. Those purposes were described by Lord Bingham in well-known terms in the Amin case in a passage we quote at paragraph 14 and which, sir, you may have seen others quote too. They include ensuring that the full facts are brought to light, that any culpable conduct is exposed, and that lessons are learned for the future.

At paragraph 15 we cite extensively from the Litvinenko case of 2013, where Lord Justice Goldring, having gone through the previous authorities, identified

nine principles of particular relevance to PII claims based on national security interests in inquest proceedings.

Let me summarise each of those briefly. First, public justice is important and it's for the court to decide whether a PII claim should prevent disclosure of a document.

Second, the context of the balancing exercise is critical and PII claims based on national security raise their own particular considerations.

Third, if a PII claim is based on national security concerns, there must be proper evidence in support.

Fourth, if disclosure would have a sufficiently serious effect on national security, there must be no disclosure. If the claimed damage to national security is not, however, plain and substantial enough to prevent the balancing exercise being performed, then it should be performed.

In that exercise, fifthly, the Secretary of State's view of the nature and extent of the damage to national security should be accepted absent cogent reasons to reject it.

Sixthly, it is usually a given that the Secretary of State knows more about national security and the coroner knows more about the proper administration of justice.

Seventh, a real and significant risk of damage to national security will generally, but not invariably, preclude disclosure.

Eighth, to reject a PII claim backed by a ministerial certificate, the coroner must find that the damage to national security as assessed by the Secretary of State is outweighed by the damage to the administration of justice.

Ninth, it is incumbent on the coroner to give reasons, especially if ordering disclosure against a PII claim.

Sir, as that set of principles recognises, considerable weight has to be given to the Secretary of State's assessment of the harm which disclosure of a document or part of a document would cause to national security, both because she has access to expert advice about security matters and also because she is politically accountable for the protection of the public while the court is not.

The authorities making those points are cited at paragraph 16 of our submissions.

The Secretary of State can also properly point to various passages in the authorities saying that a real and significant risk of harm to national security will usually preclude disclosure, and they are set out in

paragraph 17 of our submissions.

But there are two important countervailing considerations, at least, which we make at paragraph 18 and which the families also properly make.

First, upholding a PII claim involves a restriction on open justice in the coronial process. The open justice principle is one of constitutional importance.

Second, the entire process depends on the court exercising rigorous independent judgment and not, in the evocative words of one judgment, saluting a ministerial flag. Sir, the submissions of Mr Pitchers QC, Mr Rule and Ms Nagesh for the Jones family make those points very compellingly at paragraphs 9 to 16.

In striking the Wiley balance, a variety of factors may come into play. They include the weight and significance of the national security interest claimed, the degree of relevance to the inquiry of the information being withheld, and the consequence on the inquiry of upholding the certificate, and the extent to which evidence on the subject is already provided by way of gist and/or by disclosed material.

Let me then turn to the application of the principles in this case. We set out the approach as we say it should be followed at paragraph 21 of our submissions.

Sir, let me now add three points, having regard to the submissions of others.

First of all, the investigation in which MI5 participated is a subject within the scope of these inquests which will be considering the management and monitoring of Khan and whether his attack could have been prevented. In theory it could have been prevented in one of two ways: if Usman Khan's preparations for the attack had somehow been identified in advance, or if further information had been gathered or a higher assessment of risk made which would have caused him to be prevented from going to the Learning Together event, or perhaps accompanied to that event.

As we say at paragraph 22 of our submissions, this topic is a proper subject for inquiry. For instance, there had been prison intelligence from shortly before Khan's release in late 2018 that he intended to return to terrorism. MI5 acknowledged that there was a risk in this regard.

Then shortly before the attack a joint operational team or JOT meeting of police and MI5 on 18 November noted that he had become withdrawn and might re—engage in extremist activity.

The inquest can and should legitimately consider what information MI5 had at each stage of the history,

what assessments they made, what investigative measures they took, what were the results of their investigation and to what extent their information was provided to other agencies responsible for managing Khan.

Secondly, however, a great deal of information about intelligence available to all state bodies will be in evidence in any event and in open. There has been a vast amount of disclosure of prison intelligence documents, probation records, West Midlands Police and Staffordshire Police intelligence reports, minutes of MAPPA meetings at which the decisions about Khan's management were made, reports of DDP mentors and so on.

The court has statements from and will hear directly from officers of Staffordshire Police, both the Prevent officers managing Khan and the Special Branch officers dealing with intelligence and communicating with West Midlands Police CTU and MI5.

The court will very shortly receive statements from officers of the West Midlands Police Team 7 who were the partners of MI5 in the joint investigation. Those have been prepared at our request. And contrary to the assumption made in one set of submissions, we have made clear that key officers from Team 7 will be called as live witnesses.

There will be further disclosure of investigation

documents from Staffordshire Police, Special Branch and West Midlands Police CTU in the coming week or two, with only quite limited PII redactions at most.

Sir, let me give a few examples to illustrate the significance of the huge amount of disclosure, and I'm going to use the first three issues of significance raised in Mr Armstrong's submissions at paragraph 6 for the Merritt family.

Paragraph 6(a), Mr Armstrong points to prison intelligence which MI5 received shortly before Khan's release indicating that he continued to radicalise others and that he said he would return to his old ways believed to relate to terrorism. Mr Armstrong asks whether this information reached others. In fact, it is in the Mercury Intelligence review —— report {DC6503/2242} for your note. And it featured in the MAPPA minutes from 5 December 2018 {DC6409/6} as well as in Staffordshire Special Branch's profile of Usman Khan, {WS5059—2A/13}.

Then at paragraph 6(b) of his submissions Mr Armstrong refers to the JOT meeting on 18 November 2019, noting that it referred to concerns about Khan isolating and reacting badly to a visit from police officers. Sir, those were considerations noted in the minutes of the MAPPA meeting four days previously

which was attended by all the relevant agencies and the discussion of what concerns they raise is set out in great detail in those minutes {DC6417/5}. Police visit and Khan's apparent isolation were also the subject of detailed consideration in emails between the actual officers involved in dealing with him and their Special Branch colleagues which we have disclosed {WS5063/JS413}.

Then at paragraph 6(c) Mr Armstrong refers to contact between Khan and other TACT offenders while in prison and asks whether information on this subject was communicated to Staffordshire Special Branch or in MAPPA meetings. In that regard we would point to the MAPPA F form for 5 August 2018 which refers to Khan being regarded as one of the main extremists on the wing, responsible for radicalising others, and having close associations with other TACT offenders who are named, including Brusthom Ziamani, who carried out a later attack in Whitemoor Prison. See for your note {DC6420/6}. Ms Bolton, the MPS offender supervisor for Khan, acknowledges this in her statement and deals with it.

Sir, I should also note in passing that it is wrong to say, as suggested at one point in Mr Armstrong's submissions, paragraph 6(b)(vii) and 6(f)(ii), that the

subject of Khan's trip to London came to MI5 after the JOT meeting on 18 November. What Witness A says at paragraphs 135 to 136 of their statement is that the proposed trip was discussed in the meeting, that MI5 was told the exact date of the trip very shortly after, and that it was notified of the travel arrangements for the trip on 22 November.

The third general point we make is that the statement from Witness A is a very detailed document and in many respects more detailed than comparable MI5 statements made in other cases. It identifies the key intelligence received at each stage and also the judgments made at the most significant meetings, including quarterly case review meetings. This information can be directly compared with what others received and the risk assessments of MI5 can be tested by reference to all the other information.

Sir, let me give a couple of examples, again by reference to Mr Armstrong's detailed submissions.

As he says at paragraph 6(e), MI5 considered that Khan might be acting in a compliant way in order to avoid scrutiny from the authorities. The statement of Witness A says when this judgment was made, see in particular paragraph 128. That concern, that Khan might be acting in a compliant way to avoid scrutiny, was,

sir, a constant feature of concern in relation to Khan recorded in the documents. It had been raised in a MAPPA intelligence report in mid 2018 and was recorded in the MAPPA minutes, both of which have been disclosed. See {DC6406/6}. It was the risk under constant consideration by the MAPPA bodies thereafter.

Secondly, at paragraph 6(f) Mr Armstrong refers to the JOT meeting again on 18 November. That meeting is gisted in detail over two paragraphs of Witness A's statement, paragraphs 135 to 136.

Sir, I should also note that DS Stephenson of Staffordshire Special Branch, who attended the meeting and provided the intelligence update to MI5, will be giving evidence and deals with this in his statement {WS5072/12–13}. He was also present at the MAPPA meeting of 14 November 2019 and we have disclosed his emails with the Prevent Team evidencing his knowledge about the London visit.

Sir, we don't make any of those points to suggest that you should take a superficial approach to the PII process. Far from it. We urge you, sir, to take a rigorous approach, subjecting each damage argument to critical analysis and considering carefully the relevance of the documents. Without going into the detail of the closed submissions, you will be aware from

our written closed submissions that we have taken a questioning and challenging approach to the claims. You will also be aware, sir, that as a result of the exchange of closed submissions, multiple documents, the Secretary of State has already abandoned and adjusted aspects of the PII claim. And that is how a constructive PII process ought to work.

JUDGE LUCRAFT: Just in relation to that exchange of submissions, those documents came to me yesterday, Mr Hough, and I have had a chance to see it. Again, just to make clear, it is clear to me from having read that document that clear thought has been given to the various points that were made in the submissions that you and Mr Moss made in respect of the first detailed submissions received on the closed side, and again, it's obvious to me that a lot of work has gone into a close consideration of those points that were made.

MR HOUGH: Sir, we understand, as professional advocates, that it must be frustrating for others to be told about the process but without being party to it. But unfortunately that is the nature of such things.

JUDGE LUCRAFT: Yes.

MR HOUGH: For the benefit of all listening to the hearing, before I move on to the other agenda items ——

JUDGE LUCRAFT: We will have to keep our voices raised.

Point taken, thank you very much.

MR HOUGH: I should refer before leaving this topic, sir, to the types of damage that need to be considered in cases of this kind by reference to paragraph 24 of our open submissions.

First of all, the Security Service uses operational techniques which have to remain secret in their details, use, practicalities and limitations. If they became known, terrorists and criminals would be able to avoid them and the risk of future atrocities would increase.

Secondly, operations and subjects of interest can be linked. Disclosing information about other operations and individuals under investigation may make those investigations less effective. Again, that puts us all at greater risk.

Thirdly, it is well known that law enforcement agencies receive information from individuals. If material is disclosed which reveals a human source or which gives information from which a source can be suspected or known, that has at least three damaging effects: the individual may be at risk of harm or death, the intelligence may dry up, and others may be dissuaded from helping in future.

Fourthly, disclosure of information which reveals liaison and relationships with foreign sources can be

expected to damage those relationships and so cut off future intelligence.

I make those as general points without saying that any of them in particular applies here or to what extent.

May I then turn to item 2, adequacy of investigation. That issue follows on from the first. If you uphold the PII claim to any extent, you will need to consider whether it is possible for you to conduct a satisfactory investigation through these inquests. In particular, you will need to consider whether you can properly discharge the responsibility to hold a sufficient inquiry to answer the statutory questions set out in Section 5 of the Coroners and Justice Act, including how each of the attack victims came to die.

If not, the appropriate course would be to request the establishment of a public inquiry since such an inquiry can hear evidence in closed session and could therefore receive material which is the subject of the PII claim.

At paragraph 20 of our submissions on page 9 we suggest that a request for an inquiry should be made where the investigation would be seriously incomplete or potentially misleading without the deployment of material covered by PII. Mr Armstrong's submissions

take issue with our use of the adjective "seriously" or the adverb "seriously" before "incomplete", paragraph 27(a). However, the point is that a coroner does not necessarily call for a public inquiry just because some relevant documents or some facts may be excluded. If that were the case, almost any inquest in which a PII claim was upheld could not proceed as an inquest.

The starting point is that you have been appointed as coroner to conduct these inquests and you have statutory responsibilities to conduct the inquests. It is only if you conclude that those responsibilities cannot be satisfactorily discharged that you should ask for a different form of process to be put in place.

That, sir, was the essential approach taken by both Sir Robert Owen in the Litvinenko case and Sir John Saunders in the Manchester Arena case. The justifications for their decisions can readily be seen. In the Litvinenko case, as it was put in the divisional court, without the PII material it was impossible to investigate whether the death was the result of an ordinary crime or the result of state sponsored terrorism.

In the Manchester Arena case, Lord Anderson's public report stated that MI5 twice received intelligence which

could in retrospect be seen to be "highly relevant" to what was an organised and highly sophisticated attack. Paragraph 2.37 of his report.

In his letter to the Home Secretary of 27 September 2019, Sir John concluded that the PII material was centrally important and that the inquiry could not properly consider whether the attack might have been prevented without that material. He observed that no interested person in that case differed from that view.

There have of course been other cases involving upheld PII claims which have proceeded as inquests, not only your own Westminster and London Bridge cases, but also the London bombings case and the Perepilichnyy case, not to mention numerous cases involving police and MOD PII claims.

Plainly the judgment is fact sensitive and requires the coroner to consider the PII material carefully, asking whether its absence prevents a legally sufficient inquiry.

Sir, we agree with Mr Armstrong's submissions that in considering that question, you should not be swayed by the consideration that a family engaged in a public inquiry will be unlikely to receive MI5 material attracting PII in that inquiry.

We also agree that you should not be swayed by any perceived advantages of the inquest process or by the fact that calling a halt now would be disruptive and potentially distressing to many witnesses. In our case, however, it is our submission that a legally sufficient inquiry is possible even if the PII claims were upheld fully, and that you should proceed to discharge your statutory duties under the Coroners and Justice Act.

We make five submissions in that regard, developing the point in paragraph 28 of our document. We shall of course expand on these in closed oral submissions since your judgment by definition needs to be made with reference to the closed materials.

First, the relevance of material for which PII is claimed needs to be seen in context. Unlike the Litvinenko case and the Anthony Grainger case, the material does not relate to how the deaths occurred. How the attack was prepared for and carried out is apparent, and Witness A has made clear that MI5 has no information to add to this subject. Furthermore, the attack was one with the lowest level of sophistication, requiring no network, no communications, and no logistics. There is no suggestion that the PII material may contain evidence of attack planning which was there to be seen.

Secondly, we point again to the vast amount of disclosure provided about the management and monitoring of Usman Khan, what was known to state agencies about him and the risk assessments formed. It is telling that the statement of Witness A reflects MI5 having a picture of intelligence which was consonant with that in the MAPPA minutes and in the prison intelligence, the key items of which fed into the MAPPA process. Of course, sir, if you were to conclude that the PII material includes further items of information which should significantly have influenced the consideration of the risk Khan posed, then that might alter your view. But, sir, that is not our assessment of the material.

Thirdly, we would make the related point that the inquest will receive a large amount of witness and documentary evidence of the decisions taken in the management of Usman Khan, including that critical decision permitting him to travel to London. That decision was primarily a matter for the MAPPA agencies, notably the probation officers and the Staffordshire Prevent Team officers, taking account of the intelligence which sped into the MAPPA process as recorded in the minutes.

Advocates can ask participants in those meetings what they knew of the visit and why they sanctioned it.

For instance, Mr Skelton, the probation officer, discusses how the visit was proposed and considered in MAPPA meetings and why it was agreed. For your note, that's {WS5057/27–28}. Sergeant Forsyth of the Prevent Team discusses why he approved the visit. That's {WS0256D/24}. DS Stephenson of Staffordshire Special Branch explains how he came to know of the event and describes communications with the West Midlands Police Team 7 officers about the details of the event, {WS5072/13} and all those three men will be witnesses in the inquest.

Fourthly, as we have already pointed out, the statement of Witness A provides an account of the key information received by MI5 and the risk assessments made. The witnesses may be questioned about the extent to which this information was shared with others, and whether any information from other bodies was not provided to MI5. And those questions may also be asked of Witness A.

Fifthly, consideration should be given to the nature of the attack here. Even now, after all the extensive post–attack investigations, there is no evidence that Khan did anything in a public place or in a place visible to the public which would have pointed to an intended attack. And there is no evidence that he

shared his attack aspiration or plan with anyone in the 11 months following his release. This is accordingly not a case where it can be said that further surveillance on Khan could realistically have identified actual attack preparations or even an imminent intention to commit an attack.

Sir, that's what I say about item 2.

May I now move to item 3, the anonymity and special measures application of Witness A, and that is the application by the Secretary of State on behalf of Witness A.

We summarise it at paragraphs 29 to 30 of our document and the orders sought you will recognise as materially the same as those made in the Westminster and London Bridge cases. They're also substantially the same as those made in the Manchester Arena Inquiry, with the important exception, that in that case the screening order permitted the witness to be seen by the chairman, counsel to the inquiry, and some advocates for family core participants.

Sir, we have set out the governing principles at paragraph 31 of our document. To summarise very briefly, in cases where a refusal of an order would expose the witness to a real and immediate risk of death or serious harm, the order should usually be made

without hesitation to protect the Article 2 and Article 3 rights of the witness. Otherwise, the court seeks to strike a balance between the interests served by the application and countervailing interests. Weight is given to the important principle of open justice with due regard to the context. Article 8 rights of the witness are balanced against Article 10 rights of those reporting on the proceedings. Applying those principles, you have already granted some applications in this case and refused others.

Sir, no interested person actively resists the application for anonymity and screening from the general public, although the Merritt family rightly ask you to scrutinise it carefully.

In our submission, the application plainly justifies anonymity and screening from the general public on the basis of the common law balancing exercise. Therefore, you need not consider whether refusal of the orders would expose Witness A to a real and immediate risk of attack which is a judgment that may require consideration of closed material.

We make five short points. First, the witness at least has reasonable fears of reprisals if required to give evidence without anonymity and screening from the public.

Second, refusal of the orders would on the evidence compromise the witness's future career opportunities and may deprive the UK intelligence community of a valuable asset.

Third, refusal of the orders would on the evidence seriously impact on the witness's private life by effectively blowing their long-term professional cover.

Fourth, the witness's name is not relevant to the evidence to be given.

And fifth, granting the orders would help the witness to give best evidence.

We should also briefly address the suggestion that the Security Service should have avoided the need for this application by putting in the director general as the witness because his identity is public. Sir, we would not accept that suggestion just as Sir John Saunders did not in the Manchester case.

As we submitted at the last hearing, the witness needs to do a huge amount of preparatory work for just this hearing, a matter of weeks, rather than days, and it would not be feasible or good for any of us for Mr McCallum to be taken away from his very busy day job for the necessary period.

Sir, so much for the application in general terms.

The Merritt family take a more assertive position in

relation to the screening of the witness. They submit that they and their advocates should be permitted to see the witness. They make the very valid points that first of all they have a proper interest in seeing the significant witness rather than merely hearing the witness's disembodied voice, and secondly that questioning by advocates can benefit from the ability of the advocate to pick up non-verbal cues and reactions. We all understand that as professional advocates, and it is a point specifically identified within Rule 18.

They also submit that the risk of any of them both seeing the witness outside court and either deliberately or inadvertently revealing the witness's identity to others is a non-existent risk.

Sir, those are cogent arguments. We would ultimately on balance favour the application for the following two main reasons.

First, unlike in the Manchester Inquiry, this case will be heard by a jury. The jury should not be permitted to see the witness because they cannot realistically be vetted or vouched for. That does not happen with English juries.

The risk of a chance encounter outside court with a juror is a real risk. A chance encounter of that kind, not with a juror, happened in the London bombings

cases.

If the jury as tribunal of fact cannot see the witness, and it is of course for them to assess witnesses, it is difficult to see any justification for others doing so. Furthermore, it would be exceedingly difficult to find and configure a courtroom in such a way that a witness could be seen only by a few selected advocates and not by the jury.

Secondly, quite apart from any logistical challenges, permitting a witness to be seen by the families and their advocates raises some problems of principle. It creates a hierarchy of interested person advocates with some given more direct access to the witness. It would also raise the unwelcome general prospect of the Security Service having to check out family members in cases of this kind.

It may also be that Mr Sheldon with instructions from his client will have further points to make on that subject.

Sir, let me then turn to item 4, Security Service witnesses.

At the last hearing you considered applications by the families that you seek statements from MI5 officers involved in the investigation into Usman Khan. You decided that the question could only properly be

resolved after the PII claim had been considered. The question whether there is a call for these further statements is one of the judgments you as coroner perform in making enquiries and selecting witnesses. See paragraph 35 of our submissions on that sort of judgment.

In our submission, if you uphold the PII claim largely or entirely, it would not be appropriate to call further MI5 witnesses. We would give three reasons in these open submissions as set out at paragraph 36 of our document.

First of all, Witness A --

JUDGE LUCRAFT: Can I just repeat my request. Anyone not speaking is on mute, please.

MR HOUGH: First of all, Witness A's statement gives an account of the history of MI5's investigations into Usman Khan and his knowledge of him. It addresses the intelligence received, assessments made and attempts to obtain coverage. In addition, as I've already submitted, the court will have the evidence of the counter-terrorism police officers involved in the investigations, including officers from Staffordshire Special Branch and West Midlands Police.

If you uphold the PII claim, by definition you will have decided that it is not possible for MI5 to give

further substantial information about its investigation than is in the Witness A statement without harming weighty national security interests.

Secondly, if the PII claim is upheld on that basis, there would be serious problems both of principle and of practicality in individual officers being asked to give evidence about the investigation. Questions about the individual judgments and decisions of officers would inevitably call for them to go into facts or operational techniques that could not be disclosed.

Suppose, for example, that an officer is asked the set of questions which the Merritt family pose at paragraph 6(h) of their detailed submissions: were the surveillance capabilities that were used the best ones and was any of them used —— not used to its full effect? Those are questions, sir, guaranteed to get into a discussion of secret techniques. How could an officer answer without referring to the full menu of other options?

Thirdly, there are good reasons why the Security Service has put forward the statement of a senior officer in this and similar cases. If an MI5 witness is to give meaningful evidence about an investigation without revealing any sensitive information or techniques, or any fact which might allow

a hostile actor to divine sensitive information or techniques, the witness needs to engage in prolonged and extensive preparation. They need to be intimately familiar with every detail of the investigation and any related investigations and subjects, a process which takes even an experienced officer out of their regular job for weeks on end.

Sir, in the closed session you will be able to form your own view of how feasible it would be for a number of individual officers to engage in this task as well as Witness A. Sir, you may also hear about what has actually happened in the Manchester case if —— in case there are any submissions made in open or closed to the effect that that represents a model, given that some individual officers will be giving evidence or have given evidence there.

Sir, let me then turn to item 5, screened witnesses and the press, which we deal with from page 20 of our submissions. I can take this item quite quickly because it has become uncontroversial.

In your directions of last June, last October and this February, you've made various sets of orders for witnesses to be granted anonymity and screened from the general public if they are called to give evidence.

On the last occasion a media representative raised

the suggestion that accredited journalists might be permitted to see these witnesses. In our submissions we argued that this suggestion was in keeping with open justice and that there was a lot to be said for it. We cited a recent decision of the Court of Appeal.

The representatives of the police officers granted anonymity have considered the matter and they are content for the officers to be seen by accredited journalists, provided that your orders under Section 11 of the Contempt of Court Act, which prohibit information liable to identify them, extend to names, physical descriptions and images.

Sir, we agree that the Section 11 orders do have that effect and that any order permitting journalists to see the witnesses can make that point explicit. We are sure that the experienced journalists reporting on this case will understand them and abide by them.

In our submission, there is no basis for any other screened witness to be treated differently, save for Witness A.

As regards members of Usman Khan's family, sir, we are not persuaded that permitting them to be seen in the witness box by accredited journalists would cause them legitimate concern. Concerns have been raised to avoid them being approached by journalists but we say, sir,

that those concerns could be met by providing them with secure and escorted means of entry and exit to and from the court.

Sir, finally, item 6, remaining case management issues. Let me deal with the remaining case management issues by answering the submissions of each interested person who has raised some.

First of all, the submission of —— the submissions of the team of Mr Pitchers QC for the Jones family. Having considered the submissions about the value of calling PC Parke in relation to the care provided to Saskia, we are prepared to add that officer to the witness timetable.

As regards witnesses from the Fishmongers' Company, we are not at present persuaded that it is necessary to call Ms Spolton, the grants officer, who had the discussions with Learning Together about arranging the alumni event on 29 November. What the Fishmongers' Company was or was not told about the event is documented in an extensive set of emails and the person best placed to address what the company would have done with further information is Commodore Williamson.

As regards Philip Bromley, who was Khan's offender manager up to 2017, and Mr Skelton's manager at a later stage, we're not persuaded by the arguments for calling

him because he was not directly involved with Khan over the most relevant period and there are many more directly involved witnesses who attended the MAPPA meetings which are of course minuted.

As regards further witnesses from the University of Cambridge, we've requested statements from both the individuals who Mr Pitchers identifies and we have chased twice in the last week.

As to the Operation Aragon report of the IOPC, we have been chasing for that. We have been told that it's recently been completed and will be provided to us very shortly for onward disclosure.

As regards the Staffordshire Special Branch officers, some statements have already been disclosed. Others are going through the review pipeline and are to be disclosed in the very near future.

As regards West Midlands Police subject profiles, one has been disclosed and another is going through the review process to be disclosed very shortly.

As regards MAPPA agendas, they are with us for review and again will be disclosed very shortly.

As regards drug testing, we can confirm that we have no further material as far as we are aware.

As for the exhibits to Mr Woods' statement, we understand that they are not on the system because they

are physical exhibits, for example the constituents of the hoax IED.

As regards paragraph 36, the reference to a report from Annie, we can resolve the mystery by explaining that Annie is a nickname for Ian Oakley, if anyone remembers the 19th century gunslinger Annie Oakley. Annie get your report. And the report which has been mentioned is at {DC5256}.

As to paragraph 37, we'll make enquiries of the Fishmongers' Company about the report described as the Wallace Report. We think it might be the document at {DC5064}.

We then turn to the submissions of Mr Armstrong's team for the Merritt family.

As to paragraph 40(a) concerning West Midlands Police Team 7 officers, we agree. Some weeks ago we asked for statements from the key Team 7 officers, including DS Jerromes, and those officers are to be called. We understand that the statements are in production and will be with our team shortly.

As to paragraph 48(b), we are not at present persuaded that Dr Bennett should be called. There will be a number of witnesses already dealing with the development of the Learning Together programme, including its founders, and also the Prison Service's

dealings with this programme.

As to paragraph 48(c), the case management system log, I understand that solicitors to the inquest have dealt with that request directly and that it is a problem of nomenclature.

As to paragraph 48(d), the JOT minutes, those have been gisted in Witness A's statement and they are within the PII claim.

As to paragraph 48(e), Mr Armstrong and his team make a good point about the process for passing Khan to participate in the Learning Together programme in 2017. We have made a series of requests over several weeks for further information from the Prison Service about what process was followed for clearing offenders for further education courses and how that process was followed in the case of Khan. We understand that a further statement is being taken from Gina Butler on that subject.

As to paragraph 48(f), Khan's illegal drugs, so far as we're aware there are no records dealing with how Usman Khan obtained drugs which he had apparently taken.

As to paragraph 48(g), we do not propose, subject to submissions from anyone else, that the families of the victims of the attack be interested persons in the inquest of the attacker.

Thirdly, and finally, the submissions of Mrs Begum, mother of Usman Khan. As to paragraph 8(a), we note that Mrs Begum is currently in Pakistan and might not be able to give evidence because of her location. We shall of course keep the question of calling her under review and stay in touch with her representatives.

As to paragraphs 9(f) —— 9 and following, we understand that Mr Bunting makes a good point that it would be better if the police training officers confined their evidence to the training given to officers as to how they should respond to particular situations, and that they should not deal directly with whether the officers involved in the confrontation acted in accordance with their training. We consider that is a matter more properly for the jury.

However, we stress that there is nothing wrong in our view with the training officers being asked how firearms officers are trained to respond to particular sets of circumstances, for example the presence of an apparent suicide vest on a suspect in a city centre.

Sir, I appreciate I have taken some time, but I have covered, I hope, all the agenda items.

JUDGE LUCRAFT: It's very helpful also, Mr Hough, I suspect, for others that you've responded to what is set out in some of the written submissions. So you've dealt with

particular issues in relation to case management, for example, and the issues over witnesses which I suspect is very helpful indeed.

The one other matter which is resolved since the last hearing was obviously the location of the inquest.

MR HOUGH: Yes.

JUDGE LUCRAFT: I should simply put on record my formal thanks for the Guildhall being made available for us to be able to conduct these inquests if I accede or don't accede to the various matters which are set out in the submissions. But obviously that gives us a location which is close to the Old Bailey and it gives us a location of good size for us to be able to accommodate these hearings.

MR HOUGH: Thank you very much, sir. I'll now yield the floor to others.

JUDGE LUCRAFT: What I'm going to do, Mr Hough, is I'm going to go through the list of people who I think want to be heard in relation to oral submissions. I'm going to start first of all with Mr Pitchers.

MR PITCHERS: Sir, yes. Can I first check you can hear me adequately at this point?

JUDGE LUCRAFT: I can hear you loud and clear, Mr Pitchers.

Submissions by MR PITCHERS

MR PITCHERS: Thank you, sir. As you would expect, we adopt

our written submissions of 22 March 2021. The bulk of my oral submissions will address the claims for public interest immunity and the requests that remain for operational witnesses from MI5.

It's fair to say, at least in our submission at least, there's a significant overlap between those matters and I propose to deal with them both first before picking up the sequence of the other agenda items.

So, sir, I'll start with Security Services and MI5. I should say at the outset that we're pleased to hear that there is a prospect of further operational statements being provided from the West Midlands Police. Obviously you have claims to PII from both them and the Secretary of State, and much of my submissions certainly as to principle apply equally to those two interested parties.

I say the starting point is this, and has been fairly acknowledged by Mr Hough this morning, that as already determined, the scope of these inquests is to include but not be limited to three areas of particular pertinence for today.

Firstly, the management of Khan after his release from prison by probation officers and others. Secondly, any monitoring of him by the police and/or the

Security Services. And thirdly, arrangements for him to attend the event. And in relation to all three of those, of course, you've determined that the scope should include relevant systems and procedures.

So as we understand it, all of the material that you will be asked to consider in relation to PII, the witnesses that we suggest in relation to operational matters, all of that comes squarely within the scope of the inquests. We say not just within the scope, but central to it.

The importance of the Security Services' involvement in the scope of the inquest can be stated in quite simple terms. Of course Usman Khan was not an unknown entity before these events. He was a convicted terrorist, released under stringent conditions less than a year before the attack, and at the time of the attack he was subject to 16 licence conditions and remained at the highest level of MAPPA arrangements.

As a result of these, he was of course required to be subjected to close supervision by a number of state agencies with input from the police, Security Services and probation. It should also be borne in mind that his attendance at the Learning Together event wasn't unexpected. He had been invited to attend, he required permission to attend, and such permission was granted.

On the basis of what we have seen thus far, having given permission for him to attend, there seems to have been no real arrangements for him to be accompanied on the day of the event, nor were there any particular notifications given to others who might have had a real interest in his attendance such as the Fishmongers' Company, the Metropolitan Police or the City of London Police.

So we have an authorised attendance and we would say at least, on the face of the evidence that has been provided, a lack of any precautionary measures surrounding his attendance. We say those matters are very much at the heart of the inquests.

Ultimately, whoever had the particular decision-making responsibilities, the power of veto, if you like, in that regard, it must be, we say, unarguable that were there to have been input from Security Services, from MI5, expressing concerns about what was proposed, that would or certainly should have been given serious weight by the decision-makers.

Of course, we are all too aware of what happened after Khan was permitted to attend without those precautions having been taken. He was able to prepare for this attack, assembling the fake suicide vest at home, travelling to London wearing a large coat,

carrying a bag, and taking those items along with two large knives into Fishmongers' Hall, unchallenged. And he arrived there several hours before the attack.

We say that if one looks at that in the round, there are highly important questions to be asked of the state agencies involved in his supervision and management, which includes MI5, and these questions can be probably fairly distilled into the following.

The first question, and it's simple to express but it's clearly going to take up a lot of time at the inquest, is: why was he permitted to attend at all? And the second question is: if he was permitted to attend, why were there no protective measures taken? Whether that might include visits in the days leading up to the event, escorting him on the day, ensuring that he was subject to some sort of check, his person and his belongings before entering the hall, or as I have said, notifying others who may well have had a legitimate interest to know that he was coming.

As has been outlined to you by Mr Hough, we know and we do give credit to what the witness statement from Witness A does tell us. It has given us some useful background information to help us understand their knowledge of Khan prior to the attack, and as you've heard, information had been obtained prior to his

release from prison that he may have had an intention to carry out an attack after his release. We know that he was subject to heightened surveillance, a formal risk assessment, quarterly reviews, and we know, as you've heard, that in October 2019 —— we don't have a precise date, I don't think —— that MI5 became aware of the plan for Khan to attend the Learning Together event.

Of course we had the joint operational team meeting, the JOT meeting, just 11 days before the attack.

We would say we don't have a complete understanding as to all of the rationale for the decision—making around him attending, but what we do know is that at that meeting, shortly before his attendance, it was noted that he'd been attending the gym less frequently, he'd stopped attending the mosque, he was noted to have significantly withdrawn since moving into his new flat, and at that meeting risks were identified that he might engage in further Islamist extremist activity and might attempt to travel to Pakistan.

It would seem that there were some discussions about enhancing the level of coverage, including for the proposed trip to London, but for reasons which certainly aren't yet clear to us on reading the documents that have been provided, such enhanced coverage wasn't possible.

Then a week before the attack the Security Services became aware of his travel arrangements, and again, on the evidence available, nothing to indicate that that prompted any further considerations as to whether any further steps should have been taken.

Sir, the family of Saskia Jones don't accept that Witness A's statement, whilst acknowledging its use, is sufficient, and we don't accept that the —— particularly looking at paragraphs 133 to 137 give a sufficient gist on some important questions.

It doesn't enable us to consider whether and to what extent the risks associated with him attending were considered. It doesn't enable us to make proper conclusions about the decision—making process or inter—agency communication. And from our perspective, as we consider this from a PII angle, these aren't questions about the methods of gaining intelligence. We are not looking to have detail about surveillance techniques.

The thrust of our submissions, and we've tried to be realistic and pragmatic within the limitations of a PII claim, is to be focused and specific, and the things that we are most concerned with, we say, should not trespass upon national security interests if national security interests are properly defined.

I have indicated that we say there's an interrelationship between the PII claims and decisions about further operational witnesses from MI5. At the last hearing you heard submissions about that and you heard the family's submission that it would be preferable to obtain those witness statements before you determined PII to give you the context to look at the documents that you've been provided.

That's part of the argument here. The other part is this. We resist a submission that the resolution of the PII claims will be dispositive of the question of whether or not further operational witnesses should provide statements. We say it doesn't follow, and it's quite possible that you may accede to some of the PII claims yet further require there to be operational witnesses from MI5.

Just turning to some specific submissions on the claims to PII, I'm not going to go into the weeds of the legal principles here to any significant extent. Just to flag up and emphasise the following.

Obviously, the material that you've been provided has already been assessed as relevant. So the material that you're invited to withhold from public scrutiny is evidence which is relevant to the inquest and within the scope.

Whilst we acknowledge that you must give due weight to the views of the Secretary of State, as has been said and recited by you in relation to the London Bridge inquests and already referenced earlier, you must exercise independent judgment and not simply salute a ministerial flag.

We say that the presumption must be for onward disclosure, unless you're satisfied that that is not possible without a significant risk to national security, and of course it would seem that considerations as to redactions are already in hand.

So, as I say, in relation to the claims to PII, I hope you will consider that our position is not to try and trespass on to issues of national security, but rather to focus upon what was done with the information that was available. What was the decision-making process? Why were steps not taken? Why were communications not better between the agencies?

We say that there's no public interest in concealing failings on the part of the Security Services. Quite the contrary. Shining a light on those matters actually should increase the chances of avoiding future mistakes.

Sir, moving on to the question of operational witnesses, so these are witnesses from MI5 beyond the statement we have from Witness A, as we've acknowledged,

there is a value to a corporate witness statement, but we say it is not nearly sufficient for the purposes of these inquests.

To state perhaps the obvious, Witness A was not present at the time or involved in any of the key events about which the interested parties will want to ask questions.

Now, of course, he or she may be able to refer to documents, but the documents are unlikely to provide complete answers to proper questions. Now, we haven't seen all of the documents of course, but unless there's a transcript of a meeting, it won't be a complete account. The subjectivity of minutes of meetings is perhaps obvious to anyone who has attended a meeting.

What Witness A cannot do, we say, is to answer properly the whys. For example, why were there not concerns expressed about Khan attending at all? Why was it not suggested that permission be refused to him to attend? Why were no other notifications given?

These are the questions that Witness A cannot adequately answer, and we fear that the jury, as well as the interested parties, will be bemused that the central questions are not being answered by operational officers and decision-makers, perhaps particularly when other state agencies are not afforded the same luxury of

simply providing a corporate witness.

And as we know, there was quite a long list of police officers and probation officers who will be attending in person and will have difficult questions to answer about their direct experiences and their own actions and inactions and we say that there's no reason, once you've dealt with PII, to afford any special measures to MI5 operational witnesses save for the following, which is of course we know, as it's already in play in this case, that there are special measures that can be deployed so as to protect those officers, and those may relate to anonymity, special measures when giving evidence, advanced notification of topics for questioning.

So these are measures that we've deliberately tried to take a neutral, as far as possible, stand on those points, because we're more concerned with hearing from the proper range of witnesses than trespassing upon issues of confidentiality. We would rather provide those protections but be able to ask the right witnesses.

We say that the officers involved, we suspect, are not naive, unsophisticated witnesses, and that they ought to be well able to acknowledge the proper boundaries of their evidence and not inadvertently

reveal or stray into areas of national security.

Of course, the Secretary of State will be represented no doubt by leading counsel who will, I'm sure, object to questions which are inappropriate or realistically risk inappropriate answers being provided.

So we say there's lots of protections in place that should be reassuring to those officers of MI5.

Moving on to the question of a public inquiry, the family of Saskia at this point do not argue for a public inquiry. Our position is not to support that suggestion, but nor actively to oppose it.

I acknowledge that the test does not give you a broad discretion. This issue would only arise if you were satisfied based upon what you have seen, but we have not, that you were unable to carry out a legally sufficient inquiry.

From our perspective, until we know the results of your decisions as to PII and to further witnesses, the family cannot take an informed view as to whether or not we would suggest a public inquiry is required, but we are not advancing that suggestion at this point.

In relation to anonymity and special measures for Witness A, as I say, we have taken a relatively neutral position. Others have set out the applicable legal test and the need for rigour in relation to policing these

measures.

We do share the concerns expressed by the Merritt family about Witness A not being visible to Saskia's family or her legal teams. As you heard, any advocate will be conscious of the impairment that can arise by not having that visual ability to take visible cues or visible responses from a witness, as well as of course the family not being able to see the person giving evidence. So we would invite you, sir, to look with scrutiny about the suggestion of screening and to consider, if possible, allowing Saskia's family and her legal teams to have sight of any witnesses such as Witness A from the Security Services.

But as I say, our primary concern is to hear from more witnesses of MI5, not fewer.

We raise a very practical point about the restriction on the use of electronic devices. Just to set out our understanding, which is that's a restriction that's aimed at preventing audio or video recording which of course we wouldn't oppose. My instructing solicitors were just conscious that they wouldn't be prevented from tapping a note on to their laptops during the course of the evidence.

Moving on to other case management matters, and firstly witnesses. We're pleased to hear that PC Parke

will now be added. We continue our position in relation to Fishmongers' Company. We say that there's a very real concern for the family and we think also for the jury as to what were the arrangements made by Learning Together, Fishmongers' Company, in the run-up to this event. What information was exchanged? What information was sought? If information wasn't sought, why wasn't it? What sort of planning went in specifically to the security surrounding this event? Even if that is to say there wasn't any planning, that is evidence that should come from the person who was involved in those arrangements.

We can see that Commodore Williamson in a sense provides again a corporate position, but he can't answer directly because he wasn't directly involved in those matters. We say it's entirely proportionate for there to be at least one witness from Fishmongers' Company who can speak to those matters, even if there is evidence of it already set out in emails.

We maintain our request for Philip Bromley to provide evidence at the inquests. It's right that he ceased to be Khan's offender manager in 2017, but he continued to be involved as the line manager of Kenneth Skelton. So he was a senior probation officer, Kenneth Skelton's line manager.

So he was clearly directly in that sense involved in the Probation Service management of Khan during 2019. From reviewing his statement, it's clear that he was involved in the downgrading of the assessment of Khan's risk of harm on 14 May 2019. He seems to have attended the MAPPA meetings, he was aware of Khan's planned attendance at the Learning Together event, and clearly, as the line manager, he had the opportunity to express concerns or to intervene if there were difficulty identified in the way that Khan was being managed.

Again, and I don't want to pre-empt the questions, but clearly there's a possibility that deficiencies in Mr Skelton's experience or training may arise or deficiencies in relation to the way that he was managed and supervised. And a more senior probation officer, the line manager of Kenneth Skelton, can properly address those issues.

So there's one other matter on witnesses I think that's outstanding. It's not actually something that we raise. We picked up a suggestion that Vincent Cirimele should have his evidence read. He's a toxicologist. I think it's the Metropolitan Police Service have suggested that his evidence should be read.

We have a reservation about that which is we would like to have the opportunity ask live questions of him

in relation to the extent to which he can assist with when Khan last consumed illegal drugs prior to the key events, and perhaps also as to the potential impact upon him of that ingestion. So we would resist Vincent Cirimele becoming a witness whose statement was simply read.

In relation to documents, we're grateful for the resolution of the Annie mystery. The only other point I would make, having heard from Mr Hough, is I'm not sure -- I may have missed it -- if he dealt with paragraph 33(d) of our written submissions which related to the Prison and Probation Service offender supervisor contact logs. So our request in that respect remains.

Sir, unless I can assist you any further, those are my oral submissions to amplify what we've set out in writing.

JUDGE LUCRAFT: Mr Pitchers, thank you very much. Can I just make one thing clear, I hope to Saskia's family through you, and obviously what I say applies equally to Jack's family.

Although you will not be present for the closed hearing, can I simply give you this assurance. The points made very clearly in the written submissions that I've got and amplified today in your oral submissions will be very much at the forefront of my mind in the

course of the closed hearing, and I will take those matters into account in my determinations of the issues that surrounding the public interest immunity concerns that are present.

MR PITCHERS: Thank you, sir.

JUDGE LUCRAFT: Just on that final point, Mr Pitchers, in relation to paragraph 33(d), I'm sure that it —— I'm just going to suggest that rather than take the normal course, I was just going to ask Mr Hough to deal with that simply because it may make more sense if it's dealt with now rather than at the end.

MR HOUGH: Yes, sir. We received an update from the government legal department on 22 March telling us that Suzanne Nidai, Kay Linsley and Christine Andrew do not have additional records and that they are waiting to hear from the other offender supervisors to see if they have further logs.

JUDGE LUCRAFT: Thank you very much.

Can I next turn I think it's to Mr Nicholls, rather than Mr Armstrong, who is going to make any oral submissions on behalf of Jack Merritt's family.

Mr Nicholls, can I again just say what I have just said to Mr Pitchers applies equally to Jack's family.

Can I also make clear that the very detailed written submissions that I've got dated 22 March which run to

some 35 pages, I've got that material very clearly in my mind.

Mr Nicholls, what I would suggest you do is to simply amplify any particular points that you feel need amplification but don't feel, please, that you need to go through that material. I have certainly got it very much in my mind having had the opportunity to read those detailed submissions.

MR NICHOLLS: Thank you. Can I check first that you can see and hear me?

JUDGE LUCRAFT: I can certainly hear you. I can't see you at the moment. But I can now.

Submissions by MR NICHOLLS

MR NICHOLLS: I'm very grateful. Can I start by thanking you, sir, in relation to both the indication you've given in relation to the closed process and also in relation to the written submissions. I was intending to make those points at the start and I'm very grateful for the indications you have given.

I'm intending to take our oral submissions in the order that CTI have taken matters. It was my intention, sir, not to repeat the written submissions but rather to seek to distill those submissions as you have suggested, particularly in light of Mr Hough's submissions, and in doing that I will also seek to reply to points raised by

Mr Hough orally.

JUDGE LUCRAFT: Thank you.

MR NICHOLLS: The first topic is the PII applications. And in headline terms, the family's position on those applications is that the evidence over which PII is claimed appears to be to them of central relevance to one of if not the central issues in these inquests. And that is a matter of the greatest importance to them and we submit the wider public.

The second point on the family's position on PII is that because of the relevance and importance of the evidence over which PII is claimed, and I'll expand on this a little in these oral submissions, Jack's family respectfully invite you, sir, to adopt the most careful and exacting approach to the substance of the PII applications and as I say, they are grateful for the indication you have given in that regard.

If I can briefly develop those two headline points in turn. First, the centrality of the evidence over which PII is claimed. I do not intend, sir, to go through the detail of paragraphs 5 and 6 of the written submissions which I know you have before you. The thrust of the family's submission is that the open evidence that they have considered gives rise to a concern, indeed a significant concern, that

opportunities were missed to prevent the attack. In short that is because the open evidence reveals the following points.

First, that there were serious concerns about Khan's risk prior to his release given his previous convictions, the long held concerns that MI5 held about him, and the fact that he had been assessed at or near the very highest level of risk right up to his release from prison.

Second, MI5 and CTP continued to have concerns about him following his release. He was subject to active monitoring and MI5 were concerned that his apparent compliance may have been an attempt to evade scrutiny from the authorities. Similar concerns were expressed about him by the Prison Service.

Third, concerns developed about Khan's risk very shortly prior to the attack. There were growing concerns that he was isolating, a key risk factor in his case, on or around 6 November. A MAPPA visit took place on 14 November, Khan reacted very badly to that, and on 18 November the JOT meeting identified Khan as being increasingly withdrawn and at risk of re—engaging in extremist activity.

Those were concerns that fell squarely within the warning signs identified by the latest risk assessment

conducted on him.

In addition, MI5 and CTP were aware that he was intending to travel to Learning Together, a sizeable event at a central London landmark attended by high profile guests. No steps appear to have been taken to review or prevent that attendance or to raise concerns with those responsible for the event.

In our submission that position revealed by the open evidence begs a number of key questions which are central to these inquests, and those are set out at paragraph 6 of the written submissions. As I say, I will not repeat them.

Mr Hough has very helpfully drawn your attention to some of the specific points made in our paragraph 6. Can I respond on a number of specific points but without going into great detail in a way that I hope will indicate the family's overarching position in light of what Mr Hough has said.

First, Mr Hough referred to paragraph 6(b) and the stated concerns over Khan's isolation. Mr Hough draw attention to the fact that those concerns were raised in the 14 November MAPPA minutes and were also covered in emails of officers that dealt with Khan at the time.

In our submission, sir, that is not the issue that we raise. The issue we raise is what was discussed

about this concern and its risk at the JOT meeting on 18 November, how that concern informed an assessment by MI5 and CTP of Khan's risk and what options were considered as a result.

The fact that a MAPPA review before the JOT considered the same risk factor does not in our submission answer the point, and neither does Witness A's statement. That is clear from paragraphs 133 to 135 where a bare and short description of the JOT meeting is set out. The reason for that, the clear inference arises, is because of the PII claim.

Second, Mr Hough referred to our paragraph 6(e). He points to the fact that Witness A's statement says when MI5 judged that Khan may have been manipulating, and that that was a concern that others also held, including those involved in the MAPPA process.

Again, in our submission that does not answer the point we make at paragraph 6(e). The point we make is not whether others considered the issue. The question is what MI5 knew, what they shared, the basis for their concern and why they had the concerns that they did about manipulation and indeed how strong those concerns were. Witness A's statement does not answer those questions. Again, the clear inference is that that is because of the PII claim.

In our submission, it is telling that in referring to paragraph 6(e) of our submissions Mr Hough drew attention to the fact that Witness A says when MI5 made their judgment on this point, but nothing more.

Third, Mr Hough referred to our paragraph 6(f) concerning the meeting of the JOT on 18 November 2019. In our submission this was clearly a key moment given the issues discussed and the proximity to the attack. Mr Hough understandably emphasises what is available about the JOT meeting on 18 November. But as we can see from Witness A's statement, that reveals the limits of that submission. The summary is three short paragraphs. The JOT minutes have been withheld on PII grounds. The content of the discussion is highly limited, for example we do not know what was said about logistics and accompaniment issues, and so is the detail on what was decided.

Again, the reason for those limits clearly appears to be PII, as Witness A says at paragraph 133 in referring to national security concerns.

In light of those submissions, and others that I won't develop in detail, it remains the family's position that the questions identified at paragraph 6 of their written submissions are the questions that must be asked, investigated and answered in order to address the

concerns that arise from the open evidence. But they are not addressed and answered by the open evidence, and that is because of the PII claim.

It follows that if the PII claims are upheld in full or in large part, and these submissions proceed on that basis, as do Mr Hough's, the inquests will not ask and answer those central questions raised by the open evidence. That, sir, is the context which Jack's family invite you to have firmly in mind when considering the PII claims and the consequences of how they are determined.

That brings me on to the second of the two headline points on PII, namely the approach to the PII balancing exercise, and I will be shorter on this point than the first.

The family's submissions on approach are set out in detail at paragraphs 8 to 22 of the written submissions. Those submissions can be summarised in a single central proposition that is this. There is a compelling public interest in full disclosure of the relevant evidence over which PII is being claimed. CTI make the same point. In our submission the basis and strength of that public interest is perhaps broader than the way in which CTI have put it. In the family's submissions, it is underpinned by the following factors.

First, the evidence is central to the family's understanding of how Jack died.

Second, such an understanding is necessary to allow the family to gain any form of meaningful catharsis from the inquest process.

Third, full disclosure is necessary to ensure accountability, the allaying of concern and lesson learning. Those functions are vital to Jack's family and the wider public.

Fourth, because the public interest in disclosure, full investigation and public recording of the facts concerning specifically MI5 and CTP is very considerable, that is for the reasons at paragraphs 16 and 17 of the written submissions which I don't repeat.

Fifth, because without full disclosure the inquests cannot ask and determine the central questions that the open evidence, as they see it, raises.

The effect of that compelling public interest in full disclosure is, we submit, twofold when it comes to considering the substance of the PII claims.

First, it is relevant to the first and fourth questions identified in Mohamed. The family submit that for the reasons I have summarised, sir, there is a very considerable public interest in disclosure. Where the public interest balance lies is of course a matter for

you, sir, and not one that the family can address in any detail.

Second, as a result, the public interest in full disclosure supports the approach to PII which the family have invited you to adopt.

And having made those submissions on PII, and the approach to the process, can I turn to the second topic, which is adequacy, dealt with by Mr Hough in his oral submissions as well as in writing.

The family's submissions are at 23 to 28. They proceed on the same basis as CTI's, that the PII claims are upheld in whole or largely, and that contrary to the family's position, no evidence is sought from any MI5 or CTP witness of fact, and I will proceed on that basis.

In those circumstances, the family's position is that they are unable to see how the inquest can comply with the statutory duty of inquiry, and I wish to make clear, sir, on their behalf that they do not say that lightly. They understand the implications of that submission which will of course impact them as well as others, but having considered the matter carefully, including the position adopted by CTI, they remain unable to see how the duty of inquiry can be met, and that is for the following reasons.

First, preventability is one of if not the central

issue in these inquests. A full investigation of it is required to answer the "how" question in Section 5.1(b).

Second, when determining whether the inquests will be adequate, the family invite you, sir, to adopt the approach they have set out at paragraph 27 of their written submissions.

In summary, the question is whether the inquests will be insufficient, incomplete or inadequate with no gloss applied. The question should not be considered on the basis that it is preferable or strongly preferable that the investigation remains within the coronial jurisdiction. Where relevant material is withheld from an inquest on PII grounds, there may be a number of reasons why the investigations, findings and public utility of a public inquiry into that death may be fuller and greater than if the matter were to remain as an inquest.

Adequacy should be assessed without reference to practicalities, and Mr Hough has made that point.

CTI have suggested a number of reasons why in their submission these inquests will comply with the statutory duty of inquiry where the relevant material is withheld on PII grounds. And we have of course considered those submissions in writing and orally made by Mr Hough with great care. Having done so, the family's submission is

that those reasons do not demonstrate that the inquests will meet the duty of inquiry.

They say that for the following reasons, sir.

First, Mr Hough made the point that a coroner does not call for a public inquiry in any case where some PII material is withheld because were that the case, in any inquest involving PII material, there would be a public inquiry. We agree. That is not our submission.

Our submission is not that in any inquest where material is withheld on PII grounds there must be a public inquiry. Our submission is that in this case, from the open evidence and what it omits, a public inquiry is required.

Second, CTI suggests that the material for which -- I'm quoting from paragraph 28(a) of the written submissions, which I understand to have been adopted orally -- CTI say that the material for which PII is claimed does not relate to the questions of how the attack was perpetrated or how the deceased came by their death.

That is not accepted by the family. First, an investigation of how you an attack was perpetrated requires careful examination of whether it could and should have been prevented.

Second, failing to prevent an attack that causes

death does in the family's submission "relate to the question of how the deceased came by their death". It is central to that question.

Third, in response to the CTI's submissions on adequacy, CTI's submissions, we suggest, are in essence premised on the suggestion that the investigation of the immediate means of death is more important in discharging Section 5.1 than the investigation of preventability. The family do not agree. There is no hierarchy of importance or relevance within Section 5.1. The question is whether it will be discharged.

Fourth, CTI submits that there has been a vast amount of disclosure concerning Khan's background and what was known to a range of public bodies. That is necessary for Section 5.1 to be fulfilled, but not sufficient because that evidence does not illuminate the key issue of MI5 and CTP's role in preventability for the reasons we have already addressed. Indeed, it may distract from it because the greater intensity of review applied in open to the actions of, for example, the Probation Service, may suggest greater culpability when that is not in fact the case.

Fifth, CTI submit that the inquests will receive considerable witness and documentary evidence of the decisions taken in the management of Khan. Again, we

submit that that is necessary but not sufficient. Again, it will not illuminate the issue of MI5 and CTP's role. To the extent that it does, it will only do so to the extent of the limits of what is held on PII grounds.

Sixth, CTI submit that the key decision-makers will be giving evidence and can be questioned, but in our submission that is not the case. Some key decision-makers will be giving evidence, other key decision-makers with relevant evidence to give will not because of the position adopted on PII and in relation to witnesses of fact.

Seventh, CTI submit that the inquests will be adequate because they will receive evidence from MI5 and CTP about their knowledge of Khan. In our submission that reasoning is circular. The inquests will receive some evidence about that but indeed that is the very evidence that raises significant concerns that are central to the preventability issue, and that evidence does not answer those concerns.

Eighth, CTI suggests that when assessing the sufficiency question, you should bear in mind that it is understood that Khan acted alone, did not share his plans with anyone, and the evidence of his movements gives no suggestion he did anything in public suggestive of attack preparation.

In our submission, sir, that suggestion should be approached with significant caution when determining the question of adequacy.

First, because it relies on other reviews which have variously not involved the gathering of full evidence, have involved no questioning of witness, certainly not in public, and have involved no participation by the family.

Second, relying on previous reviews prior to the inquests to determine the inquests' adequacy would risk usurping the very investigative function that Section 5 requires. Put simply, the question of preventability is the very issue that the rule requires investigation.

Third, it would in the family's submission be concerning if the inquests were deemed adequate without investigating the withheld material because of reliance on reviews and untested evidence from the very organisations under investigation and who are asserting PII.

Fourth, in our submission, CTI's approach appears to adopt an overly narrow approach to preventability because it suggests that Khan's attack could only have been prevented had others known that the attack was to take place or seen attack preparation. In our submission, preventability should not be approached in

that way. For example, Khan's attack may have been prevented had he been subjected to a more exacting risk assessment informed by relevant information shared between agencies. Had that taken place, he may have been prevented from attending the event altogether.

Sir, finally, before concluding on the issue of adequacy, the family suggest that the submissions I have made on that point lend powerful support for three consequences.

First, a change in position to provide meaningful further disclosure on the role of MI5 and CTP.

Second, adoption of the family's position on Security Service witnesses of fact.

Third, if it is determined that due to PII no further disclosure can be made and no evidence from MI5 witnesses of fact will be sought, the family, sir, invite you to request the establishment of an inquiry under the Act. I make clear, sir, on their behalf that they do so solely to ensure that the investigation of Jack's death is complete, meets the concerns that they consider the open evidence reveals, and allows the fullest findings and learning to take place.

They do not seek to cause difficulties, but they consider that that is what is required. They do it with their eyes open to the practical consequences, but it is

critical in their view, and they have no doubt that it is what Jack would have wanted. For them this needs to be got right and that requires this submission.

Having made those submissions, sir, on PII and adequacy, can I now turn to deal with the application in relation to Witness A.

On anonymity, I don't intend to add anything on the written submissions we have made, paragraphs 30 to 32.

I would like to address you if I may, including in light of Mr Hough's submissions orally today, on the issue of screening.

The strong view of Jack's family is that Witness A should be seen by them and their legal team and certainly that he should be seen —— that she should be seen by the family's advocate when giving evidence, and that is for the reasons set out in detail at 35 to 42 of the written submissions.

Distilling those points, first, screening is not required to give effect to anonymity. It may be justified but that will require cogent evidence because screening separate from anonymity interferes with the default presumption in favour of open justice.

Second, the default position is that which Mr Hough has identified, that witnesses should give evidence in public, including visible to the bereaved family. The

open justice principle, as the Supreme Court recognised recently in Kuja, has only increased in an age which attaches growing importance to the public accountability of public officers and institutions. That is the case here.

Third, the circumstances of these deaths are of considerable public interest and concern. The case of Dyer that Mr Hough has referred to and which we have drawn your attention to in our written submissions identifies that as relevant when determining a screening application.

In this case the central aspect of the concern raised by the deaths is whether MI5 failed to prevent the attack. MI5 are therefore one of the main bodies subject to investigation. It is proposed by MI5 that Witness A will give the entirety of the MI5 evidence. That is the position that CTI also adopt. If the Secretary of State's PII claim is upheld, Witness A's evidence will not contain relevant content on grounds of national security, and Witness A is likely to be giving evidence anonymously.

No other witnesses in the inquests will be screened from the family and their lawyers. In those circumstances, screening Witness A, a central witness, giving the only evidence from one of the state

organisations that is key to these inquests, from the family and their lawyers, will, we submit, lend a further air of secrecy and special treatment to their evidence. That may not be the intention. The concern is that will be the perception and that that will reduce the ability of the inquests to allay the concerns of both the family and the public.

The fourth reason why the family consider that they should be entitled to see Witness A when she gives evidence. It is important to Jack's family that they do so for a number of reasons. Her evidence is of considerable importance to them. It will be more detached and less intelligible if given as a disembodied voice. That was a matter relied on by Lady Justice Hallett in the 7/7 ruling. Of course such rulings, as Mr Hough has indicated, have gone in different directions and carry only a degree of weight. We accept that.

Witness A's evidence is central to an understanding of how Jack died. It is contentious and we anticipate will be subject to some challenge. In those circumstances it is important to the family to see Witness A when she answers so they can assess her response, including hesitation or equivocation.

In Dyer, it was indicated that allowing a family to

see a witness will enhance the accountability function of the inquests. We rely on that proposition.

In Dyer, it was also indicated that seeing a witness can assist the family in seeking catharsis and resolution from the process. Again, we consider that that will be undermined if Witness A's evidence is merely a disembodied voice.

Fifth, the risk of Witness A being identified publicly and becoming known to a hostile actor as an officer of MI5 is, we say, remote and does not justify screening from the family. It also does not justify screening from counsel for the family. We say the risk is remote for the following reasons.

Jack's family do not object to Witness A being screened from the public or other IPs who have no need to see Witness A. That will significantly limit the number of people who do see Witness A. The family are subject to strict undertakings. If necessary, further undertakings could be put in place.

In our submission the same could be applied to jurors.

Importantly, the risk that is relied on by CTI is premised on a scenario that in our submission is highly unlikely to materialise. What is described in CTI's submission as a chance encounter involves the following

taking place. If the families, their lawyers and/or the jurors are allowed to see Witness A, it is suggested that the following may occur. They may by chance encounter Witness A in public at some future point. Despite knowing the importance of not doing so, including because of undertakings that they will not do so, they may then say publicly something to the effect of "You work for MI5". That may occur in the presence of a hostile actor. Such a hostile actor may then successfully capture an image of Witness A. That image is then uploaded to the internet and/or circulated to others, and as a result, Witness A is identified to hostile actors as an officer of MI5 and put at risk.

That is a risk that was dismissed as a justification for screening by Hallett, Lady Justice Hallett in the 7/7 inquests, it was rejected as a basis for screening of anonymous police witnesses in the Grainger Inquiry by the current Chief Coroner, and it was rejected as a basis for screening from counsel for the families in the Manchester Inquiry.

It of course was accepted, as Mr Hough indicates, as a basis for screening in Manchester from the families but that was because two particular factors applied: the engagement of Article 2 and the large number of family core participants who would need to see the MI5

witnesses.

Those issues do not arise here. And, sir, just to be clear. When I say the engagement of Article 2, I'm referring to the Article 2 engagement of the corporate witness's rights in the ruling given by Sir John Saunders.

It was suggested finally on this point of risk by Mr Hough that the risk he relies on in fact materialised following Lady Justice Hallett's ruling in the 7/7 inquests in relation to MI5's corporate witness. In our submission that proposition should be treated with some caution.

Having considered your earlier ruling, sir, in the 2017 attack inquests, including the Westminster Bridge Inquest ruling, it appears where you quoted, sir, from the open assessment given by MI5 about what had happened in the 7/7 case that what in fact had happened was that Witness G, the corporate witness, was subsequently recognised by an IP whilst travelling on public transport, but was not identified publicly, and certainly not with the effect that a hostile actor was and did identify Witness G's image and the fact that he was an MI5 officer.

In our submission, that demonstrates the minimal prospect of the risk materialising here, particularly

where the number of people involved are significantly lower than in 7/7 and where the very experience of 7/7 provides a cautionary tale.

Sixth, as to why the family suggest they should be entitled to see Witness A, and certainly that their advocate should do so, there is meaningful value to the inquest process and to the family in allowing that to occur. First, because it brings forensic benefits. These are set out in some detail at paragraphs 50 to 52 and in particular paragraph 52 of Sir John Saunders' ruling in the Manchester case, where that was the issue that he ruled in favour of.

Second, Sir John Saunders in that ruling identified that allowing counsel for the family to see such a witness will provide some reassurance to the family. And in the same ruling, Sir John Saunders identified that allowing counsel for the family, in that case four leading counsel, gave rise to what he described as a non-existent risk of identification of the relevant witness, in that case Witness J.

All of the reasons given by Sir John Saunders in that ruling, we submit, apply here. In addition, there are only two briefed families in this case, so only two advocates who could see Witness A. The risk therefore is even lower than in the Manchester Inquiry.

A number of points, sir, have been made by the Secretary of State and CTI as to why it is said that screening Witness A from the family and their lawyers is justified. Can I respond to those briefly in turn.

First, it is said that Witness A should be screened because her credibility is not in issue. In our submission, that misunderstands the nature of Witness A's evidence which is central and contentious, its importance to the family, the perception of evasion that is created by seeking screening from a family who present no threat to the witness but merely wish to ask questions and understand the answers, and because of the various reasons which I have sought to summarise earlier in these submissions that are unconnected with credibility as to why a bereaved family may wish to see a witness giving evidence.

Second, in their written submissions CTI identify at paragraphs 32(a) to (c) a number of reasons why in their submission adverse consequences would result from Witness A being identified. Sir, we accept that you may consider that those matters justify an order for anonymity, but in our submission none of those factors justifies an order for screening from the family and their lawyers. That is because for those factors to justify a screening order, it would need to be shown

that without being screened Witness A would be identified.

The evidence provided by the Secretary of State in our submission from what we have seen of the open evidence does not support that conclusion and nor does the possibility of a chance encounter for the reasons I have set out.

Third, CTI suggests that screening Witness A would help Witness A to give best evidence because she would not be concerned about the consequences that would attend "giving evidence in her own name". Jack's family can well understand that submission in respect to screening from the public, but if it is said to apply to screening from the family, then they disagree. First, that written submission from CTI appears to contain an oversight. It appears to suggest that screening would remove Witness A's fear of giving evidence in her own name, but of course screening has nothing to do with whether Witness A gives evidence in her own name. That is a matter for anonymity and the two applications are different.

In addition, to the extent that it is suggested that Witness A would be assisted to give best evidence screened from the family, in our submission there is no open evidence from Witness A or in the open threat

assessment that demonstrates either a subjective fear to that extent or an objective basis for such a fear. And we say that is unsurprising because there is no suggestion that Jack's family present any risk to Witness A and the possibility of a chance encounter is remote.

The fourth point. CTI —— and these points were amplified by Mr Hough in his oral submissions —— suggest that screening from the family is justified because Witness A will be giving evidence before a jury.

In our submission that does not justify screening from the family. First, because Witness A could be seen by the jury. There is no reason why jurors would have to be security cleared to see an anonymous witness and if it were required, in our submission that could be done.

The jurors could of course be reminded of the need to avoid any contact with Witness A and what they should do if they happen to see her in public. Sir, I know you will be well familiar with the law in the criminal context that proceeds on the basis that jurors will follow assiduously the directions they are given which has been stated repeatedly in the case law, a recent example being the case of Sarker [2018] 1 WLR 6023, paragraph 32.

Sir, contrary to that, if you were to consider that the jury should not see Witness A, CTI's submission is that in those circumstances it is difficult to see a justification for advocates seeing Witness A. We disagree. There are strong reasons why those seeking to question the witness and gain a combination of understanding and catharsis from the process should see such a witness.

Finally, CTI suggests that the layout of the courtroom and the presence of jurors, advocates and witnesses gives rise to practical concerns that it would be very difficult for Witness A to be screened from everyone in court but not from a few selected lawyers. In our submission that does not justify screening from the family and their lawyers. It is of course a matter that would have to be dealt with, but in our submission it is a matter of practicality for which a practical solution should be found.

We note in this respect that in the decision of the divisional court in a screening case involving an inquest, Hicks v Inner North London Senior Coroner [2016] EWHC 1726 (Admin), both Mr Justice Irwin as he then was and Lord Justice Gross emphasised the importance of finding practical solutions using the court estate to allow tailored screening arrangements to

be put in place, and I refer there, sir, to paragraphs 41 to 42 and 46.

Two final points arising from Mr Hough's oral submissions. In oral submissions Mr Hough suggested that if the family and their teams see Witness A and other IPs do not, that would create a hierarchy and that that justifies screening from the family. In our submission we do not consider that if a hierarchy were required, that it would be so objectionable as to justify screening.

If it is necessary to limit the IPs who see Witness A, that simply reflects the difference of interests that different IPs have. Indeed, that is implicit from the ruling of Sir John Saunders in the Manchester Inquiry, and it was not seen as objectionable or a course that meant that approach should not be taken.

Sixth and finally, Mr Hough in oral submissions suggested that allowing the families to see Witness A would require vetting and checks and might result in undesirable consequences. In our submission, if that needed to be done, that could of course be considered. One must treat that submission in our view with care and caution given that if it is adopted, it will result in the other objectionable course which is that a matter of

great importance to them, seeing the witness giving evidence, will not occur.

Sir, can I turn briefly to the fourth topic, the need for Security Service witnesses of fact. The written submissions are detailed at paragraphs 44 to 45. In summary, they can be distilled to five propositions and they are short.

First, preventability is a central issue in these inquests. There is a compelling public interest in this full investigation.

Second, the relevant questions that need to be asked in order for that issue to be investigated concern individual officers' understanding at particular moments in time and how that impacted on the decisions that they made. That cannot be done in our submission through questions about —— to Witness A because they do not concern her individual understanding and decisions because she was not involved, and they cannot be done by considering what MI5's corporate understanding was because MI5 as an entity did not have a particular understanding and then make particular decisions. Its officers did, individually or with a few other officers, as part of a team.

Third proposition. The relevant questions need to be asked of those who are best placed to answer them in

order to secure best evidence. Those are the people who were present and/or responsible for particular decisions or actions. That is not Witness A.

Fourth, for that reason Witness A is not the witness able to provide best evidence. If she is asked why was that decision taken or what were you thinking when you did that, what was your understanding of X or if you had known Y would you have done something differently, Witness A's answers will necessarily involve speculation and assumption, potentially quite considerable speculation and assumption.

Fifth proposition. If all MI5's evidence is given by a corporate witness, that is likely to give rise to difficulties during the inquests. They are summarised at paragraphs 44(f) of the written submission and I won't repeat them.

In summary, we suggest that that approach will undermine the effectiveness of both the evidence and the conclusions that the inquests can reach, and that that should be avoided.

In our submission, what should follow from those propositions is the normal course that is routinely followed in inquests, namely evidence should be sought from the relevant witnesses of fact. It can be assessed, and a determination can then be reached on

which witnesses to call.

The Secretary of State and MI5 invite you, sir, to adopt a different approach and to divert from the normal course. In our submission there are not proper reasons to do that. That is for the following reasons in summary.

First, MI5 witnesses of fact have no special status which means they should not give evidence. Publicly on their own website, MI5 make clear that "MI5 officers have been witnesses for the prosecution in a number of high profile criminal trials" and they also indicate that MI5 officers have given evidence in many SIAC and TPIM cases. Of course those are not enquiries. But the point is this. CTI state in their written submissions that there would be "serious objections of principle and practice to calling individual officers", yet in certain contexts MI5 officers do give such evidence. Indeed, the same section of MI5's public facing website says the evidence given by MI5 witnesses remains subject to cross—examination by the defence in the normal way even where the judge makes an order for the witness's screening and anonymity.

Of course, the context is different, but in our submission the approach that arises is the same. In those circumstances, in our submission, it's not clear

why there is said to be such a serious objection of principle to MI5 witnesses of fact giving evidence and being questioned.

Secondly, as Mr Pitchers has said, the involvement of MI5 witnesses may give rise to particular issues to ensure that the evidence can be given, for example anonymity and screening, but those measures can be put in place if justified. They are not a reason for not obtaining the evidence in the first place.

Third, both the Secretary of State and CTI submit that MI5 witnesses of fact may be unable to walk the line between open and closed evidence and that that means they cannot be called and therefore no useful purpose will be served in obtaining evidence from them.

Jack's family do not accept that submission for the reasons set out in detail in the written submissions. I won't go through those in any detail.

Fourth, proportionality concerns are raised. It is suggested that to give evidence without harming national security interests each MI5 witness of fact would need to develop a comprehensive understanding of the totality of the evidence about MI5's involvement with Khan.

In our submission, that overstates the position, is inconsistent with the approach taken to all other witnesses from organisational IPs, and does not justify

declining to seek the evidence.

The witnesses will be asked to focus on matters with which they have direct involvement, questions outside that could be prevented, they could decline to answer questions and seek clarification, and the other measures Mr Pitchers identified would also remain in place.

Fifth, the Secretary of State submits that a corporate witness will in fact give better evidence than MI5 witnesses of fact. The family do not agree with that submission.

First, the Secretary of State suggests that because a number of MI5 officers considered Khan in a number of contexts, such matters are better covered by a corporate witness. In our submission that does not follow. Just because a number of individuals have relevant evidence to give is not a reason to call none of them. It may be a reason to call some but not all of them.

Second, the Secretary of State suggests that evidence solely from Witness A is appropriate because MI5's assessments were based on intelligence built up over time which involved large numbers of people. In our submission that is no different to a range of other organisational IPs who are providing individual witnesses of fact.

Third, the Secretary of State suggests that evidence

from Witness A is appropriate because relevant decisions were not made by individual MI5 officers in each case. But if one looks at the open statement from Witness A, it appears clear that those decisions did involve individual officers and even the number of officers.

Sixth and finally, sir, the Secretary of State submits that there would in fact be no point in seeking further evidence from witnesses of fact because if PII is upheld, they could not add further relevant evidence.

In our submission, that reasoning is flawed. If PII is upheld, MI5 witnesses of fact can give evidence within the limits of the PII ruling. That is what Witness A has done but she cannot give the relevant evidence because she had no involvement. Witnesses of fact should be asked to do that. If the evidence they then provide is relevant, but is covered by PII, following the ruling, open aspects can be disclosed and if that evidence is relevant but cannot be disclosed on PII grounds, that, we submit, is of direct relevance to the adequacy question.

Indeed, we note in that respect, sir, that in London Bridge in your PII ruling in the final paragraph you indicated that you would of course keep the issue of adequacy under review. And that point that I have just made goes to that issue.

Ultimately, sir, it seems that the underpinning objection to obtaining evidence from MI5 witnesses of fact is that there is no point in doing so because of the limits imposed by PII. But in our submission that takes things back to front. If in the normal way, for the reasons we have submitted, factual evidence should be sought, and we submit it should, the question is then how that can be achieved given the effect of the PII ruling. The answer is to look to the mechanisms within an inquest, gisting, summaries, anonymity, screening. If those mechanisms are not sufficient for the relevant evidence to be admitted, then the inquiry route is the alternative route that provides a solution.

The answer is not simply to decline to seek the evidence altogether in order to remain an inquest, in our submission.

So I'm coming on to my final topic. We have nothing to say on topic 5, screening of witnesses and accredited press, and only one short matter to raise with you in relation to the remaining case management matter, and that concerns the evidence of Dr Jamie Bennett. Sir, I appreciate you may not be fully familiar with the details of his evidence, but can I raise some brief points about that in light of what Mr Hough has said in his oral submissions.

He said today that the inquest team are not yet persuaded that Dr Bennett should be included. We would seek to persuade you, sir, that he is more important and more distinct from, for example, Governor Styles than may first appear. He is a very senior witness, now the head of operational security at the MOJ, previously deputy director for security at the Prison and Probation Service. He had or should have the clearest understandings of the dangers that someone like Khan represented. He was also a prison governor, including of a category A prison.

He knew and, as we understand it, championed the Learning Together programme as governor of Grendon Prison where it started and as a friend of Learning Together. In our submission, he appears to be in a very good position to add —— he appears to have been in a very good position to add the discipline to Learning Together and the safeguards that appear not to have been in place. Questions arise for him: why was Learning Together rolled out so far with so few safeguards in place? Why was it being approved and championed at Dr Bennett's level?

The answer to those questions in his statement is that an informal review took place and nothing more was said. We suggest, sir, that that is not enough and we

would wish to probe what that means and why it was not more.

Sir, that is the family's position. I appreciate that is not a matter that you're likely to rule on now. If you would like us to provide further submissions in correspondence, we will of course do that, but it is a matter of importance for the family that I wish to raise.

Sir, unless I can assist you further, those are our submissions on the topics for the agenda today.

JUDGE LUCRAFT: Thank you very much indeed, Mr Nicholls. That's very thorough. Thank you.

I'm going to turn -- Mr Hough, I'm conscious that -- keeping an eye on the clock, but also conscious of who I've got written submissions from. What I'm going to do is to go through the others who have made written submissions, just to see if there's anything they wish to add.

MR HOUGH: Sir, I suspect that the two other advocates who will have significant submissions to make are Mr Sheldon QC and Mr Beer QC.

JUDGE LUCRAFT: Yes, I was going to come to them last of all and really go to the others first of all.

If I can then start, Ms Barton of City of London Police, is there anything you wish to say in addition to

the short document I have from you for today's hearing?

Submissions by MS BARTON

MS BARTON: Sir, there is, yes, please.

Sir, I should address an issue -- are you able to hear?

JUDGE LUCRAFT: I can hear you, yes.

MS BARTON: I'm grateful.

Sir, I should address an issue which has arisen from paragraphs 9 to 14 of the submissions made by Mr Bunting on behalf of the mother of Mr Khan. That submission concerns whether the firearms trainers should be invited or permitted to give their assessment of the actions of the firearms officers, and in particular whether their actions were in accordance with their training.

That has not been dealt with in my written submissions because it only came to light as a result of the submissions that were served by Mr Bunting.

Sir, Mr Hough appeared to agree that Mr Bunting's submissions had merit. I have to say that it comes as something of a surprise because the content of the statement of Acting Inspector Flack on behalf of the City of London Police is based upon a list of issues, including that issue, which was provided by your team on your behalf. That list of issues mirrors those which were covered in both statements and oral evidence of

similar witnesses in the course of the London Bridge inquests.

Sir, that said, if you were to conclude on reflection that you will not follow the course adopted in the London Bridge inquests, and witnesses should not give evidence on the issue of whether the force used was compliant with training, then in my submission that can be very easily dealt with as Mr Bunting suggests by limiting the evidence to the training provided and if the evidence heard ultimately justifies it, then one could leave the issue of whether officers complied with their training to the jury.

Sir, I say that in the context of this case it's not inappropriate for them to give that evidence, but if you were against me on that, then the issue is to consider the evidential position at the end of all the evidence and if the issue in fact is one for the jury and arises on the facts, leave it to the jury.

Sir, that's all I seek to add to my written submissions unless I can assist further.

JUDGE LUCRAFT: No, thank you very much. That's understood, thank you.

Mr Butt on behalf of the Metropolitan Police, anything in addition to the short document I've got from you?

Submissions by MR BUTT

MR BUTT: Sir, only the same point raised by my learned friend Ms Barton. Can I just ask in deference to what Mr Hough has said that you and your team just revisit the evidence that was given on Day 8 of the Butt, Zaghba and Redouane inquests at page 67 to 75. That's the evidence of Chief Inspector Sheridan from the Metropolitan Police Service and former Superintendent Brown from the City of London Police who gave precisely the evidence that it was asked that Mr Sheridan and Mr Flack give in these proceedings, and also that you review Day 19 of the Khalid Masood inquest, 8 October 2018, at pages 45 to 48.

In our submission, what Mr Hough did on those occasions was to carefully call evidence from Chief Inspector Sheridan and former Superintendent Brown that appropriately assisted the jury with matters that are properly expert evidence but did not in any way risk usurping the jury's function.

Just very briefly addressing the points raised by Mr Bunting, it is suggested that Chief Inspector Taylor, if not independent in the manner in which one expects an expert evidence to be, sir, as you will be aware there is of course no rule that an expert witness cannot be either employed by or an officer of either a past

litigation or, far less in this case, an interested party in an inquest.

In fact, the law is to opposite effect. See, for example, Factortame Number 8 at paragraph 70.

To the extent that Mr Bunting, treading lightly, suggests that to express an opinion as to whether the officers acted consistently with their training might usurp the jury's role, he relies on obiter from the case of Re LM with the citation of his footnote 5. We would simply observe that the evidence as was called in London Bridge and Westminster goes nowhere near what happened in LM, where the guardian solicitor in fact in effect asked an expert to make recommendations as to the order of the court, and the ultimate issue rule for at least two reasons would have no application in relation to this matter.

So, sir, we would simply ask that your team maintain the approach taken in London Bridge and Westminster and go no further than that. Chief Inspector Taylor and also Superintendent Flack are independent of the events of 29 November and are able to give expert evidence, and in our submission there would be nothing wrong with the approach you have taken before being adopted, and there is of course no requirement in an inquest that independent, in the sense that Mr Bunting means it,

evidence is required for an Article 2 inquiry.

Mr Bunting makes reference to the cases of Wright and Stanley. As you will know, both of those cases were considered in Goodson v Coroner for Bedfordshire and Luton [2004] EWHC 2931, where at paragraph 71 Mr Justice Richards as he then was held that neither Wright nor Stanley established a principle that independent expert evidence was required by Article 2 and that in fact there was no such principle.

But, sir, as I say, we hear the submissions of Mr Hough. That is all we would seek to add to that point. Unless I can assist further, those are my submission.

JUDGE LUCRAFT: Thank you very much indeed, Mr Butt.

Mr Boyle I think is on the line. Mr Boyle, I don't have a written document from you, but is there anything you wish to say in relation to the points on the agenda?

MR BOYLE: No, thank you, sir. It's kind of you to extend the invitation, but I've got nothing to say on the agenda items, thank you.

JUDGE LUCRAFT: Thank you.

Mr Beer, if I come to you next then, please.

Mr Beer, I've got from you, on behalf of West Midlands Police, a document setting out your written submissions, but it's really just if there are any other

points you wish to address.

Submissions by MR BEER

MR BEER: Sir, I intend to be brief and genuinely brief, given the need for Mr Sheldon, I think, to have a sufficient period of time with which to speak, and therefore I won't be making any submissions on the consequences of your PII decision, anonymity or special measures for Witness A, further MI5 witnesses, screening from the press or further case management. Instead I'll speak only to our open PII submissions without repetition of them.

You will seen that we have sought, sir, to be as open and helpful to the inquest as possible through the disclosure already made and the open witness statement of Assistant Chief Constable Ward. We have, as you will know, sir, responded and continue to respond positively to all further requests for (inaudible) and in that way have sought to make as much as possible open through careful and very limited redactions.

That's because the Chief Constable understands that it is very important, especially for the families, that as much of the process as is possible is transparent, and that all relevant evidence is disclosed to all interested persons.

But of course sometimes that is not possible, and in

that regard it must be remembered and not forgotten that PII is a privilege. It cannot generally be waived. There is a duty to assert it. We have consequently sought to apply for PII over the absolute minimum of material necessary to prevent a real risk of serious harm to important public interests.

That assessment has been carried out with input from DV members of your team who have comprehensively reviewed the material. The application is, as is required, supported by evidence.

Now, Jack's family's legal representatives have made very extensive written submissions and oral submissions this morning culminating in the following suggestion.

Firstly, that the most careful and exacting scrutiny should be brought to the substance of the applications.

Second, that where any part of the PII claims is to be upheld, every effort should be made to disclose to IPs as much relevant information as is possible, including through gisting, summaries and redacted disclosures. For our part that is exactly what we envisage would occur in any event because that is the very process envisaged by your counsel, by the Secretary of State and by West Midlands Police which the court is being invited to undertake. It is incidentally, of course, what always happens.

Jack's family's representatives prejudge, and this is paragraph 9 of their submissions, that they will be provided with no meaningful explanation for the outcome that is reached. But, sir, we have no doubt that you will say as much as can safely be said in an open judgment on public interest immunity. That is important and we encourage it because it comes from you, an independent judicial officer, sir, not us, somebody whose conduct is questioned in the course of these inquests.

So with that in mind, there's one point that I wish to make on the public interest immunity approach.

Sir, you will know that there's obviously a clear process to be followed. It's set out in a guidance note number 30 that you yourself issued, including a process where a nominated judge and vetted members of the team can review the material.

In this case both CTI and you have considered or will consider the material. But it's important to emphasise that it's the court and not CTI that will undertake thereafter the balancing exercise.

Jack's family, like all other interested persons in situations where a PII claim is made, find themselves in the difficult position of having to make submissions without having the ability to see the underlying

material, and they rightly concede in paragraph 3 of their submissions they cannot make any informed submissions, and that's certainly the case.

But it's vitally important not to mis-state those matters which have been said in open. There are, I'm afraid to say, some examples of that in the submissions that you have received. So it's wrong for Jack's representatives to say in paragraph 3 that there has been no gisted or summary disclosure. You have Witness A's statement, as do they. You have, as do they, the witness statements of ACC Ward, there was another to follow, and a statement from DS Jerromes which has been mentioned already.

It's also wrong to suggest that no redacted versions over the material over which PII is claimed has been disclosed. As Mr Hough has said, exactly that material has been disclosed on Opus already, and there may be more documents following your decision after the closed hearing.

It's said in paragraphs 5(e) and (f) of the submissions -- and I'll invite you in due course, sir, to have regard to these -- and (h) in particular, that MI5 and CTP identified Khan as being:

"... increasingly withdrawn and at risk of re-engaging in Islamist extremist activity only 11 days

after the attack."

That's in (f). And then that is linked to what is said in paragraph 5(h) of the submissions:

"It was considered necessary to gain enhanced coverage of Khan's trip to London to identify any intelligence of concern, particularly in relation to his mindset."

Those two paragraphs, 5(f) and (h), are a reference to what has been disclosed by way of summary and gist about the JOT meeting of 18 November in paragraphs 133 to 135 of Witness A's statement, and, sir, you said that you've read that already. I'll invite you in your own time to go back and read it very carefully, because what those paragraphs reveal is additionally the following sentences:

"No intelligence of concern had been seen since Khan's release from prison."

And:

"Discussion took place within the JOT as to how the level of coverage of Khan could be enhanced, including of his proposed trip to London. It was considered that any further coverage would assist MI5 to identify any intelligence of concern, in particular in relation to Khan's mindset."

And then this:

"Given that no intelligence of concern had been seen since Khan's release from prison, it was agreed that this further coverage could be reviewed and the investigation should be considered for closure if MI5 was unable to identify any intelligence of concern."

This context and those sentences is critical and is omitted from the submissions. It's just ignored. It was also omitted from the oral submissions that you heard this morning.

Of course, where someone appears to have disengaged from Islamist extremist activity, there's of course a risk of re-engagement. But that's not the same thing as saying that there was some sort of new and concerning risk identified 11 days before the attack, as is implied in the submissions and was suggested this morning.

The entire context was not one of warning signs that were missed but of a careful and diligent process of checking and double-checking to give the necessary assurance before the ongoing investigation was closed.

So, sir, in short, in assessing relevance, you should not accept the characterisation that is given in these two paragraphs which entirely mis-states the open material that the family have received and then use it as a platform to make an argument as to heightened relevance which is made on an incorrect and false basis.

So that's the only point that I seek to make in open.

JUDGE LUCRAFT: Thank you very much indeed, Mr Beer.

Mr Sheldon.

MR SHELDON: Sir, thank you very much. I hope you can hear me and possibly see me.

JUDGE LUCRAFT: Yes. I can indeed. Can I just again, Mr Sheldon, make clear for your assistance, but also the assistance of others, that I've got and I have read the open submissions that are -- that everyone has been provided with and of course I have seen -- again I repeat -- the underlying materials which we will look at in the closed session.

Submissions by MR SHELDON

MR SHELDON: Sir, thank you very much for that. I'm very conscious of the need to be brief, I know you will need to hear from Mr Hough again, so I won't repeat matters that you have already considered.

Can I deal very briefly first with PII and I can deal with this briefly for two reasons. Firstly, we have put in detailed written submissions which I adopt and don't repeat; and secondly, I respectfully agree with the submissions of your counsel, including what they identify as the countervailing considerations at paragraph 18 of their submissions, and indeed with

Mr Hough's reference today to the similar points made by Mr Pitchers in his submissions.

It doesn't seem to us as though there is any significant dispute as to the legal principles that should be applied to a PII claim of the type you have before you, but for the avoidance of doubt, and in light of some of the submissions you've heard today, can I just accept the following important propositions.

The first is that the ultimate decision on each element of the PII claim is yours and yours alone. It's not the Secretary of State's and it's not your counsel's.

Secondly, each element of the claim should be considered individually.

And thirdly, each element of the claim, each document, each piece of information, each redaction, should be subject to careful scrutiny or, as it's been put, rigorous and exacting analysis.

Can I also accept two further points which are perhaps obvious, but in light of the submissions you have just heard from Mr Nicholls in particular perhaps require express acknowledgment.

Mr Nicholls and to some extent Mr Pitchers reminded you about certain aspects of the factual background to this case, for the purpose I think of demonstrating that

the evidence relating to MI5's involvement, particularly post release, is important.

Now, leaving aside the accuracy and/or balance of that summary of the evidence, and I certainly adopt the points just made by Mr Beer in that regard, it is accepted that this is relevant evidence. If it wasn't relevant, we would not be here having this argument because your counsel would not have identified the material as requiring disclosure.

There is, I accept, a powerful public interest in not excluding relevant evidence from an investigation of this sort.

Secondly, and linked to that, I accept that the effect of upholding the PII claim will be to create some gaps in the evidential picture. How extensive those gaps may be will be a matter perhaps for debate, but there will be gaps nonetheless.

What flows from that, sir, and this is really the only substantive point I want to make, what flows from that is that PII claims will not be made in this situation by the Secretary of State lightly, nor will they be upheld by you lightly.

In that regard it must be emphasised in light of the submissions that you've heard, and again, lest there be any doubt about it, that the sole basis upon which the

Secretary of State has claimed PII in this case is national security. PII may be, as you know, and indeed has been claimed on a variety of different bases and to protect a variety of different interests. The only basis upon which it is being claimed in respect of material of relevance to this investigation is on national security grounds, and where in the considered judgment of the Secretary of State, having taken expert advice, disclosure of the information in question would harm national security by making terrorist attacks either more likely by providing assistance to those who would wish to carry them out, or by making it less likely that the Security Service and CT police would be able to disrupt and detect their plans to do so and to bring them to justice.

Now, sir, I won't repeat the submissions I have made as to the legal significance of the fact that this is a claim being brought on national security grounds. Those I anticipate are well understood. I simply make the point that the purpose of this claim is to prevent as far as possible future terrorist outrages of this sort from being perpetrated, and that in making the claim she has made, the Secretary of State is discharging a duty and not exercising a discretion, still less indulging in a luxury or claiming some sort

of special treatment.

It is perhaps important in light of the submissions you've heard this morning that that is made clear.

Sir, as to the process that has been followed for the purposes of the PII exercise, I have nothing to add to the summary that you have been given by your counsel and indeed that you have provided to the interested persons this morning. So I can perhaps move directly on to the issue of adequacy of investigation.

Sir, again, I say only very little about this because the Secretary of State respectfully agrees with the analysis with which you have been provided by counsel to the inquests. Ultimately, of course, this will be a matter for your judgment once the PII exercise has been undertaken.

Ultimately the question will be whether what has been excluded prevents you from undertaking an adequate investigation. And that is inevitably an intensely fact-specific inquiry which is determined by careful analysis of the excluded material once the PII claim has been determined.

Therefore, whilst it is entirely right that the issue has been raised, as it has been, for example, at paragraphs 23 to 29 of the submissions of Jack Merritt's family, the outcome of your analysis cannot be prejudged

in the way that has been suggested. There are examples quite correctly flagged up of cases in which the nature and extent of the excluded evidence on a claim for PII has been such as to compel the coroner to conclude that an adequate investigation cannot be conducted within the framework of an inquest, and you're well familiar with the Litvinenko and Manchester Arena examples.

But there have been many cases, including cases involving extensive evidence from the Security Services, in which a different conclusion has been reached. Again, you will be aware of many examples. You have dealt with a number of them.

Now, you will have seen the submissions of your counsel on this issue and we agree with them. We submit that there is absolutely no doubt whatsoever on which side of the line this case falls.

We are here dealing with PII and in that context the focus inevitably falls on what is being excluded, and it is easy in my submission to lose sight of what has been included. Through the diligence of your team there is frankly a vast quantity of evidence concerning Khan, both in prison and after his release, which has been disclosed to the interested persons and can be considered in detail in the inquest.

Even as matters stand, and before any witnesses have

been heard, the inquests have assembled what I would respectfully suggest is an unprecedented body of evidence concerning the management of a dangerous terrorist offender through their time in custody and following their release on licence which has enabled an extraordinarily detailed chronology to be put together.

That evidence will be supplemented in due course by a great deal of oral evidence with the full involvement of the interested persons, and any material that you ultimately decide to exclude by virtue of PII has to be seen in this context. And in assessing whether you can conduct an investigation that is adequate to discharge your statutory obligations, it is necessary to assess the complete evidential picture and take into account the entirety of the iceberg, not just the tip on which the PII material rests.

Once that is done, and done thoroughly, sir, in my respectful submission, the conclusion is clear and an adequate investigation can be undertaken within the framework of the inquest.

Can I turn then to the issue of MI5 witnesses of fact.

Now, once again, sir, a large volume of written submissions have been filed on this issue across

a number of hearings and I anticipate that there is a limited amount that I can usefully add to the submissions that have already been made.

Ultimately we agree with counsel to the inquest that seeking evidence from individual MI5 witnesses of fact in addition to the evidence of a corporate witness would not materially advance your investigation for reasons we've set out in our open submissions and for additional reasons which can only be advanced in closed.

I would like to take a moment though, sir, if I may, to summarise the essential rationale for that proposition by reference to one of the specific aspects of the evidence raised by the submissions of the bereaved families. But before I do that, can I just attempt briefly to set the context which I would respectfully observe is at risk of being lost in the detail.

I do so in particular to address the submission made by Mr Pitchers that the PII exercise may not be dispositive of the issue and that it is possible, even if the exercise has been undertaken thoroughly, to identify aspects of the evidence upon which witnesses of fact might be able to provide additional assistance.

Sir, taking us back very briefly to first principles, in a case such as this in which the relevant

evidence includes the product of an MI5 investigation, it is inevitable that much, if not all, of the intelligence collected in the course of that investigation will be highly sensitive such that disclosure would cause harm to national security.

Now, in those circumstances a claim for PII can be made in respect of the material. Given the national security context, that claim is likely to succeed and the result will be the exclusion of the intelligence from the proceedings.

Now, until relatively recently that would have been the end of the matter in a set of proceedings such as these. However, the practice has developed in recent years, borne out of a proper acknowledgment of the importance of a full and fearless investigation open to public scrutiny in cases such as this one, of finding a way to place as much as possible of the sensitive intelligence into the public domain so that it can be scrutinised and questions may be asked about it —— how the intelligence was evaluated, what actions were taken in response, could or should more have been done —— for all the reasons that you're familiar with, identified in Amin and elsewhere.

Now, the mechanism that has been used to achieve that objective in the 7/7 inquests and in many cases

since has been the careful gisting of intelligence into an open witness statement by a corporate witness. As this case demonstrates, if that is done with sufficient care and rigour, a large amount of disclosure can be given, if not of the intelligence itself, then of the essence of that intelligence.

Now, sir, I make it clear that I neither confirm nor deny what sources of intelligence may be relevant to this particular case, but in general terms experience has demonstrated that if you exercise enough time and care, it is possible to find ways of revealing the reporting of a human source without revealing the source themselves or exposing them to identification; that it's possible to reveal the product of intercepted communications without revealing that interception has occurred; that it is possible to reveal intelligence obtained from covert techniques without revealing the nature of those techniques in a way which would assist people in evading them.

Now, that can be done if each word or phrase is carefully evaluated and a careful eye is kept on the evidential picture as a whole to ensure that individual bits of the evidence cannot be pieced together in a way that would amount to damaging disclosure, the well—known jigsaw or mosaic effect. Once that has been done in the

statement of a corporate witness, then there is an opportunity for CTI and the interested persons to identify lines of questioning and very considerable resources can be devoted over the course of some weeks to see whether any further disclosure can be given if carefully phrased and when analysed next to the rest of the evidential picture.

Sir, in short, it is by this means that the maximum possible disclosure is given, and it is, I would respectfully suggest, an extremely successful process. I submitted to you, sir, in the London Bridge Inquest that the level of disclosure given in that case of a live MI5 investigation was unprecedented, and indeed it was. I can say with no hesitation at all that the level of disclosure of an MI5 investigation into a TACT offender given in this case is also unprecedented. In both cases that has been achieved by the process that I have described and which has been further elaborated by your counsel today.

So, sir, my fundamental submission is that Witness A's statement, the process of its production as overseen by your team, and the calling of Witness A to give evidence, is a means of achieving disclosure, not preventing it. It has not been done to obfuscate or evade public scrutiny. It has been done to enable

public scrutiny to be applied to that which would otherwise have to remain secret.

As to what flows from that as far as individual witnesses of fact are concerned, two things.

Firstly, if the job has been done thoroughly and well, and I submit it has been here, then the evidence of Witness A in the statement, and supplemented to the extent possible orally, will be the limit of what can be disclosed consistent with the preservation of national security. If that is right, then it is axiomatic that calling additional witnesses will not contribute anything of value in terms of additional evidence as to the nature and extent of the MI5 investigation.

Secondly, when you consider the nature of the exercise I have described, it is clear that calling individual officers will not achieve the objective that has been identified.

Now, sir, at this point I was going to take you on an excursion through the JOT minutes of November 2019, compare them to the paragraphs 133 to 135 of Witness A's witness statement, and pick up a number of the specific additional lines of inquiry that have been identified in writing and orally in submissions today.

But, sir, I don't propose to do that, firstly because it would take a bit of time that I don't think

we probably have, and secondly, I anticipate that it is an exercise that you are well capable of doing yourself. But I would commend it as an illustrative way of demonstrating how, when you actually test the propositions with which you are being presented, and the lines of additional inquiry that are being suggested to you, against what has been disclosed, and the basis upon which the PII claim has been advanced in respect of that material, you reach the clear conclusion that nothing further of significant value to your investigation would or could be achieved by calling individual witnesses.

So, sir, I submit simply that whilst we understand entirely the desire for best evidence and maximum public scrutiny, and whilst we agree that that should be achieved to the greatest extent possible, it is actually through the process of Witness A's witness statement and further evidence as I have described that that is achieved in a case of this nature.

Sir, can I deal finally then, and very shortly, with Witness A and the issue of screening which seems to be the only significant outstanding issue of contention. Of course, these submissions are directed primarily to those advanced by Mr Nicholls in that regard.

Now, it must be said that the submissions advanced on behalf of Jack Merritt's family on this issue have

presented something of a moving target. As I understood him at one point to acknowledge, Mr Nicholls appeared to submit that it would make no sense in effect or would be wrong in principle for the legal representatives of Mr Merritt's family and Mr Merritt's family members themselves to see the witness, but not the jury, and thus what was really being sought was an order providing for screening for everybody other than the jury, Mr Merritt's family and Mr Merritt's lawyers.

However, at a later stage in his submissions he sought to suggest that the level of restriction that was being advanced in this case on his submissions was less than that in the Manchester Arena Inquiry because in that case four lawyers can see the witness, whereas in this case it would only be two. But of course, as you've heard, in the Manchester Arena Inquiry the witness will not seen by the families and there is no jury.

It's not entirely clear what is being suggested, but I'm assuming for present purposes that the submission that's been advanced to you is that Witness A should be seen by Mr Merritt's family —— I'm not entirely sure it's been made clear which ones —— the legal team of Mr Merritt's family and the jury, and on that basis I make these brief limited observations.

Firstly, I agree with and gratefully adopt the submissions made by counsel to the inquiry as to why the balance should come down against that proposal in the particular circumstances of this case.

Secondly, I would observe in light of the first three points made on behalf of Mr Merritt's family that that arrangement would do nothing to improve the impression of public scrutiny nor public accountability.

Thirdly, I would invite you to consider the particular circumstances in which the Manchester Arena Inquiry's chairman made the decision he made which were very different.

In the Manchester Arena Inquiry the witness concerned from MI5 will be travelling to Manchester in order to give evidence over the course of a day or possibly longer. There was a very careful consideration given as to the risks that would arise to the witness if that situation arose and he was seen by individuals in the hearing room.

MI5's firm view was that if he were seen by anybody, including the four advocates for the families, that would serve to expose him to undue risk. The chairman took a different view and it will clearly be necessary in light of that to manage that risk. But the circumstances in which it will be managed will be

circumstances in which the witness is in a city in which he is not normally based for a very short period of time, and arrangements will be made to minimise the risk of inadvertent recognition.

So the factual circumstances relating to Witness A, as you've seen from open and indeed from the closed evidence, are very different, and the risk that would arise from the arrangements that have been proposed to you by Mr Merritt's family create an entirely different order of risk.

Those risks are not fanciful or remote. In the one most comparable situation in which something to similar effect has occurred, the risk eventuated in circumstances with which you will be familiar, and I'm afraid it is simply no answer to that problem for Mr Nicholls to submit, as he did, well, in the event no harm was done.

Allowing Witness A to be seen by the individuals that have been identified by Mr Merritt's family's submissions, in respect of whom, quite frankly, there is no realistic prospect of detailed security vetting being undertaken, would expose that witness to serious and unacceptable risk, and in my respectful submission the course proposed by your counsel that Witness A should be screened from everyone in the courtroom is the

appropriate one to take in the particular circumstances of this case.

Sir, just one minor point of detail on the Witness A application in light of what Mr Pitchers has submitted. I should make clear for the avoidance of doubt that, as far as notes made in the hearing room are concerned, the application that we make is made on the same basis as it was made in Westminster and London Bridge, namely that electronic notes should not be taken during the course of Witness A's evidence but handwritten notes may be.

The reason for that, sir, as you will have heard explained in previous cases, is that the risk that is being guarded against is inadvertent disclosure. Electronic notes made on computers, linked in some instances to solicitors' firms' cloud platforms or otherwise backed up by other means, can be impossible or at least very difficult to retrieve if inadvertent disclosure is made and then recorded on an electronic device.

There will be a transcript. I accept that we are all of us less used to making handwritten notes than we used to be, but for the reasons that I have submitted to you on previous occasions, and have been adopted on previous occasions, notes should be restricted to handwritten notes only in the hearing room during

Witness A's evidence, or at least that is our application.

Sir, I have nothing to add on the case management issues beyond that which has already been set out by counsel to the inquiry other than to —— to the inquest, forgive me, other than to confirm that we respectfully agree with the views expressed about additional witnesses, and where Mr Hough has indicated that further information is forthcoming from my clients, that is all well in hand and will be with you shortly.

Sir, unless I can be of any further assistance, those are my submissions.

JUDGE LUCRAFT: Thank you very much indeed, Mr Sheldon.

I think in fact, just on that last point you make about handwritten notes, on the previous occasions when those restrictions have been in place I myself also made only handwritten notes. Those who saw me acting in those previous inquests would have seen that otherwise I kept a note on a computer, but I applied the same rules to others as to myself.

Thank you very much, Mr Sheldon.

MR SHELDON: Thank you.

JUDGE LUCRAFT: Mr Hough, I'm going to come to you in just a moment. I just think I ought to give Mr Bunting a chance if there's anything he wishes to add to his

written submissions that I've got.

Mr Bunting?

Submissions by MR BUNTING

MR BUNTING: Thank you, sir. Mrs Begum respectfully agrees with the thorough and detailed submissions of Mr Nicholls on PII, whether an inquiry is needed and whether witnesses other than Witness A should be called to give evidence on behalf of the Security Service.

I'm not going to repeat any of those points, rather just make three very short points.

The first, as flagged up in the skeleton argument at paragraph 8(a), is that there is now some doubt about Mrs Begum's ability to give evidence, not just to travel, as Mr Hough suggested, but also her medical fitness to give evidence. We will keep that under review and we will ensure that Mr Hough and his team are rapidly updated.

The second relates to the issue of screening for members of Usman Khan's family. The starting point here, in my respectful submission, sir, is the witness statement that was served on behalf of one of the brothers of Usman Khan on 15 June last year when special measures were first sought. You, sir, will remember that in that statement the brothers of Usman Khan expressed revulsion at what Usman had done, but also

explained how vulnerable, exposed, threatened and devastated the family felt at the prospect of further identification in connection with his case.

In particular, they had great fears about being subjected to reprisal attacks and they felt individually and collectively under a huge amount of pressure, too afraid to attend school, to leave homes, to go to work, in the initial months thereafter.

Sir, those concerns remain vital for the family and they explain why they invite you, sir, to maintain the position that you originally ordered, that they be screened both from the general public and from members of the press.

The short point is that unless they are protected from the possibility of their images being disseminated through these proceedings, then they will not be able to give their best evidence in these proceedings. And if they are not screened from accredited members of the press, there is the prospect of their images being drawn by court drawers or indeed from accredited journalists identifying them outside court to photographers who could then take their photos. Those, whilst there is no anonymity order in place, would cause the family members not to be able to give their best evidence.

There is no, of course, real issue with open justice

here because if the family are screened in the way that you initially ordered, it will still be possible to report all of their evidence, it will still be possible to report their names, but what it will do is it will address that real risk the family members feel about their images being further disseminated.

Sir, the final point which I'll address very briefly is the point about police training evidence. I'm grateful to Mr Hough for his very helpful submissions on this point this morning with which I agree. Mrs Begum's submissions are in her skeleton argument at paragraphs 9 to 14.

There's been two submissions this morning on this point, one from Ms Barton and one from Mr Butt.

Ms Barton's fallback position, as I understood it, was that officers be permitted to answer questions about the scope of training provided, but then not to give an assessment of whether the officers on the ground complied with that training. Sir, I respectfully endorse that fallback position.

As regards Mr Butt, his submission appeared to be that it is proper to invite officers of the Metropolitan Police to opine on the jury issue of whether officers off the Metropolitan Police on the ground complied with their training. I disagree with that submission for the

reasons set out in writing.

Insofar as that was done in previous inquests, it's unclear from the transcripts if the court in those inquests was specifically addressed on the propriety of that approach. They do not stand as authority, still less binding authority, for the correctness of that approach.

Mr Butt finally relied on opening remarks of Mr Justice Richards as he then was in Goodson's case. Of course, the point made by Mr Justice Richards at paragraph 71 was that independent expert evidence is not always required in order to render an inquest an effective investigation. As Mr Justice Richards said, all will depend on the facts, and the facts here are in my respectful submission clear. A high degree of independence is required of this specific issue in Usman Khan's inquest, the legality of the use of force, and for those reasons, the approach which I understand Mr Hough to take is, in my respectful submission, correct.

Unless I can assist you any further, sir, those are the submissions of Mrs Begum.

JUDGE LUCRAFT: Thank you very much indeed, Mr Bunting.

Mr Hough, I think I have now gone round everyone who I was anticipating wanting to be heard.

MR HOUGH: Sir, it may be an idea to ask whether anyone else on the CVP link wishes to address you.

JUDGE LUCRAFT: I'll simply say: is there anyone who has not yet spoken who would wish to? I'll take silence as being a no.

Mr Hough.

Submissions in reply by MR HOUGH

MR HOUGH: Sir, I can be very brief in response because I sought to anticipate most arguments and have already addressed you at length.

A few very brief points.

First of all, in relation to submissions made on behalf of the two bereaved families, it was said at some points that if the PII claims are upheld, there will be no evidence of MI5 or CTP documents or witnesses other than the statement of Witness A.

Sir, that is wrong in point of fact. CTP witnesses, including some of the most important on the ground operational CTP witnesses, will be called, notably those from Staffordshire Special Branch and West Midlands Police CTU Team 7. You have heard two of the key individuals identified during the course of submissions, namely DS Jerromes of West Midlands and DS Stephenson of Staffordshire Special Branch, and those include individuals who were involved in some of the key

meetings, including the JOT meeting of November 2019.

In addition, CTP records, records from these bodies, have been disclosed and more are due to come shortly, partly as a result of the PII process and with very limited redactions.

Sir, we would also make the point in relation to some of the submissions that you have heard that Witness A can be questioned in relation to the contents of that witness's evidence and the process for notification of questions in advance should allow that witness to be able to provide as much responsive detail as possible about the decision-making process at each stage as is consistent with the demands of national security.

You, sir, will remember how that happened in the Westminster and London Bridge cases and how an experienced corporate witness who had done the phenomenal amount of work which Witness L had done in those cases was able to answer questions of detail, including about interaction with CTP, represented there in the person of Witness M.

By extension from what I have said about counter-terrorist police evidence, one of the suggestions made was that there will be no meaningful further disclosure from the PII process. We

respectfully disagree. There will be meaningful further disclosure at the end of the PII process with, as I say, very limited redactions in most cases.

I should address briefly the point about electronic note—taking during the evidence of Witness A. The reasons for that unusual restriction have been given. It is important to the Security Service to ensure that if Witness A says something that that witness should not have said, it can be kept out of the public domain. Electronic notes, as Mr Sheldon has indicated, have a habit of being irretrievable .

If I can give this assurance, though: on previous occasions we have been able to produce the daily transcript on a half daily basis so that those who would otherwise take electronic notes can get a complete transcript very quickly.

In relation to Mr Bunting's submissions concerning press screening and the concern that those he represents might be identified outside court, photographed and those photographs put into the public domain, sir, in our submission you would be entitled to make an order under Section 11 of the Contempt of Court Act 1981 prohibiting publication of any images of those witnesses or any details liable to identify them physically, those being matters you will have kept from the general public

by your screening order. In our submission such a Section 11 order could be made to bolt on to your order of 22 October 2020 and would address Mr Bunting's proper concern.

Finally, as regards the debate about the constraints on police training officer witnesses, we do accept that a slightly narrower approach is being proposed than in the Westminster and London Bridge Inquests, although Mr Butt and Ms Barton are correct to say that careful limitations were applied in those cases too. We make our submissions in deference to the points which Mr Bunting has made and we suggest that the modest additional limitations would not create any difficulty or limit your inquiry in any material respect.

Sir, unless I can be further assistance, those are my submissions in open.

JUDGE LUCRAFT: Thank you very much indeed, Mr Hough.

Can I just simply repeat my grateful thanks to all of those who put in very detailed written submissions and supplemented those by oral submissions this morning.

We've overrun time slightly, Mr Hough, but only slightly . It's 1.15. What I'm going to suggest we do is that that will bring the open hearing to an end. We will reconvene for the closed hearing and those who are going to be present. I'm going to suggest we start that

at 2.10, just to give us all a time for a proper break, and we will resume those at 2.10.

For the benefit of both Jack and Saskia's family, I repeat what I said in the course of the submissions made by Mr Nicholls about how I regard my role in relation to the closed hearings, conscious as I am that they will not be present nor represented at those hearings. But I think the other feature that is perhaps important for both the families to understand is, again, the thorough process which has been undertaken by you leading the team on behalf of counsel to the inquest and solicitors to the inquest and the interaction that has taken place before the hearing we're about to embark upon between you and those who represent the Secretary of State.

There's been a very thorough analysis of the material. There's been a degree of questioning of why it is that material has fallen one side of the line rather than the other, and I think it's hugely important for those who are not going to be present for the hearing to understand that thorough detailed process which has taken place over many, many hours of work before we embark on a closed hearing.

I'll rise .

(1.16 pm)

(The open hearing concluded)

INDEX