

Monday, 14 November 2016

1

2 (10.40 am)

3

Opening remarks

4

THE CHAIRMAN: Mr Beer, you will remember that at the

5

opening session of this Inquiry on 26 July, I stated

6

that the Inquiry's oral hearings would begin on

7

16 January next year. I added that the timetable I had

8

set was an ambitious one, and that much preparatory work

9

remained to be completed. I am however happy to confirm

10

that the Inquiry is presently on course to begin its

11

oral hearings promptly on the planned date. That we

12

find ourselves in such a position is due to the

13

constructive participation and cooperation of the core

14

participants, together if I may respectfully say so with

15

the exemplary efficiency and industry displayed by all

16

members of the Inquiry's legal and administrative team,

17

and I am very grateful to all concerned.

18

Before leaving the topic of the Inquiry's team,

19

I wish to make particular reference to

20

Mrs Jane Worthington, the solicitor to the Inquiry.

21

Unfortunately her period of secondment to the Inquiry is

22

about to come to an end. She leaves us at the end of

23

this week to take up other duties. I should like to

24

record my own debt of gratitude to her for her hard

25

work, dedication and efficiency.

1 As her replacement, I welcome to the Inquiry's team,
2 Mr Lachlan Nisbet of Brabners. The Inquiry has also
3 appointed a paralegal who will take up duties shortly.

4 As I have already indicated, Mr Beer, the process of
5 preparation for the oral hearings is well in hand. The
6 Inquiry has distributed open and closed witness lists.
7 It has commissioned reports from independent experts in
8 ballistics and issues connected to the command and
9 control of police firearms operations. Both reports
10 have now been drafted. One has already been distributed
11 and the other will follow shortly.

12 The Inquiry has also issued protocols in respect of
13 the disclosure and redaction of documents and
14 applications for anonymity and other protective
15 measures.

16 Pursuant to the latter protocol, the Inquiry has now
17 received applications for restriction orders from
18 Greater Manchester Police and the National Crime Agency
19 on behalf of a number of witnesses who have asked for
20 anonymity or other protective measures. I understand
21 that those applications are likely to be the principal
22 focus of today's hearing.

23 In addition, a substantial number of redactions of
24 various documents has been sought, principally by
25 Greater Manchester Police. I intend to hold a further

1 hearing in a month's time to enable me to hear
2 submissions and make any necessary rulings.

3 Mr Beer, you will also recall that at the last
4 session, having heard submissions from all concerned,
5 I determined that I would seek an undertaking from the
6 Attorney General preventing the use against witnesses in
7 future criminal proceedings of material provided by such
8 witnesses to this Inquiry.

9 Regrettably as a result of inaccurate reporting by
10 certain elements of the media, that decision gave rise
11 to some misunderstanding. Despite the fact that
12 I expressly stated on 26 July that I would not seek any
13 undertaking which would purport to confer immunity from
14 prosecution for any offence, my decision was represented
15 in some quarters as a request that a form of immunity
16 should be granted to witnesses. That is emphatically
17 not the position at all. The undertaking I seek is to
18 the effect that in any future proceedings against
19 a witness to the Inquiry, no evidence that he provides
20 to the Inquiry shall be used against him.

21 Its precise terms can be found in the transcript of
22 the last hearing on the Inquiry's website.

23 As I said on that occasion, the purpose of the
24 undertaking and the reason I regard it as necessary, if
25 the Inquiry is to be able to fulfil its terms of

1 reference, is to encourage witnesses to give candid and
2 complete evidence without being deterred by a fear that
3 their evidence may subsequently be deployed against them
4 in criminal proceedings. It is not an unusual procedure
5 in Inquiries of this kind, indeed there are many
6 precedents.

7 I am sorry to say that, despite having issued
8 several reminders, the Inquiry has still not received
9 any substantive response from the Attorney General.
10 This delay represents a significant impediment to the
11 work of the Inquiry; the Inquiry needs to be able to
12 tell witnesses whether they will have the benefit of
13 such an undertaking before taking oral evidence or
14 written statements from them.

15 The oral hearing is now just two months away.
16 Although we are, as I have said, presently on target to
17 begin on the planned day, further delay by the Attorney
18 General risks endangering that date.

19 Mr Beer, I know because I have had the advantage of
20 seeing your written submissions prepared in advance of
21 today's hearing that you will be addressing these and
22 other matters in greater detail in due course.

23 At this stage the only comment I wish to make with
24 regard to your written submissions concerns the proposed
25 timetable for the first week of the oral hearing in

1 January. I know that you and Miss Cartwright both share
2 my view that the Inquiry should at all times strive to
3 keep in mind the human dimension to its task, never
4 losing sight of the fact that we are investigating the
5 tragic death of a man who was loved by many, a son,
6 a brother, a partner, a father and a friend. To that
7 end, it seems appropriate to me that the first evidence
8 the Inquiry takes should come from those who knew and
9 loved him, so that the Inquiry begins its task with
10 a rounded picture of the personality of Mr Grainger.

11 I note that your proposed timetable for the first
12 week would leave some time after the conclusion of
13 opening statements and I wonder, Mr Beer, whether it
14 might be sensible to hear evidence about Mr Grainger at
15 that stage before the end of the first week.

16 MR BEER: Sir, thank you.

17 As you know, I appear with Ms Cartwright as counsel
18 to the Inquiry, instructed by Ms Worthington, solicitor
19 to the Inquiry, soon to be Mr Nisbet as you have
20 explained. Present in court today are, for Mr and
21 Mrs Schofield, that is Anthony Grainger's stepfather and
22 mother and Stuart Grainger, Anthony Grainger's brother,
23 Mr Thomas who sits at the end of the row but one.

24 THE CHAIRMAN: Yes.

25 MR BEER: For Gail Hadfield-Grainger, Mr Grainger's partner

1 at the time of his death, Mr Wetherby and Ms Murphy.
2 For the Greater Manchester Police, Anne Whyte and
3 Julian Evans who sit behind me. For Q9, the GMP officer
4 who shot Mr Grainger, Hugh Davies who sits behind me.

5 For the National Crime Agency Fiona Barton and
6 Jonathan Dixey, who again sit behind me immediately and
7 for Cheshire Police, Jacky Rose, who sits on the back
8 row.

9 The Independent Police Complaints Commission, the
10 IPCC, is not legally represented today. It explained by
11 email on Friday that the IPCC, "Will not be legally
12 represented at the hearing on Monday. There are no
13 issues that we wish to raise and the submissions do not
14 appear to touch on any investigative matters".

15 They also informed the Inquiry that two
16 investigators are however attending and I have seen
17 Mr Liston and Mr Yates already, they are to assist if
18 necessary.

19 You should have before you the three bundles,
20 bundles A, B and C --

21 THE CHAIRMAN: Yes.

22 MR BEER: -- the indexes to which have been distributed to
23 the core participants. They have already had the
24 contents of bundles A and C and we have provided
25 electronic copies of the materials in bundle B, the

1 authorities bundle.

2 You should also have mine and Ms Cartwright's
3 outline submissions.

4 THE CHAIRMAN: Yes.

5 MR BEER: Then, additions, a bundle or a set of supplemental
6 submissions by Mr Thomas, and we have put them in
7 bundle C behind tab 14, and a small clip of 10 pages of
8 material lodged by Mr Davies on behalf of Q9.

9 THE CHAIRMAN: Yes.

10 MR BEER: We have put those also in bundle A at tab 15.

11 THE CHAIRMAN: I have seen all those.

12 MR BEER: Before launching into what I intended to say, sir,
13 can I address firstly your closing comments about the
14 desirability of hearing some evidence about the
15 character and background of Mr Grainger. We agree that
16 is a good idea and also agree that it could properly be
17 timetabled at the end of the first week of the Inquiry.

18 The proposal is that Ms Cartwright and I will open
19 on the Tuesday and Wednesday of week one, core
20 participants will each speak up to a maximum of an hour
21 and a half on the Thursday and Friday of week one,
22 leaving the afternoon of the Friday of week one for that
23 purpose.

24 THE CHAIRMAN: Yes, thank you.

25

1 Submissions by MR BEER

2 MR BEER: The purpose of the short submissions that I intend
3 to make today is four fold: firstly, to explain publicly
4 the work that the Inquiry has undertaken since the July
5 hearing; second, to identify to you and the core
6 participants, and to the public, the work that needs to
7 be undertaken before we begin our oral hearings
8 in January next year; thirdly, to identify and to
9 introduce the main issues upon which you may hear oral
10 submissions today, namely the applications for anonymity
11 and protective measures made by the National Crime
12 Agency and the Greater Manchester Police, and the
13 requests for two additional witnesses to give oral
14 evidence made by Greater Manchester Police; fourth, to
15 suggest some directions for the future management of the
16 Inquiry.

17 Can I turn to the first of those, please.

18 THE CHAIRMAN: Yes.

19 MR BEER: The work of the Inquiry to date. Since the
20 opening session of the Inquiry on 26 July, a period of
21 three and a half months or so, the Inquiry has been busy
22 in its work and has achieved much. This is under four
23 main headings, disclosure, applications for restriction
24 orders in relation to documents made by the NCA, GMP and
25 Cheshire Police, the provision of witness statements,

1 issues relating to additional witnesses giving oral
2 evidence, and the request that you have made to the
3 Attorney General as to an undertaking for the future use
4 of evidence, and the expert evidence that the Inquiry
5 has commissioned.

6 I will deal with those four subheadings now.

7 Number one, disclosure. Paragraph 1 of your order
8 of 26 July required that, in relation to the material
9 provided to GMP by the Inquiry team back in June, GMP
10 should identify to the Inquiry team any proposed
11 redactions before 23 August. GMP complied with this
12 timetable and the Inquiry distributed the material as
13 bundle G1 on 23 August.

14 Paragraph 2 of the order required that in relation
15 to the balance of unused material obtained by the
16 Inquiry team, the Inquiry team should disclose it to
17 GMP, certainly that material that it regards as
18 potentially relevant by 10 August, and that GMP should
19 identify any redactions that they proposed by
20 8 September. Both the Inquiry and GMP complied with
21 that timetable, and the Inquiry distributed the material
22 as G2 on 29 September 2016. Additionally, at the end of
23 August, we issued bundle Q, consisting of the case file
24 of Andre Botha, a ballistics expert and additionally in
25 the course of liaison with Cheshire Police over a rule 9

1 request issued to a former chief inspector, Cheshire
2 Police disclosed to the Inquiry that it had identified
3 the existence of recordings of relevant telephone calls
4 made after the incident on 3 March 2012. Since that
5 time, the Inquiry has been pursuing the question of
6 whether that is the totality of recordings, we were much
7 more interested in any recordings that existed before
8 the shooting.

9 THE CHAIRMAN: Yes.

10 MR BEER: We have obtained such recordings, some of them
11 have been transcribed, we have checked for accuracy
12 against the recordings the transcripts that have been
13 provided. You will see that in paragraph 6.1 of our
14 written submissions, the recordings which have now been
15 discovered both before and after the incident. We are
16 in the process of distributing those to the core
17 participants and I think that is going to happen in the
18 near future, we are just working for GMP to finalise the
19 proposed redactions to what will be I think bundle M7.

20 We have additionally sought to discover from GMP
21 whether similar recordings exist within GMP that are now
22 available for inspection, both before and after the
23 incident, these are of relevant telephone calls routed
24 through a system within GMP, and we are actively
25 pursuing that.

1 Finally, we have disclosed to core participants
2 a video recording of the scene on 3 March 2012.

3 In some of the submissions, some additional requests
4 for disclosure have been made for documents, see in
5 particular Farleys' letter of 8 November which
6 incorporates by reference the two earlier requests at
7 pages 2 and 3, and Bhatt Murphy's letter also of
8 8 November at pages 2 and 3. We are busy working our
9 way through those disclosure requests. Suffice it to
10 say that for the most part the requests seek material
11 which has in fact already been provided, but we will
12 continue to seek to address those requests in
13 correspondence rather than going through them line by
14 line today.

15 The second topic is applications for restriction
16 orders relating to documents. On 3 October 2016 GMP and
17 the NCA provided to the Inquiry schedules in accordance
18 with paragraph 9 of our protocol, ie a sequentially
19 numbered schedule of the broad category of reasons why
20 any documents or parts of documents in which it had
21 an interest relevant to matters being investigated by
22 the Inquiry may not be capable of being disclosed to the
23 other core participants or put into the public domain.

24 Cheshire Police provided such a schedule on
25 7 November. The Inquiry has now distributed these

1 schedules to the core participants.

2 On 24 October GMP provided to the Inquiry a schedule
3 of the redactions that it proposed should be made to
4 documents. This schedule has over 5,000 columns of
5 suggested redactions and runs to nearly 1,000 pages. On
6 24 October the NCA also provided to the Inquiry
7 a schedule of the proposed redactions. This is much
8 shorter, 32 pages, but that is I think because it is not
9 duplicative of the redactions that had already been
10 proposed by GMP.

11 Since the receipt of those, about a fortnight ago,
12 counsel to the Inquiry, myself and Ms Cartwright, are
13 working through the proposed redactions and will revert
14 to GMP and the NCA in accordance with our protocol
15 setting out our views on the strength or validity of
16 each of the redactions sought, but having regard to the
17 approach that has been taken by those organisations to
18 some of the redactions, we assess on what we have seen
19 so far that it is very likely that it will be necessary
20 for you to rule on the applications made, or some of
21 them.

22 We therefore suggest that, as a matter of
23 precaution, a hearing should be set down now for that
24 purpose. It is very likely that such a hearing will
25 have an open element to it, where all core participants

1 can participate, making open submissions on the approach
2 to be taken, some of the categories of redactions sought
3 and the legal test to be applied. But it is also very
4 likely to require a significant majority of the
5 submissions to be made in closed hearing, and we
6 therefore suggest that two days are set aside for that
7 purpose. That those being Wednesday, 14 and Thursday,
8 15 December, and we will ask you to make a direction to
9 that effect.

10 THE CHAIRMAN: In the absence of any opposition I am happy
11 to do that straight away.

12 MR BEER: Thank you.

13 If you forgive me.

14 (Pause)

15 Sir, you will have noted that in the past week we
16 have gone through a redaction exercise contemplated by
17 the protocol in relation to the police command and
18 control expert, Mr Arundale, where, cutting things down
19 to their bare bones, quite a large number of redactions
20 were proposed by Greater Manchester Police.

21 Ms Cartwright and I went through them, assessed the
22 validity of them, prepared a table that suggested that
23 all but two of the redactions were justified and, in the
24 light of that, GMP reviewed its position, as did the NCA
25 and didn't persist in the application, other than in

1 relation to the two redactions that we suggested ought
2 provisionally to be allowed. That is a time-consuming
3 exercise, because the ground for not agreeing with the
4 redactions sought was that the material had already been
5 public, had been made public to the core participants --

6 THE CHAIRMAN: Yes.

7 MR BEER: One has to search through the documents to see
8 whether that material has been the subject matter of
9 a proposed redaction in the past. That is I think
10 a lesson for the future as to timetabling, it is a very
11 labour-intensive exercise, but also a warning to core
12 participants that the Inquiry team will adopt a strict
13 approach in relation to proposed redactions. Where
14 material has already been made available to core
15 participants or is otherwise in the public domain,
16 unless there are some other reasons advanced for the
17 redaction of that material, we will take a strict
18 approach and suggest that the material be unredacted.

19 Third topic, sir, witnesses. As I explained at the
20 last hearing, the Inquiry would be serving requests
21 under rule 9 of the Inquiry Rules 2016, on the NCA and
22 the GMP for the provision of witness statements. Those
23 were to be divided and they have been divided into
24 closed and open requests. The Inquiry served three
25 closed requests on the NCA in September and October and

1 the Inquiry has received witness statements in reply
2 from the NCA. The first request it received two witness
3 statements in response. The second request, the Inquiry
4 has received 10 witness statements in response to this
5 request. There are two witness statements outstanding.
6 In relation to the first of these, the Inquiry has
7 served a notice pursuant to section 21 of the Inquiries
8 Act 2005, and is pursuing the matter under that
9 procedure for the provision of a witness statement.

10 In relation to the second of these, it is
11 anticipated that the Inquiry will have a witness
12 statement from this witness this week.

13 In relation to the third request, the Inquiry has
14 received six witness statements in response to it.
15 There are two that are outstanding and the Inquiry is in
16 liaison with the NCA over the provision of these
17 statements. We don't ask you to make any directions in
18 that regard. We are on track through liaison with the
19 NCA or through the operation of the formal proceedings
20 of the Inquiries Act 2005.

21 THE CHAIRMAN: Yes.

22 MR BEER: The Inquiry served four closed witness requests on
23 the GMP, again in September and October 2016. In
24 response to the first request we received a single
25 witness statement in response. The second request, two

1 witness statements in response. The third request, six
2 witness statements in response. There is one
3 outstanding which GMP are shortly to provide and the
4 fourth request, three witness statements in response.
5 Again, we don't seek any directions from you in this
6 regard.

7 In relation to open requests, we have received the
8 following witness statements in response to open
9 requests. Mr Brierley, Chris Brierley, following the
10 service of a notice under section 21 of the Inquiries
11 Act requiring compliance with the Inquiry's rule 9
12 request, Mr Brierley has made a handwritten witness
13 statement. We have submitted a typed version of that
14 statement for his signature and we await a reply. That
15 is being actively pursued. Ms Karen Laughton has
16 provided a signed witness statement which will be
17 disclosed as part of bundle M7, that is the one we are
18 waiting for GMP to provide redactions. Steve Holliwell,
19 the same position and Mr Fernandes has provided a signed
20 witness statement which has been disclosed to core
21 participants. We await witness statements from
22 Kenneth Fitzpatrick, a paramedic and Ms Brown a civilian
23 who was present in the area of the incident, a matter
24 I will return to in a moment. Again, we don't seek any
25 directions from you in that regard.

1 We have served on the participants two versions of
2 witness lists, one an open witness list on 28 September
3 and some closed lists on 29 September.

4 In response to those, three of the core participant
5 groups have made requests for additional witnesses.

6 I am going to address them compendiously now. It is
7 important that we address these issues now with but two
8 months to go until the Inquiry's oral hearings.

9 A number of parties have suggested that Q3 should be
10 giving oral evidence. We agree, and a request will be
11 served on Q3 for the provision of a witness statement.
12 He was a tactical adviser of GMP who advised earlier in
13 the operation.

14 Ms Brown who I have identified already. We had in
15 fact already identified the need to ascertain whether
16 Ms Brown had any relevant evidence to give before the
17 core participants made submissions on the issue and
18 steps are already in train, with the assistance kindly
19 of the IPCC, to obtain a witness statement from her.

20 Gary Mills, nobody has suggested that Mr Mills be
21 called, rather that a rule 9 request be made of him and
22 then review once his statement has been provided. We
23 agree.

24 Albert Dann, this was a surveillance officer of GMP.
25 We don't see the necessity to call Mr Dann to give oral

1 evidence. This type of detail can be adduced before you
2 sir by taking such evidence as read and the same applies
3 to Jerry Connors.

4 It is suggested that Kevin Rogers should give
5 evidence. We say that in the light of the modest value
6 of the evidence, it is worth having regard to the
7 Inquiry's terms of reference and the facility to adduce
8 it through Nicky Moore, another CPS employee. We would
9 not support Mr Rogers being called to give oral
10 evidence.

11 In relation to Alex Millett we agree that the
12 relevance of his evidence should be kept under review,
13 and then finally, in relation to Simon Pemberton and
14 David Sturman, I will revert on that issue in short
15 while, that is an issue of more substance.

16 Finally, under this heading, sir, the request for
17 an undertaking from the Attorney General. On 26 July,
18 as you said, sir, you ruled following oral and written
19 submissions that you would seek an undertaking from the
20 Attorney. On 15 August you made a written request to
21 the Attorney for him to provide an undertaking in the
22 terms that you set out. And as you have said, sir, it
23 is on the website. Since 15 August, that is a period of
24 some three months, the Inquiry has chased the Attorney
25 General's Office, the AGO, for a substantive reply to

1 the request on many occasions. Given the difficulty
2 that has been encountered here, I am going to set them
3 out.

4 On 23 August, the Attorney's office acknowledged
5 receipt of the request and said that a substantive reply
6 would be provided by 20 September. When no reply was
7 received on 20 September, the Inquiry wrote to the
8 attorney's office the very next day, 21 September,
9 respectfully suggesting that the Attorney should
10 expedite his consideration of your request.

11 In response the Attorney asked the Inquiry to
12 provide some additional documentation relating to the
13 request and that was provided the very next day,
14 23 September. We chased the attorney's office for
15 a substantive reply on 7 October 2016, a reply was
16 received on 10 October 2016 indicating that
17 a substantive reply would be received in the week
18 commencing 23 October.

19 We wrote again on 13 October indicating that any
20 further delay may cause the Inquiry serious difficulty.
21 No reply was received to that letter.

22 On 27 October, having had no further communication
23 from the Attorney's office the Inquiry checked the
24 position and was informed by the Attorney's office that
25 the Attorney General had been unavoidably delayed and

1 that a response would not be possible until the
2 following week. The Inquiry further chased the
3 attorney's office on 2 November, 4 November and at the
4 end of last week, to be informed that the response would
5 "Take another week."

6 At the time of writing the Attorney General has not
7 responded substantively to a request that you made of
8 him three months ago. It has not been suggested by the
9 attorney's office that the Inquiry has failed to provide
10 the attorney with any relevant information. The request
11 is, as we submitted on the last occasion, in relatively
12 conventional terms. Similar undertakings have been
13 given by successive Attorneys General, in the
14 Stephen Lawrence Inquiry, the Bloody Sunday Inquiry, the
15 Ladbroke Grove Inquiry, the Robert Hamill Inquiry, the
16 Rosemary Nelson Inquiry, the Baha Mousa Inquiry, the
17 Al Sweady Inquiry, the Azelle Rodney Inquiry and the
18 Undercover Policing Inquiry.

19 We submit that witnesses are entitled to know,
20 especially when preparing to give oral evidence to the
21 Inquiry, the position that they are in. It is now only
22 two months before the oral hearings of the Inquiry
23 begin.

24 In these circumstances we submit that you should do
25 three things.

1 Firstly, write to the Attorney personally setting
2 out the difficulty that the persistent delay has caused
3 and may cause the Inquiry in the future.

4 Second, write to the home secretary, the minister
5 who commissioned this Inquiry, drawing to her attention
6 the impact that tardiness of this nature may have on the
7 Inquiry's ability to discharge its terms of reference
8 that her predecessor, now the Prime Minister, set for
9 the Inquiry.

10 Third, in default of a substantive reply within
11 seven days of such a letter, list the issue for an oral
12 hearing, very shortly thereafter, with a request for
13 attendance by a representative of the Attorney General.

14 It seems to us they are the only ways in which this
15 issue can be moved on.

16 THE CHAIRMAN: Yes, I agree.

17 MR BEER: Can I turn to the fourth topic of work that the
18 Inquiry has been undertaking, expert evidence. This
19 divides into two, police command and control and
20 ballistics evidence.

21 By letter dated 7 September 2016, with the
22 assistance of core participants, the Inquiry instructed
23 Ian Arundale to provide his independent expert opinion
24 on a range of issues, including items 1 to 7 of the
25 Inquiry's terms of reference, in particular addressing,

1 was the strategic approach taken by GMP appropriate so
2 as to minimise to the greatest extent possible the risk
3 to life? Was the tactical approach appropriate so as to
4 minimise to the greatest extent possible the risk to
5 life? Was the plan implemented so as to minimise to the
6 greatest extent possible the risk to life?

7 On 4 October the Inquiry received Mr Arundale's
8 176-page report. Following redactions being proposed
9 and settled by the NCA and GMP, it was distributed to
10 core participants. As I have explained, a second very
11 much less redacted version has now been distributed to
12 core participants with only two very short passages
13 remaining redacted.

14 Secondly, ballistics. By letter dated
15 16 August 2016, and again following helpful
16 contributions by the core participants as to its
17 contents, the Inquiry instructed Dr Philip Seaman to
18 provide the Inquiry with expert evidence concerning
19 ballistics. The Inquiry has received a draft report
20 from Dr Seaman, but this cannot be finalised and
21 distributed to core participants until after a video
22 reconstruction of the incident is undertaken in
23 accordance with the Inquiry's letter of instruction.
24 This is presently scheduled to take place, I believe in
25 fact today. The Inquiry will distribute the finalised

1 report to core participants as soon as possible after it
2 has been received.

3 That is a very brief explanation of what has been
4 done. Can I turn then to the two more contentious
5 issues on the agenda today, namely applications for
6 anonymity and protective measures and submissions about
7 the evidence of Messrs Pemberton and Sturman. I propose
8 to take them in turn, allowing core participants to make
9 submissions on each issue before moving to the next and
10 then I will finally turn towards some issues of case
11 management in the future.

12 Sir, the applications for anonymity and protective
13 measures. The purpose of this part of the hearing is to
14 hear oral submissions that core participants wish to
15 make in support of or opposing the applications for
16 anonymity and protective measures that have been made by
17 GMP and the NCA. In particular submissions on the legal
18 approach that should be taken to the determination of
19 the applications.

20 We do not presently understand there to be
21 a pressing need for any part of the applications for
22 anonymity and protective measures to be heard in closed
23 hearing. That possibility should not be ruled out
24 entirely however. If you identify such a need, then it
25 can be accommodated at a short hearing, perhaps at the

1 same time as the hearing I have already mentioned in
2 mid December. We don't imagine that it is presently
3 necessary.

4 Sir, you have seen the applications in bundle A.

5 THE CHAIRMAN: Yes.

6 MR BEER: You have seen the arguments in support by the NCA
7 and GMP in bundle A and the response by other core
8 participants in bundle C. The authorities are in
9 bundle B.

10 THE CHAIRMAN: Yes.

11 MR BEER: With that short introduction, sir, I will propose
12 to give the floor in this order, to the core
13 participants. Mr Thomas first --

14 THE CHAIRMAN: Yes.

15 MR BEER: -- then Mr Wetherby, then Ms Whyte, then
16 Ms Barton, then Mr Davies and then any points of reply
17 that Mr Thomas and Mr Wetherby wish to make to those
18 made by the state participants can follow.

19 THE CHAIRMAN: Yes.

20 MR BEER: Before we then move to --

21 THE CHAIRMAN: The other topic.

22 MR BEER: -- Messrs Sturman and Pemberton.

23 THE CHAIRMAN: Yes. I should say that I have read,
24 obviously, the documents in the bundles, the written
25 submissions. Nobody should feel that they have to

1 rehearse what is already in those written submissions,
2 but I am happy to hear any additional arguments that
3 have been omitted from them. I am not quite sure how
4 long the process will take, I was going to take a break
5 in the course of the morning for the benefit of the
6 loggist, who has already been going I think for about
7 45 minutes, we can go on a little longer.

8 ANONYMITY AND PROTECTIVE MEASURES

9 THE CHAIRMAN: Mr Thomas, I don't know how long you expect
10 to be dealing with this aspect of the case.

11 Submissions by MR THOMAS

12 MR THOMAS: Five seconds. I rely on my written submissions.

13 In relation to the submissions that Mr Wetherby makes in
14 relation to the general principles, I remain entirely
15 neutral and want to make you absolutely clear on that,
16 you know, I am neutral.

17 THE CHAIRMAN: Yes, I understand. Thank you very much.

18 Mr Wetherby.

19 Submissions by MR WETHERBY

20 MR WETHERBY: Thank you. May I just say before I start on
21 anonymity, that we commend the work that your team has
22 done in respect of the witnesses and so far as the
23 submissions of Mr Beer has made on those, we are
24 entirely content with the process that has been made.

25 Likewise in respect of submissions he is going to

1 come to, which I will address later, in respect of the
2 process, of the examination of witnesses, and opening
3 statements.

4 With respect to the issue of anonymity, again, we
5 rely on our full written submissions and I will try not
6 to repeat them, it is helpful that you have indicated
7 that --

8 THE CHAIRMAN: I should say also, of course, I am sorry to
9 interrupt, quite obviously I am going to be rereading
10 all those submissions very carefully at least once
11 again.

12 MR WETHERBY: Again that is very helpful.

13 May I start with something of a concession, that in
14 making these submissions, we do not take the issues
15 behind them lightly and that we accept that there is
16 a case for example with Q9 for anonymity. We are not
17 taking an unrealistic view of this issue and the fact
18 that there may well be anonymity orders in this case.

19 What is being asked for here is an enormous number
20 of such orders and we submit that it goes far beyond
21 what is reasonable in a case of this nature and with the
22 issues that are around that. That creates a problem, it
23 creates a problem, frankly, primarily, for the Inquiry
24 to sort out. We start by saying that it is not helpful
25 that there are so many applications but it also rather

1 throws the gauntlet down to those of us --

2 THE CHAIRMAN: Throws the gauntlet down?

3 MR WETHERBY: Throws the gauntlet down to those of us who
4 are opposing it, because we say it is an absolute
5 scattergun approach to anonymity here. That is
6 primarily the issue I want to amplify from the written
7 submissions that were made.

8 With respect to the anonymity applications, as we
9 understand it, there are about 42 applications at the
10 moment. I say "about", because 22 of those are open
11 applications and 20 of them are closed applications. We
12 note from the helpful note from Mr Beer that in fact
13 there are further closed witnesses who may end up being
14 called, so from paragraphs 15 to 17 of Mr Beer's
15 submissions there could be up to 32 closed witnesses,
16 with the obvious attached applications for anonymity for
17 them.

18 In respect of the proposed closed hearing witnesses,
19 as far as I understand it, we have no statements from
20 them even in a redacted form and we have no gists of
21 what they may relate to. Talking from my position on
22 behalf of Gail Hadfield-Grainger, all we know about
23 those applications is what is set out in the open parts
24 of the NCA submissions which is that they refer to
25 covert policing. Let me deal with those witnesses

1 first, because I can do that in pretty short order if
2 I may.

3 Where we know no more than they relate to "Covert
4 policing," it is difficult for me, of course, to make
5 any meaningful submissions on them. What we say should
6 be the starting point with the closed witnesses is that
7 there should be a protocol in the way that has helpfully
8 been provided with the anonymity and redactions and
9 disclosure issues. There ought to be a protocol for the
10 way that the closed hearings are dealt with so that
11 there is a process, a proper process, by the Inquiry for
12 determining whether such evidence ought to be heard in
13 closed session or not and thereby deciding what
14 information is able to be given publicly, both to core
15 participants and to the general public and the media,
16 which would allow for submissions, potentially, to be
17 made about closed hearings.

18 We say in the first place, in respect of the 20 or
19 possibly 32 closed witnesses, before anonymity is
20 considered the issue of closed hearings should be
21 considered.

22 I have had a brief word with Mr Beer this morning --
23 he has been as helpful as always -- and he has indicated
24 that the amount of information that might be forthcoming
25 from that process might be slender. He put it in such

1 a way. Even so, we take the view that that should be
2 a process that should be gone through in all such areas
3 because closed sessions of course are a radical
4 departure from the general principles of open justice
5 and there ought to be a process and it should proceed in
6 that way. Once we know what we are able to be told
7 about these witnesses and closed sessions then we may or
8 may not, as the case may be, make further submissions on
9 anonymity with respect to those NCA and small number of
10 Greater Manchester Police witnesses.

11 If the Inquiry does in fact deal with those
12 witnesses without such a process, then we oppose them
13 simply on the basis of principle. We are not in
14 a position to make any meaningful submissions, as I say.

15 With respect to the open applications, we have set
16 out what we say are the legal tests in the written
17 submissions and I don't see any profit in repeating what
18 I have already put in writing. As far as we can
19 understand from the applications that are made, the
20 applications relate centrally to the common law,
21 a balancing act, a judgment that the Inquiry must make
22 but also refers to the other grounds, particularly
23 article 2 grounds. My starting point with the open
24 submissions is that the anonymity applications are made
25 on a far too wide basis and encompass witnesses who are

1 really quite removed from the issues that are central to
2 this Inquiry. In making the submission that these
3 applications are made too wide, let me make clear that
4 we are not making light of the work that the police do,
5 nor that it can be dangerous and we don't pass lightly
6 over the fact that there are well known outrages that
7 have been committed against the police, particularly in
8 the north-west and we don't take any of those matters
9 lightly.

10 However, we submit that these applications do pass
11 rather lightly over the important issues of open justice
12 and the difficulty for the Inquiry is where the line is
13 to be drawn between those two points. Open justice is
14 the DNA of our system and it is to be jealously guarded.
15 We have referred and indeed other core participants have
16 referred to various cases in respect of open justice and
17 I am not going to tax the patience of the Inquiry by
18 going to them. It is not an absolute principle, of
19 course, that witnesses in particular have to be named in
20 open court. We accept indeed that in some cases, strict
21 adherence to open justice in its many guises would cause
22 its own injustices, so we accept that.

23 We accept that granting anonymity in exceptional
24 cases interferes with open justice but indeed it doesn't
25 destroy it. We hope that in making the submissions that

1 we do, that we are realistic about the extent of open
2 justice and its importance but also that overall justice
3 to the case is something which does sometimes have to
4 override the particular elements of open justice. In
5 simple terms, with respect to anonymity our submission
6 is that anonymity must only be granted where it is
7 necessary for justice to be done.

8 By way of context, I have already adverted to the
9 numbers of applications that are made here. 42
10 applications are before the court at the moment and, as
11 I say, that may go up to 54. In the context of the
12 witness lists, that is half of the total number of
13 witnesses that are potentially to be called in both open
14 and closed sessions.

15 With respect to the closed witnesses, whether it is
16 20 or up to 32 closed witnesses, that would be between
17 a quarter and a third of all witnesses to this Inquiry
18 would be heard in private, without core participants,
19 without the media, without the general public. We say
20 that the Inquiry ought to stand back from the wide
21 ranging applications and to very anxiously consider
22 which of them are actually necessary, and that in our
23 submission is the key word.

24 Context, again the context here of course is
25 an Inquiry into the most serious of matters, as indeed

1 you opened proceedings this morning by highlighting, the
2 death of a man at the hands of police officers. The
3 context of the Inquiry calls for the maximum amount of
4 openness that is possible and the minimum amount of
5 closed evidence and anonymity that is actually
6 necessary.

7 We accept, again in terms of context, that there is
8 intelligence relating to organised crime, an organised
9 crime group, which does to some extent distinguish this
10 case from other cases where that does not arise. It is
11 obviously pertinent to the way in which the balancing
12 exercise is carried out but it doesn't in fact create
13 any new principles and therefore it is a matter for the
14 balance rather than a matter for principle.

15 In particular, in carrying out the balancing
16 exercise in respect of each of these applications, we
17 would urge you to take careful consideration that police
18 officers regularly give evidence against serious
19 criminals in open proceedings, open court cases, often
20 leading to life imprisonment, very long terms of
21 imprisonment.

22 In terms of the leading case, the House of Lords
23 case of Officer L, in bundle B at tab 5, we have
24 referred to paragraphs 3 and 4 where the House of Lords,
25 Lord Carswell started his opinion by indicating the

1 context of those applications. Applications which in
2 the event rejected anonymity applications.

3 The context of course in that case was a long
4 history of a paramilitary campaign which led to some 300
5 deaths.

6 We note again in terms of context that there is
7 certainly no open evidence of police officers being
8 targeted by anyone to do with this case or these
9 matters, indeed in terms of what is known publicly,
10 I will go so far as to say in submission that there is
11 scant evidence of any organised crime groups targeting
12 individual police officers in the north-west, despite
13 the level of gang violence and firearm related violence
14 that you of course will be well aware of.

15 We don't pass lightly over the dangers of policing,
16 as I have said, but we do say that those matters should
17 be weighed carefully in the balance.

18 With respect to this submission and the evidence of
19 Mr O'Hare relating to reliance on covert policing and
20 the TFU, the tactical firearms unit. In our submission
21 this is a general, a class claim, if I can put it in
22 that way, not related to the specifics of this case.
23 Certainly at paragraph 52 of Mr O'Hare's statement,
24 which is at tab 6, Mr O'Hare refers to the inevitability of
25 tactical firearms unit officers being removed from that

1 unit were they to give evidence in open court. We
2 submit that the Inquiry should be particularly careful
3 on this ground, because, as we understand it, and we
4 will be corrected by those sat behind me if this is
5 wrong, but as we understand it the TFU patrol openly and
6 their key role in operations such as the one under
7 consideration here is not covert but supporting other
8 covert officers. Indeed we note in deployment Q9, of
9 course the officer right at the centre of these matters,
10 appears to have gone out of his way to be visible and
11 identifiable in respect of this particular operation.
12 Given the position of the tactical firearms unit's role
13 generally, we say that anonymity applications on the
14 basis that they would be unable to continue their roles
15 is simply unrealistic.

16 We say that with some back up, if I can put it that
17 way, because these submissions have been made in another
18 case which we have referred to in the bundle. A similar
19 argument on this basis was raised by Greater Manchester
20 Police, and indeed Mr O'Hare, in the case of Begley,
21 tab 14.

22 THE CHAIRMAN: I have read that.

23 MR WETHERBY: That is very helpful and I don't need to take
24 you to it.

25 A similar argument was run and rejected by the very

1 senior coroner, who carefully considered it and on being
2 rejected, the officers gave evidence in open court
3 without special measures and indeed there was no
4 challenge to the detailed ruling given by the Greater
5 Manchester coroner. It is not a binding decision in any
6 way, of course, and of course the factual basis of
7 Mr Begley's case is significantly different to the
8 factual basis underpinning the current, the instant,
9 facts. But there is overlap we say in this specific
10 part of the submissions made by Greater Manchester
11 Police, and we say that as far as this application is
12 put on this class basis for the TFU and indeed the
13 counter terrorism and specialist firearms unit, we say
14 it should be rejected and we say that the Begley ruling
15 is of some assistance in that, not least because of what
16 happened following from that submission.

17 I am coming to the end of my submissions. I want to
18 address, finally, the one piece of specific intelligence
19 that we know about that followed the death of
20 Mr Grainger, which was the rumour that a reward was
21 being offered for the killing of a police officer.
22 Assuming this threat was made, which of course we do, it
23 was made in the aftermath of the emotion, we don't know
24 by whom. As we understand it nobody has been arrested
25 as a result of that.

1 We note from Mr O'Hare's statement at 67 and 70,
2 that it was made in the immediate aftermath of the death
3 and there is no further intelligence which relates to
4 that threat or indeed, as we understand it, any others.
5 It will be about five years between the making of that
6 threat and the start of the hearings. It doesn't appear
7 to have related indeed to any specific officers, it was
8 again specifically raised in the context of the Begley
9 argument and, again, we commend the comments of the
10 coroner with respect to that rumour, which is at
11 paragraph 48 of the Begley ruling.

12 THE CHAIRMAN: Which I have also read.

13 MR WETHERBY: Which you have read, and we submit that you
14 should give it little weight, given its age, other
15 considerations and the fact that there does not seem to
16 be any further action following from that threat.

17 Taking all of those matters that I have raised and
18 all the written submissions that we have made in the
19 round. As I say, we don't take an unrealistic position
20 that there should be no anonymity here. As I say, we
21 can see a case for Q9 being the officer who is central
22 to these events but really, when we march away, if I can
23 put it that way, from the actual shooting, the further
24 officers get away from the events, we submit the
25 balancing exercise changes considerably and that there

1 is no proper basis for allowing the submissions beyond
2 either Q9 or a very small number of other officers.

3 Unless I can assist further.

4 THE CHAIRMAN: No, thank you very much indeed, Mr Wetherby.

5 MR BEER: Sir, before you move to hear other submissions it
6 might be time for the break.

7 THE CHAIRMAN: I am going to take the break at this stage,
8 thank you Mr Beer.

9 The other matter I wanted to raise with you briefly
10 is the suggestion of further protocols, do you want to
11 deal with that now or later?

12 MR BEER: Later please.

13 THE CHAIRMAN: I think the time has come at which it is
14 only right to give the loggists a break, so we will take
15 10 minutes at this stage.

16 (11.40 am)

17 (A short adjournment)

18 (11.56 am)

19 MR BEER: In fact it was Mr Evans rather than Ms Whyte who
20 was going to make the submissions on behalf of the GMP,
21 my mistake.

22 THE CHAIRMAN: Thank you.

23 Mr Evans.

24

25

1
2
3
4
5
6
7
8
9
10
11
12
13
14
15
16
17
18
19
20
21
22
23
24
25

Submissions by MR EVANS

MR EVANS: I am grateful.

Sir, reliance is placed on the written submissions that have been provided on behalf of GMP. Sir, the application as has been stated does relate to a large number of witnesses in relation to the open witness list and those fall into categories where witnesses are seeking anonymity and protective measures and, in respect of one witness, seeking protective measures.

Notes have been lodged in support of the applications so it is also right to indicate that an application has been lodged in respect of six witnesses on the closed list, so that is also a matter which echoes submissions made by Mr Wetherby in relation to at least straying into the closed list.

Sir, the applications themselves, the position is that the GMP rely upon the statements provided by the individual witnesses and also the supporting statement in support of those applications.

Sir, can I just indicate as far as the clarification that Farleys very properly sought in relation to the request that are made for screening and voice modulation, very properly clarification was sought on 1 November. It is right to say of course, the email is in bundle C, that GMP did respond on 7 November to

1 indicate that the applications for screening and voice
2 modulation would extend to Marina Schofield,
3 John Schofield, Stuart Grainger and
4 Gail Hadfield-Grainger, and a note was submitted to that
5 effect.

6 The position is though that keeping the position
7 under review and giving further consideration to those
8 matters, including, I think it is right to say, the
9 detailed submissions supplied on behalf of members of
10 the family, GMP no longer wished to pursue that
11 application for screening and voice modulation from Mr
12 and Mrs Schofield and from Ms Gail Hadfield-Grainger in
13 respect of any witness seeking anonymity and protective
14 measures, with the sole exception of Q9.

15 In relation to Mr Stuart Grainger, GMP does still
16 wish to pursue an application for screening and voice
17 modulation from Stuart Grainger in respect of all
18 witnesses seeking anonymity and protective measures.
19 Sir, certainly as far as Mr Thomas is concerned in his
20 written documents, they take as it were a neutral or
21 a stance which does not object to that in relation to
22 Stuart Grainger.

23 THE CHAIRMAN: I still have to be satisfied that the grounds
24 are made out though.

25 MR EVANS: You do, sir, of course, that is not in any way

1 determinative and as Mr Thomas has said neutral in
2 relation to the applications.

3 We apologise for the inconvenience that caused in
4 relation to the necessity for further statements being
5 then being submitted and applications lodged.

6 In respect of the matters very helpfully set out in
7 the note from counsel to the Inquiry in terms of
8 anonymity and the approach. Sir, we respectfully agree
9 with the analysis set out at paragraphs 37 and 38 in
10 relation to underlining the importance of sections 18
11 and 19 of the Inquiries Act. Sir, of course, these
12 applications for anonymity and protective measures are
13 for restriction orders, they plainly engage and are
14 falling to be determined according to section 19. The
15 statutory basis we respectfully agree has been properly
16 set out in counsel to the Inquiry's note and also to add
17 to that, of course is section 17, the requirement that
18 the chairman must act with fairness in relation to that
19 statutory obligation, which does in this case we would
20 submit have an overlap with the common law duty of
21 fairness that is engaged.

22 Section 18 of course of the Act underlines the
23 importance of the principle of openness and access, the
24 very principles that Mr Wetherby very properly
25 underlines as being of significant importance to the

1 Inquiry. Nevertheless, section 18 is of course
2 qualified by restrictions that can be properly imposed
3 by virtue of section 19, and so section 19, firstly
4 section 19(3)(a), as set out in counsel to the Inquiry's
5 note, that effectively therefore engages article 2 and
6 article 8 of the convention. Sir, also then in relation
7 to section 19(3)(b) we respectfully agree with the
8 analysis that therefore you as the chairman can
9 therefore consider restrictions under 19(3)(b) where
10 they are necessary in the public interest. That
11 therefore engages section 19(4) and section 19(5). Of
12 importance here we submit is that the language of
13 section 19(4), the risk of harm or damage, includes harm
14 or damage where that might involve death or injury.

15 Sir, in respect of the second legal issue identified
16 in counsel to the Inquiry's note, screening from the
17 public and screening from family members. Sir, it is
18 submitted here that yes the application is indeed to
19 screen all 23 witnesses from Mr Stuart Grainger and to
20 seek then modulation in respect of the two witnesses who
21 seek it and in a sense, of course, sir, while the
22 neutrality of Mr Thomas to that application is not
23 determinative, GMP does place reliance on the matters
24 set out in Mr O'Hare's second statement at A6.1 in
25 respect of Mr Stuart Grainger regard can properly be had

1 to his antecedents, his criminal background and his
2 conviction. The fact of that conviction for murder as
3 set out in short terms in the statement and what is
4 inevitably ongoing criminal association given the
5 sentence that he is serving.

6 Sir, it is then in relation to Q9 and Q9 alone that
7 the application is made in respect of Mr and
8 Mrs Schofield and Ms Gail Hadfield-Grainger in respect
9 of screening and/or voice modulation. Therefore it
10 relates solely to Q9 and, sir, submissions are to be
11 made as we have seen in writing on behalf of Q9, GMP are
12 supportive of those matters set out on Q9's behalf and,
13 sir, are referred to also by Mr O'Hare in terms of
14 concerns that he raises that members of the family would
15 place themselves at risk of either intimidation or
16 certainly pressure from others with an interest in
17 seeking information that would enable them to identify
18 Q9, so there are quite specific considerations that
19 attach in respect of Q9's case.

20 Sir, the third of the legal issues in counsel to the
21 Inquiry's note, that is any apparent differences in
22 terms of the test to be applied between anonymity in
23 inquests or quasi judicial proceedings or criminal
24 proceedings, we would respectfully submit that there is
25 no greater latitude per se in permitting anonymity at

1 an Inquiry and that you ought to apply the same
2 principles in relation to the starting point being one
3 of open justice and departures from that are justified
4 only if they meet the statutory criteria, section 19
5 and/or common law considerations.

6 Sir, reliance is placed then on the supporting
7 material from Mr O'Hare. I will not repeat the
8 criteria, sir, you have read them and you have
9 considered them but he sets out in his statement where
10 he says those particular considerations are then
11 individually engaged in respect of the individual
12 witnesses seeking anonymity and the protective measures.
13 Sir, the starting point you may think is then
14 consideration as to article 2. Sir, the submissions
15 made shortly are that the article 2 basis in terms of
16 the submissions advanced, it is accepted impose a high
17 threshold as set out in Re Officer L and as set out in
18 the statement of Mr O'Hare, reliance is placed on the
19 intelligence received after the fatal shooting of
20 Mr Grainger that associates of his have offered the sum
21 of £50,000 to anyone who shoots and kills a police
22 officer. While of course it is noted that that is
23 intelligence which is old, 2012, as Mr O'Hare opines and
24 sets out in the statement, there being no repeat of
25 that. Nevertheless, it is submitted here for the

1 consideration, sir, of you the chairman, that
2 nevertheless it is GMP's proper belief that there
3 remains a credible threat to those firearms officers and
4 to their commanders. Again that echoes very much the
5 terms of reference at least of the Inquiry to the extent
6 that where such information, threats or concerns arise,
7 it can be said to apply to those witnesses who the
8 Inquiry intends to call, those being both those involved
9 in the operational deployment but also those involved in
10 the planning and management of the operation.

11 Sir, in respect then of article 8, we submit those
12 considerations are also then engaged. Article 8 falling
13 to be assessed by you under section 19(3)(a) and that,
14 sir, it is open then to you to assess the extent to
15 which naming any officer and/or not permitting the
16 restrictive measures sought would amount to interference
17 with those article 8 rights, and the Inquiry, it is
18 submitted here --

19 THE CHAIRMAN: An unjustified interference.

20 MR EVANS: Indeed, an unjustified interference. That is the
21 principle that is espoused. Again, sir, in respect of
22 those observations, what Mr O'Hare sets out as
23 consideration for you the chair at criteria C and D,
24 namely the impact upon the officers concerned if the
25 measures were not granted, are matters that you can

1 properly take into account and to properly balance.

2 Sir, in respect of public interest, that is a ground
3 which is specifically relied on in terms of the
4 application. That then engages the language, the
5 statutory language of 19(3)(b) and here it is submitted
6 that protective measures in this case that would attach,
7 it is accepted, to a large number of witnesses who are
8 to give evidence, are indeed justified where disclosure
9 of the name of the witness or their appearance would
10 fundamentally impair their ability to continue to work
11 in specialist areas that rely upon covert deployments,
12 thereby causing really harm to the public interest.
13 That then is also set out in Mr O'Hare's statement at
14 criteria C and criteria D.

15 Sir, in respect of section 17, that is the statutory
16 duty, the Inquiries Act, that is to act fairly, that
17 clearly has an overlap and echo with the common law
18 principle of fairness, and that is set out in the
19 Pitchford ruling in bundle B. The application of
20 an exercise being a balancing test and it is submitted
21 here that there are important considerations that then
22 attach to that common law duty of fairness, which is
23 where, although the intelligence is not recent and, if
24 it does not meet the article 2 threshold, does have
25 a significant bearing upon the subjective fears of the

1 individual witnesses.

2 Sir, in respect of the observations properly made in
3 relation to the Begley case, here it is submitted that
4 this Inquiry is dealing with a very different case and
5 a very different set of circumstances to those in the
6 Begley inquest.

7 THE CHAIRMAN: That may be, but were the same arguments
8 advanced in that case as are being advanced now, in
9 particular the sort of statements you have referred to
10 from Mr O'Hare?

11 MR EVANS: Certain statements were advanced in relation to
12 the status of officers, that were primarily armed
13 response officers. There may have been some officers
14 who also operated in the capacity as firearms officers,
15 but in that particular case, the nature of the
16 intelligence that was referred to in the Begley case, it
17 was accepted, did not attach to anyone directly
18 concerned with the Begley case in terms of the officers.
19 Here of course the intelligence which is available does
20 relate to the Grainger shooting itself, whereas in
21 Begley this was several stages removed.

22 The Begley case, this was not a case where organised
23 crime groups featured and so there are important
24 distinctions in relation to this case compared to those
25 matters that appeared in Begley, where here, this is

1 a case which does touch upon organised crime groups,
2 organised crime and also, here therefore, a different
3 set of circumstances.

4 In that case, the Begley case, it is understood that
5 they were acting primarily as armed response officers
6 and not as covert tactical firearms officers. Sir, of
7 course we will take instructions to conclusively deal
8 with the point raised by Mr Wetherby that TFU officers
9 patrol openly. It is understood that is not the case
10 but sir, I hope we will have the liberty to confirm the
11 position and then provide further information in due
12 course to you, sir, to deal with it.

13 Sir, in relation to these matters, while of course
14 it is important to note that the intelligence relies
15 upon a single matter, namely dated information, the
16 reward offered, no one arrested, nevertheless while
17 impacting upon the article 2 considerations, those are
18 still matters that significantly engage, it is
19 submitted, the common law test. To that extent what is
20 significant here in terms of then public interest
21 argument on utility and the like is that Mr O'Hare is
22 entitled to rely upon his analysis that to deprive
23 officers who do perform these sorts of roles, in
24 particular the counter terrorist specialist firearms
25 operations, there would inevitably be very significant

1 impediment and erosion of their ability to continue to
2 be deployed in that capacity.

3 We rely upon the matters that we have set out in
4 short form in terms of the concluding submissions in the
5 note of 26 October and we would submit that, as
6 chairman, you have the power to grant those protective
7 measures sought.

8 THE CHAIRMAN: Thank you.

9 MR EVANS: Unless I can assist further.

10 THE CHAIRMAN: Yes, Ms Barton.

11 Submissions by MS BARTON

12 MS BARTON: On behalf of the National Crime Agency, the NCA
13 accepts the legal framework or scaffolding for these
14 applications in sections 18 and 19. Our submissions are
15 directed at the factors that you may take into account
16 in deciding whether there are grounds to exercise your
17 powers under section 19.

18 Sir, I say this, that the arguments about numbers
19 are superficially attractive as advanced by Mr Wetherby
20 but, of course, it is not about numbers, it is about the
21 merits of individual applications, as he says. There
22 may be, because of the particular facts of this case,
23 a large number of witnesses who require restriction
24 orders. In the case of the NCA, our application is that
25 all of the NCA witnesses fall within the requirement

1 that their evidence be given within closed proceedings
2 and with the exception of one witness, namely
3 Mr Farrimond, the deputy director whose identity is in
4 the public domain, they require anonymity insofar as any
5 later report is concerned.

6 The anonymity may in fact be a short step if indeed
7 the evidence is given in closed proceedings.

8 Sir, can I indicate this, that we have considered
9 very carefully at the highest level the NCA applications
10 for all the evidence to be in closed proceedings in
11 light of the written submissions made by the other core
12 participants, because of course we have had notice of
13 those. We are particularly cognisant of the concerns of
14 the family members and acknowledge the need for open
15 justice. So there has been specific consideration to
16 the request that more detail is given about the covert
17 policing role which is referred to in the open
18 submissions and open statement and risk assessments.

19 Sir, that leads on to the issues about a protocol
20 which, again, superficially is very attractive but the
21 issue is in respect of NCA witnesses, it is simply not
22 workable because any additional information which the
23 Inquiry would be able to provide would not just be
24 slender in the case of the NCA witnesses, it would be
25 non-existent. The reason for that is that the NCA

1 position is that we are simply unable to give more
2 detail.

3 The NCA application is made on the basis of two well
4 established categories of protection.

5 One is to protect the officers involved and the
6 public.

7 The second, which is perhaps more pertinent in
8 respect of the NCA, is police methodology.

9 THE CHAIRMAN: Yes.

10 MS BARTON: Having given very careful consideration to
11 whether it is public to give more information, the
12 answer to that is it is simply not in the case of the
13 NCA. We simply rely upon the written submissions that
14 we have made. Whilst we fully accept that it may be
15 unpalatable for a number of witnesses from one
16 organisation to give evidence in closed proceedings,
17 regrettably, because of the nature of the evidence they
18 are to give, that is the inevitable result in these
19 proceedings.

20 THE CHAIRMAN: Thank you, Ms Barton.

21 Mr Davies I think you are next. I don't know
22 whether you wish to add anything to your written
23 submissions.

24

25

1 Submissions by MR DAVIES

2 MR DAVIES: No, I can try to crystallise what Q9 is seeking.

3 In our written submissions of 8 November, at
4 paragraph 5 --

5 THE CHAIRMAN: Can I just turn those up.

6 (Pause)

7 I'm just having difficulty at the moment laying
8 hands on it.

9 MR BEER: I think it should be bundle C, tab 7. Albeit

10 I think they are dated the 7th rather than the 8th.

11 MR DAVIES: Yes.

12 THE CHAIRMAN: Thank you, I have it, and have read it and
13 annotated it.

14 MR DAVIES: Sir, so this is transparent, what is sought on
15 behalf of Q9 is anonymity and, secondly, screening from
16 all persons with the exception of firstly yourself,
17 secondly counsel to the Inquiry, and thirdly recognised
18 legal representatives for core participants. We are not
19 proactively seeking voice distortion for Q9. It being
20 the case that our assessment is that his voice is not
21 sufficiently distinct to provide a basis for recognition
22 without any other information.

23 THE CHAIRMAN: Yes.

24 MR DAVIES: The corollary of that of course is that family
25 members will be able to hear his evidence and evaluate

1 it and the manner in which it is given, and the only
2 thing that will be lost is seeing the witness as he
3 gives evidence.

4 Paragraph 15 of the same document sets out, and I do
5 not propose to read it out again, the point we make
6 that, whilst we accept that the family members other
7 than Stuart Grainger do not in themselves represent
8 a threat to Q9 -- there is no factual basis for us to
9 say that -- the fact that Stuart Grainger is such
10 an obvious and acute risk, and knows the same family
11 members, provides a set of circumstances whereby the
12 ordinary expectation of affected family members to see
13 a witness as they give evidence is overridden by the
14 quality of threat that would arise if that were to
15 occur.

16 Sir, in relation to Stuart Grainger, as you have
17 indicated, even from open source material, it is the
18 first page one gets if you Google "Stuart Grainger
19 Salford", you have a set of circumstances as to his
20 criminality that are stark and chilling. In summary, as
21 sir, you will have seen, as part of a vendetta, to quote
22 Mr Justice Butterfield at 5 and 6 of his decision, and
23 having failed to achieve his purpose with a machete,
24 within half an hour, Stuart Grainger was able to source
25 a Mac 10 machine gun and use it in public in

1 a residential area to execute, and that is not
2 an overstatement, one of his rivals.

3 It is reported in open source material that,
4 following his conviction, witnesses to those events were
5 subject to explosive devices being thrown through their
6 kitchen window. Had he been sentenced under the
7 contemporary regime, as Mr Justice Butterfield has
8 pointed out, he would have received a minimum
9 recommendation of some 30 years or thereabouts. He is
10 an acute ongoing enduring risk and he clearly believes
11 that Q9 murdered his brother. It is not something he is
12 going to forgive or forget or overlook, the passage of
13 time argument gains no traction.

14 It follows that, when you put yourself in the
15 position, either objectively or subjectively even from
16 open source material, of Q9, if anything were to occur,
17 it would lead to the greater potential for his visual
18 identification, albeit through others who may be
19 reluctant to give it. If pressure can be applied on
20 them to provide such visual identification or to be
21 asked to identify a photograph take covertly of someone
22 believed to be Q9 or a similar firearms officer, this
23 Inquiry could offer absolutely no protection from the
24 quality of threat that would follow.

25 So, subjectively and objectively, Stuart Grainger

1 has, we submit, disqualified the right that would
2 otherwise arise, the expectation, to be more precise, of
3 other family members seeing Q9 give evidence. That
4 would be, in the language of these things,
5 an unjustified interference under article 8 to Q9 and
6 were Stuart Grainger to be put in the position where
7 issue of identification were achieved, the threat to Q9
8 would be in article 2 terms real and immediate. It is
9 quite a category of criminal that can source a Mac 10
10 machine gun at 30 minutes' notice and use it as he did.

11 Family members are in a different position to legal
12 representatives for them because of course such legal
13 representatives have not been shown historically to be
14 put under such pressure, that is a reduced risk, and if
15 they were, you, sir, could be more confident that the
16 lawyers concerned would override any threat to
17 themselves by reporting what had occurred to the
18 appropriate authorities. You could not have the same
19 quality of reassurance or expectation from terrified
20 family members.

21 Begley is plainly distinguishable. In that case the
22 application was somewhat parasitic on the threat arising
23 in these proceedings to non-covert officers involved in
24 a Taser incident where they attended in a non-covert
25 capacity. The risk of a generalised threat to firearms

1 officers arising from Begley was not made out on the
2 facts. That is as far as it can go. It doesn't take
3 you any further. It is after all only a decision of,
4 with all due respect, a coroner. You must apply the
5 principles to the facts as you have them.

6 Sir, in Azelle Rodney, you will appreciate that the
7 approach taken was that the principal firearms officer,
8 he that fired the lethal shot, was appropriately put in
9 a category where anonymity arose and we say on the facts
10 of this case, you should take the further step to
11 prevent the unjustified interference that would
12 otherwise arise and continue by preventing Q9 at least
13 being seen by family members, and that is no reflection
14 on them.

15 If anything, the risk will increase once these
16 events are back in the public consciousness when the
17 Inquiry starts substantively next year.

18 THE CHAIRMAN: Thank you, Mr Davies.

19 I think at this stage, it is a question of whether
20 there is any reply, isn't it?

21 MR BEER: I was about to say, I think Mr Wetherby or
22 Mr Thomas may have wanted to say something.

23 THE CHAIRMAN: Yes Mr Thomas.

24

25

1 Submissions in reply by MR THOMAS

2 MR THOMAS: Sir, can I just deal with the submissions made
3 on behalf of Q9, in relation to --

4 THE CHAIRMAN: Yes.

5 MR THOMAS: -- whether or not there should be, because of
6 Stuart Grainger's criminal past, a blanket type
7 application that affects the other family members.

8 Sir, we entirely reject that approach and we
9 entirely reject that suggestion of risk. We submit that
10 that's farfetched. Sir, if you just stand back and
11 think about what the submission amounts to. It
12 effectively is saying that Stuart would bring pressure
13 to bear upon his mother and partially sighted -- let's
14 not forget that the stepfather is partially sighted, so
15 to an extent most of these submissions in relation to
16 visualisation will not really apply to him -- bring
17 pressure to bear upon his mum to somehow force her,
18 contrary to your ruling, to give a description in
19 relation to his client. We say, with the greatest
20 respect, that is just nonsense.

21 Indeed, sir, we say that the provisions in relation
22 to anonymity and these provisions that were given in the
23 case of Azelle Rodney, the cyphers are more than
24 sufficient. Although those submissions are made in what
25 can only be described as a fairly emotive way, we ask

1 you, sir, to take a step back, take out the emotion
2 behind the submission that has been made, look at this
3 dispassionately and, when one looks at it
4 dispassionately, our submission is that there is nothing
5 in it, that there isn't the risk. The risk is easily
6 dealt with with the use of cyphers.

7 May I just add this. Sir, if you look at the
8 rationale and the reasoning behind why the family
9 members, if one takes away the suggestion that there is
10 any risk and it has already been conceded that in
11 relation to the other family members, there is no risk,
12 that concession has been made, the reason why they
13 have -- and I put it as highly as this -- an entitlement
14 to see the person who accepts that he killed their son,
15 is that this is an inquiry, this is a public inquiry
16 and, sir, you rightly recognised the anguish of close
17 family members who, it is not just a hearing of the
18 evidence, it is the seeing of the witnesses. This is
19 all part of that process which families go through when
20 they come to an Inquiry to find out: how did my loved
21 one die? That cannot be ignored, particularly when you
22 put that into the balancing exercise.

23 Sir, that is all I say in relation to the
24 submissions that have been made and I repeat, again, we
25 pray in aid our written submissions.

1 THE CHAIRMAN: Thank you Mr Thomas.

2 Mr Wetherby is there anything you want to say by way
3 of reply.

4 Submissions in reply by MR WETHERBY

5 MR WETHERBY: Can I adopt those submissions in terms of the
6 screening of Q9 and just say this, that the points that
7 are made in terms of the screening of Q9 from my client
8 and the other family members, the points that are made
9 are highly speculative. What is it, we submit, that
10 they could, if forced to do so, what is it could they
11 convey about Q9 that would lead to his identification?

12 The highest that is put is that if other
13 unidentified, unknown criminal associates of
14 Stuart Grainger were to obtain a photograph which they
15 thought might be Q9, that is speculation upon
16 speculation. We submit that the importance of this
17 particular witness to this Inquiry is so obvious that
18 the importance of this witness to the family members and
19 my client is such that he should not be screened unless
20 there is an absolutely compelling reason to do so and
21 that, we submit, there is not.

22 Can I make two further points in reply. First, on
23 the Begley case, of course you have read the Begley
24 case --

25 THE CHAIRMAN: Yes.

1 MR WETHERBY: -- but can I just remind you respectfully of
2 just two passages from it. Paragraphs 12 and 13 deal
3 with who Greater Manchester Police were submitting ought
4 to be given anonymity. Five officers, two of them were
5 tactical firearms unit officers and two of them were
6 counter terrorism and specialist firearms unit officers.
7 No doubt that is what the application was that was made.
8 At paragraph 48, may I just read two of the conclusions
9 of the learned Greater Manchester coroner:

10 "The claim made that the TFU officers would have
11 difficulty in continuing with their work should their
12 identities be disclosed seems weak when members of the
13 TFU are regularly seen on the streets of Greater
14 Manchester carrying weapons and mingling with members of
15 the public.

16 "For both D14 and J1 as well as H1 and H4, those are
17 the four officers I have referred to already, it is not
18 suggested that counter terrorism operations or covert
19 operations forms an essential part of their day-to-day
20 work. They are simply able to assist if called upon to
21 do so."

22 Those are the passages that underpin the submissions
23 I made earlier about that ruling.

24 Thirdly and finally, in terms of the NCA
25 application, I simply underline the submission that

1 I made earlier, that this is about a quarter or a third
2 of the witnesses that this Inquiry is to hear from. Of
3 course from where I stand, I am not aware of what you
4 will be able to tell us but whatever that is, or indeed
5 even if it were to be nothing in taking it to
6 an extreme, then there ought to be a process and the
7 Inquiry ought to say publicly that it is unable to
8 indicate the nature of that evidence.

9 Those are the submissions that I make.

10 THE CHAIRMAN: Thank you.

11 Yes, Mr Beer.

12 Submissions in reply by MR BEER

13 MR BEER: Sir, as you have rightly said, you need to be
14 satisfied that the grounds for anonymity or protective
15 measures are established on the evidence and in
16 accordance with the law in relation to each application
17 that is made. But it might be helpful, I thought, if
18 I set out the position as it has crystallised as between
19 Mr Thomas's clients and Greater Manchester Police and
20 the NCA.

21 THE CHAIRMAN: Yes.

22 MR BEER: It appeared to me to be this. First, Mr Thomas's
23 clients do not argue against any of the applicants
24 giving their evidence anonymously, ie not in their real
25 names but instead by reference to a cypher. That is

1 what "anonymity" means in this context.

2 Second, Mr Thomas's clients do not object, or do not
3 argue against the applications as far as they seek
4 screening from the public and from Stuart Grainger.

5 Third, for its part, GMP accepts that all witnesses
6 who have made applications, save for Q9, should not be
7 screened from Mr and Mrs Schofield and
8 Gail Hadfield-Grainger.

9 As between, fourthly, Mr Thomas and GMP, the issue
10 is whether Q9 should be seen by the three family members
11 other than Stuart Grainger. In that connection
12 a parallel might be drawn to one of the cases that is in
13 the bundle before you, if you can turn up bundle B,
14 please, at tab 10, where the divisional court was
15 recently confronted with a not dissimilar situation.

16 THE CHAIRMAN: Hicks?

17 MR BEER: Yes.

18 THE CHAIRMAN: Yes, yes.

19 MR BEER: This was not a police shooting, it was a police
20 pursuit. If you look at the top of the fourth page of
21 the report, you will see the court rehearsing some of
22 the examples of social media traffic, just above
23 paragraph 9, which the coroner was in due course to find
24 was sufficient threatening material to found a real
25 apprehension of threat to the four officers concerned,

1 just above paragraph 9.

2 The court, Mr Justice Irwin giving the judgment of
3 him and Lord Justice Gross, at 10 said that:

4 "Whilst much of this material was likely to have
5 been venting of feelings rather than the expression of
6 genuine threat, the volume and tone of the threatening
7 material was and in my view is in my view sufficient to
8 give rise to a real apprehension of threat to the four
9 officers concerned if they were to be identified."

10 This is third party material creating, ie not coming
11 from family members, a threat sufficient to justify the
12 non-identification but anonymity and screens of the four
13 officers concerned.

14 The court rehearses the order that the coroner made
15 at paragraph 22. She gave her conclusions as follows:

16 "I shall not rehearse all of the submissions made to
17 me this morning, save to say in essence that the
18 facebook and other social media postings that have been
19 made, have come to light apparently, these were not, the
20 Metropolitan Police Services legal team were not aware
21 of these before and certainly they were not put before
22 me. In addition I have been told and accept that the
23 officers would be easily recognisable, I found this
24 a very difficult decision to make. In June 2015 I made
25 the order that witness anonymity should be granted,

1 I see no reason to go behind that now. However, what
2 I have to decide is whether this variation is needed in
3 order to give effect to that order."

4 Interposing there, this was an application that not
5 only should the public be screened from the witnesses
6 but family members should be behind the screens as well:

7 "It does not seem to me to be likely that family,
8 that immediate family members who were in court will act
9 in a way that will cause officers A to D physical harm.
10 However, I accept that they may find it irresistible to
11 pass on or communicate in some way with others the
12 identity of those officers. I don't make this decision
13 lightly. As I have indicated it has been very much my
14 wish that family members should see the officers
15 concerned. I am very conscious of the power of being in
16 the same room as the person that one holds responsible
17 for a death. However I am extremely concerned about the
18 safety of the officers and I think it is necessary in
19 order to give effect to the order that I made last
20 year."

21 That was the order that was the subject of challenge
22 in the divisional court.

23 If we could go forward to paragraph 38:

24 "The starting point for considering the approach
25 taken by the coroner is her order of June 2015, the

1 order anonymised these witnesses on the basis of the
2 evidence of threat then before the court. There was and
3 is no challenge to that order. It was in my judgment
4 a proper step to take as matters then stood to protect
5 the lives and safety of the four police officers
6 concerned. As the evidence then stood it was
7 a sufficient protection from a threat which was then
8 more generally stated as arising within the broader
9 community. However anonymity, suppression of the
10 identity of the officers was a critical element in the
11 order. Anything which breached anonymity would even at
12 that stage necessarily have been seen as frustrating the
13 order."

14 39:

15 "The coroner was then confronted with the additional
16 material drawn from the internet, she was of course much
17 closer to the detail of the process than could be the
18 case in this court, she was alive to all the nuances and
19 detail."

20 Then this:

21 "In my view it was not necessary for her to find
22 that the family members themselves represented
23 a deliberate and direct threat to the safety of those
24 officers. What she found was that there was a real risk
25 of such a threat arising from others if the family

1 learned the identity of the officers concerned. There
2 is nothing irrational or unfair in that finding."

3 On slightly different facts where the real and
4 immediate threat to the officers arose from a third
5 party, ie the public, the coroner held that it was
6 necessary in order to give effect to her order that the
7 officers give evidence anonymously and screened, for
8 family members also to be behind the screens. Here, the
9 way it is put by GMP is that, and Q9, is that the threat
10 arises from Stuart Grainger and that it is not necessary
11 for the court to find that the remaining family members
12 themselves represent the real and immediate threat but
13 that there is a real risk of information being passed.

14 That is I think the only parallel I can see from the
15 authorities.

16 THE CHAIRMAN: Thank you very much.

17 EXPERT EVIDENCE - POLICE COMMAND AND CONTROL

18 Submissions by MR BEER

19 MR BEER: Sir, can I turn then, if we have finished
20 anonymity --

21 THE CHAIRMAN: Yes.

22 MR BEER: -- and protective measures for now to turn to the
23 evidence of Messrs Pemberton and Sturman.

24 THE CHAIRMAN: Yes. Before you do, I am sorry, the question
25 of another protocol, is that something you want to deal

1 with later? I don't mind when it is dealt with.

2 MR BEER: I can see the force in what Mr Wetherby says, that
3 the Inquiry should communicate its view as to the
4 ability of some, or more information about the evidence
5 that the closed witnesses can give should be
6 communicated to the core participants.

7 THE CHAIRMAN: Yes. That doesn't require necessarily
8 a protocol.

9 MR BEER: It doesn't, no, but the Inquiry can communicate
10 it.

11 THE CHAIRMAN: Yes, I understand. Sorry to have interrupted
12 you there.

13 MR BEER: Even if it is more than slender, or less than
14 slender, as Ms Barton put it.

15 THE CHAIRMAN: Yes. Thank you.

16 MR BEER: We can do that either in correspondence or as part
17 of the rulings that you give.

18 THE CHAIRMAN: Yes.

19 MR BEER: Messrs Pemberton and Sturman. Could I invite you
20 to turn up, please, bundle C at tab 12, which are the
21 GMP submissions. Go to paragraph 6D --

22 THE CHAIRMAN: Yes.

23 MR BEER: -- which reads:
24 "We would invite the Inquiry to consider the
25 following: attendance of Simon Pemberton and Dave

1 Sturman, experts in command and control. The Inquiry's
2 expert is being called. We see no reason why the
3 experts instructed by GMP should not be called, given
4 that there may well be disagreement by witnesses about
5 the opinions of Mr Arundale. These witnesses are likely
6 to be questioned robustly and there is no obvious reason
7 why Mr Arundale should not be challenged where
8 appropriate about his own opinions."

9 You will have also seen what Mr Thomas says in
10 a supplemental note, this is tab 14, paragraphs 20 to
11 24. There is no need to turn that up for now.

12 We submit that you should not require these two
13 witnesses to be called. The short background, which is
14 known to core participants but probably not to the wider
15 public, is that in the course of the prosecution of
16 Sir Peter Fahy, the then General Chief Constable of
17 Greater Manchester Police, for breach of the Health and
18 Safety at Work Act 1974, the Crown relied on the expert
19 report of Martin Molloy, he was a National Crime Agency
20 expert who had identified a significant number of
21 serious failings in the management of Operation Shire by
22 Greater Manchester Police.

23 In response, Greater Manchester Police instructed
24 Messrs Pemberton and Sturman to prepare a report -- they
25 are other police officers from other forces -- that

1 addressed or sought to address the serious criticisms
2 made by Mr Molloy. They each prepared reports which for
3 the most part suggested, in summary, that Mr Molloy's
4 criticisms were wrong or, even if they were correct,
5 were irrelevant criticisms. The Inquiry has
6 commissioned its own expert evidence from Mr Arundale --

7 THE CHAIRMAN: Yes.

8 MR BEER: -- it informed core participants at the last
9 hearing that it was commissioning its own expert
10 evidence on the police and command and control of
11 Operation Shire and allowed core participants to
12 contribute to the letter of instruction, which Greater
13 Manchester Police did.

14 Mr Arundale's report is now available. It makes
15 very serious criticisms of Greater Manchester Police's
16 conduct of Operation Shire, leading to the death of
17 Mr Grainger. It has identified important failings in
18 the competence, experience, training and qualifications
19 of some of those involved in the firearms operation.

20 Against that background, we submit that there is no
21 need for Messrs Pemberton and Sturman to be called to
22 give oral evidence and it would not be appropriate for
23 them to be called to give oral evidence.

24 First, the Inquiry has instructed its own expert,
25 Mr Arundale, to give independent and expert evidence in

1 relation to the quality of the management, supervision
2 and conduct of the firearms operation which led to
3 Mr Grainger being killed.

4 That approach is consistent not only with the
5 inquisitorial nature of the Inquiry but also of the
6 approach taken in latter times in civil litigation to
7 the instruction of single joint experts.

8 THE CHAIRMAN: And to an extent in criminal cases.

9 MR BEER: Yes.

10 He is independent of the core participants. He is
11 manifestly a very highly qualified and experienced
12 expert. His report addresses all of the issues
13 identified in his letter of instruction, which all core
14 participants, including GMP, had the opportunity to
15 contribute to.

16 Messrs Pemberton and Sturman by contrast were
17 instructed by Greater Manchester Police for the purposes
18 of defending criminal proceedings against their then
19 Chief Constable. They were engaged by the very core
20 participant whose conduct is called into question in
21 this Inquiry, and whose conduct is the principal focus
22 of the Inquiry's terms of reference.

23 Moreover, adopting the course proposed by GMP is
24 likely to result in requests by other core participants
25 to instruct yet further expert witnesses, indeed

1 Mr Thomas in his written submissions does exactly that.
2 He says, well, if GMP are going to call their own
3 expert, we want the facility to instruct our own and the
4 Inquiry can pay for it.

5 THE CHAIRMAN: Yes.

6 MR BEER: Second, the adoption of an adversarial approach in
7 this Inquiry.

8 Thirdly, the proliferation of evidence which will
9 lead to delay and additional costs and all of that in
10 circumstances where it is not suggested that the
11 Inquiry's expert is not properly qualified or
12 experienced to give the evidence that is set out in his
13 report.

14 Fourthly, it may lead to the raising of difficult
15 issues of legal professional privilege, given that
16 Messrs Sturman and Pemberton were previously instructed
17 by GMP in the course of legal proceedings against the
18 Chief Constable.

19 GMP can, along with other core participants, seek to
20 test Mr Arundale's opinion by asking questions directly
21 of him by reference to the primary material in the
22 Inquiry.

23 Sir that, is the position that we adopt in relation
24 to the request.

25 THE CHAIRMAN: Yes, thank you.

1 MR BEER: I think probably the appropriate order now is

2 probably for Ms Whyte --

3 THE CHAIRMAN: Yes, I agree.

4 MR BEER: Then other core participants in the other order

5 that we followed earlier on.

6 THE CHAIRMAN: Yes, Ms Whyte.

7 Submissions by MS WHYTE

8 MS WHYTE: Thank you sir, I am grateful to Mr Beer for

9 summarising the situation.

10 The open list of witnesses was provided at the end
11 of September. Mr Arundale, this is no criticism, has
12 required some two months quite understandably to read
13 that which he was required to read before formulating in
14 writing his opinion which stretches to 175 pages. The
15 point of drawing this to your attention at the outset of
16 submissions is that our primary submission is that this
17 issue should be deferred, however unattractive or
18 regrettable that might be. It should be deferred for
19 the following reasons --

20 THE CHAIRMAN: What issue should be deferred?

21 MS WHYTE: As to whether or not Messrs Pemberton and Sturman
22 should be called to give evidence.

23 THE CHAIRMAN: All right.

24 MS WHYTE: You, sir, have a statutory duty under

25 section 17(3) to ensure that the procedure and conduct

1 of this Inquiry are fair.

2 This, we submit, is a process that should not be
3 rushed. Primarily, we don't even know if this is
4 an argument that we need to have yet. We have been in
5 receipt of this report for an extremely short period of
6 time. It has not been possible to take detailed
7 instructions --

8 THE CHAIRMAN: But it mirrors in outline the form of reports
9 prepared by Sturman and Pemberton. It follows the same,
10 if you like, template, doesn't it? It is easy enough to
11 see where areas of disagreement occur and where areas of
12 agreement are. It is not a complicated exercise.

13 MS WHYTE: No, I am not suggesting it is, but it is a time
14 consuming one, sir.

15 THE CHAIRMAN: Is it?

16 MS WHYTE: Yes, sir, it is with the greatest of respect. We
17 have not had the opportunity to take Mr Pemberton or
18 Mr Sturman's views on the contents of Mr Arundale's
19 report. That is going to take a little time. Until
20 that process is complete, we are not able to make
21 informed submissions on the matter which you are
22 apparently proposing to rule on today.

23 THE CHAIRMAN: How is your position going to be improved if
24 you do have time to take further instructions? How is
25 it going to make any difference to the outcome of

1 an application that those two witnesses should be called
2 in addition to the Inquiry's own expert?

3 MS WHYTE: Because, sir, we are not able to make informed
4 submissions to you today on the desirability or
5 otherwise or the need in fairness or otherwise for GMP
6 to rely upon expert evidence in order to challenge other
7 expert evidence. We fully recognise the inquisitorial
8 nature of these proceedings but there is no default
9 position. Frankly in civil or criminal litigation, or
10 in coronial or inquiry litigation, that simply because
11 a chairman instructs one expert that excludes the
12 admission of similarly disciplined expert evidence from
13 other core participants where it is fair for those core
14 participants to seek to rely.

15 I am afraid I don't agree, with the greatest of
16 respect, with the very brief summary of how expert
17 evidence is dealt with in civil and criminal litigation
18 in England and Wales. Since the Civil Procedure Rules
19 and since the Criminal Procedure Rules have been in
20 existence, there has been a procedural impetus for
21 parties where appropriate to instruct joint single
22 experts or where separate experts are instructed, to
23 meet and communicate in a timely fashion in order to
24 identify areas of agreement or disagreement. I am
25 afraid anybody conducting a serious litigation, either

1 at the civil or criminal level, which this plainly is
2 because of the grave consequences of what have occurred
3 in this case and the wide ranging criticisms that are
4 made and due to be made. This is not some, with the
5 greatest of respect, road traffic accident where courts
6 apply a single joint expert, this is very serious and
7 important litigation and --

8 THE CHAIRMAN: Well, all right, it is serious and important.
9 "Litigation" is not the appropriate word, is it? That
10 is part of the point of what Mr Beer has been saying.

11 MS WHYTE: Sir, where there are serious potential issues of
12 fact and opinion between important witnesses in a case,
13 whether you call it litigation or otherwise, where there
14 have been very grave consequences, I am afraid I do not
15 agree that the default position is a single expert and
16 that would not be the case, frankly, in any like serious
17 criminal or civil litigation. Anyone who conducts
18 serious criminal or civil litigation, I think would be
19 surprised by the notion that the parties were enforced
20 to a single joint expert in a case of this complexity
21 and gravity.

22 We also do not agree that simply because
23 Messrs Sturman and Pemberton have been instructed by
24 a core participant whose conduct is likely to be the
25 subject, quite rightly, of detailed scrutiny, if not

1 criticism, are incapable of giving independent evidence.
2 They, sir, are bound by precisely the same common law
3 and procedural duties as your own expert. As is quite
4 clear from a cursory reading of their evidence, they are
5 more than capable of making muscular criticisms of their
6 own client and indeed drawing to their client's
7 attention issues which their client may indeed have been
8 ignorant about.

9 I don't agree, with the greatest of respect, with
10 Mr Beer's suggestion that in some way, totally
11 unsubstantiated, that they lack independence. The GMP
12 work with the Metropolitan Police just as much as they
13 work with the West Midlands Police and there is
14 absolutely no suggestion that either gentleman as
15 an expert lacks independence. They are bound by
16 precisely the same duties.

17 I also don't agree at this stage that this is likely
18 to lead to a disproportionate proliferation of evidence.
19 What other core participants do is a matter entirely for
20 them in terms of applications to you, sir, about the
21 contents of witness lists.

22 In fact as a result of the process which is
23 encouraged under the Civil and Criminal Procedure Rules,
24 there was ultimately a significant degree of agreement
25 between Mr Molloy and his colleagues and the experts

1 instructed on behalf of the Greater Manchester Police.
2 All we seek to do by these submissions, sir, given the
3 very pressing degree of time, is to be given some time
4 to allow that process to take place.

5 THE CHAIRMAN: How much time?

6 MS WHYTE: As quickly as possible. We would ask for 14 days
7 from today for us to be able to give the court
8 a concrete view as to whether or not we wish to keep
9 this issue alive. That is why I say, sir, it is simply
10 premature, a core participant such as a police force,
11 given the issues in this case, with the greatest of
12 respect, should not be bounced into a decision when
13 there has been insufficient time to consider the
14 contents of a very lengthy document.

15 With the greatest of respect, we also disagree with
16 Mr Beer's submissions that this is likely to cause
17 choppy waters in terms of legal professional privilege.

18 THE CHAIRMAN: When did you get this report?

19 MS WHYTE: We received this report on 7 November.

20 MR BEER: The 4th.

21 MS WHYTE: 4 November, I am sorry, that was a Friday
22 afternoon.

23 Sir, you may or may not be aware that due to
24 bereavement-related personal circumstances, the GMP
25 legal office has not been staffed as it normally is for

1 the last 10 days. That report was the subject of a very
2 tight timetable in terms of redactions, as you know, and
3 that has left us very little time to perform the type of
4 exercise which we consider, as a core participant, we
5 frankly are entitled to perform.

6 It is quite simply a question of fairness, and it
7 may well be, sir, that once those two experts have read
8 the report and opinions of Mr Arundale, that there is
9 a very significant degree of agreement. If that is the
10 case, this issue is highly likely to fall away. But
11 I am afraid, with the best will in the world and with
12 a clear wind, I fail to see how it can be fair for
13 an organisation such as the Greater Manchester Police to
14 be rushed into making submissions on something that is
15 plainly quite significant and is likely to have
16 potentially very serious ramifications.

17 It is not adversarial, sir, but counsel asking
18 questions of an expert witness is not evidence. I do
19 not completely agree with Mr Beer that counsel is able
20 simply to challenge an expert witness on the basis of
21 potential fact or disputed fact.

22 You at the conclusion of evidence in this case are
23 going to have to make detailed findings of fact and
24 decide whether or not you agree with the opinions of
25 Mr Arundale. That has profound consequences for all

1 core participants, not just for Greater Manchester
2 Police. I am bound to say that considering the
3 section 17(3) duty, all core participants should be able
4 to challenge in an appropriate, non-adversarial way the
5 content of expert opinion appropriately. At the moment,
6 it is not fair to say that GMP know whether that can be
7 done, as of today.

8 THE CHAIRMAN: Thank you.

9 Yes, Mr Thomas, I think you are next.

10 Submissions by MR THOMAS

11 MR THOMAS: Thank you, sir.

12 Sir, can I just remind you of a couple of things in
13 relation to the application made by GMP. Firstly, in
14 bundle C, tab 12, paragraph 16 --

15 THE CHAIRMAN: Do you want me to turn that up?

16 MR THOMAS: Yes, please.

17 THE CHAIRMAN: Bundle C.

18 MR THOMAS: Bundle C, tab 12 --

19 THE CHAIRMAN: Yes, I have it, paragraph 6.

20 MR THOMAS: Paragraph 6D. You will see there that what is
21 being put there is quite clear, slightly different
22 emphasis today, but it is quite clear:

23 "Attendance of Mr Pemberton, Mr Sturman, experts in
24 command and control, Inquiry's expert is being called,
25 we see no reason why the experts instructed by the GMP

1 should not be called given that there may be
2 disagreement by witnesses about the opinions of
3 Mr Arundale. Those witnesses are likely to be
4 questioned robustly and there is no obvious reason why
5 Mr Arundale should not be challenged where appropriate
6 about his own opinions."

7 That is the basis upon which this has been raised.

8 I have nine short submissions to make in response to
9 that. They are as follows.

10 Number one, we do say that the GMP witnesses are not
11 sufficiently independent from the GMP. That is
12 an important submission. And for the reasons as already
13 outlined for Mr Beer, these witnesses were instructed by
14 GMP for the purposes of R v Fahy trial, they worked for
15 West Mercia Police and the GMP.

16 Bearing in mind, sir, and this goes into the second
17 submission, that this is an article 2 Inquiry into
18 a police shooting, the expert witnesses should be
19 entirely independent and independent means not just if
20 a witness says, "Well, I am independent", but it is the
21 appearance of independence that also matters in these
22 cases to give confidence to this Inquiry.

23 The next submission, sir --

24 THE CHAIRMAN: This is the third one?

25 MR THOMAS: This is the third submission -- is that you

1 already have an expert who is going to be giving
2 evidence about planning and control.

3 Fourthly, that expert is perfectly well qualified to
4 give evidence in relation to the matters in issue.

5 Fifthly, there is no good reason to add to the costs
6 of this Inquiry by calling other witnesses who may
7 duplicate Mr Arundale's work.

8 Sixthly, it is a point that has already been made
9 but I make it again, a lot has been made in relation to
10 fairness but fairness must relate to all the core
11 participants. If you were minded, contrary to these
12 submissions, to allow that evidence in we do make the
13 submission that we would be inviting you to call
14 an expert, at least one expert, on behalf of the
15 families, who was instructed on behalf of the families
16 to give evidence.

17 That brings me on to the next submission, because
18 sir, the difficulty that you face -- this is the seventh
19 submission -- the fact that an individual may disagree
20 with Mr Arundale's opinion is not a good reason of
21 itself to call that evidence.

22 Eighthly, there is no requirement to call all
23 planning and control experts who may have differing
24 views.

25 Ninthly, and this is my final submission, one of the

1 things that you have to be conscious of, and I say this
2 respectfully, is the whole issue about -- I think you
3 will understand the expression -- expert forum shopping.

4 THE CHAIRMAN: Yes.

5 MR THOMAS: Those are my submissions.

6 THE CHAIRMAN: Thank you.

7 Mr Wetherby, it has gone 1.00.

8 MR WETHERBY: I have nothing to add.

9 THE CHAIRMAN: I think we do have some further business
10 though.

11 MR BEER: Yes, we do and I have a short reply to the points
12 that Ms Whyte made. Might it be convenient to say 2.05?

13 THE CHAIRMAN: I think it would be. I do think I have to
14 have some regard to those recording these proceedings,
15 and we have already overrun. In fact, for the sake of
16 court staff, if you don't mind, I think we had better say
17 2.15.

18 MR BEER: Thank you.

19 THE CHAIRMAN: Thank you.

20 (1.05 pm)

21 (The Luncheon Adjournment)

22 (2.15 pm)

23 THE CHAIRMAN: Yes, Mr Beer.

24

25

1 Submissions in reply by MR BEER

2 MR BEER: Thank you sir, if I could reply briefly then to
3 the issue of the evidence of Messrs Sturman and
4 Pemberton, addressing the submissions made by Ms Whyte
5 to you.

6 There are two points that she really took. The
7 first is that you should not decide the issue now, but
8 should adjourn it, and, secondly, if you do take the
9 decision now, then don't exclude the evidence of
10 Messrs Pemberton and Sturman, instead call them.

11 Dealing with those points in turn, Ms Whyte
12 submitted that GMP are being "Rushed into it," and that
13 she should not be "Bounced into it" and that the
14 Inquiry's consideration of this issue is premature.

15 The application was in fact made by GMP, not the
16 Inquiry. They received the report of Mr Arundale on
17 4 November. You will have seen, I have taken you to
18 them, and Mr Thomas has taken you to them, at
19 paragraph 6B of their submissions dated 8 November, in
20 which they make the application.

21 THE CHAIRMAN: Yes.

22 MR BEER: It appears that GMP had already decided to make
23 the application that Messrs Sturman and Pemberton should
24 be called on the basis of their consideration of
25 Mr Arundale's extensive report within that four-day

1 period and the existing evidence of Messrs Pemberton and
2 Sturman.

3 It is not the Inquiry bouncing anyone into it, it is
4 an application that GMP has made to which we are now
5 responding.

6 As to the substance of the matter, we do not say and
7 we have not submitted that the default position is that
8 a single joint expert should be called. What we say is,
9 for the reasons that I outlined in the circumstances of
10 this case, and in the way in which it has arisen, you
11 should not on the basis of the material before you,
12 namely Mr Arundale's report and the two reports of
13 Messrs Pemberton and Sturman, accede to the application.
14 It is nothing to do with a default position, it is for
15 the detailed reasons that I gave and to which Mr Thomas
16 added.

17 A solution to the problem, we submit, would be,
18 given that the application is made and is made on the
19 basis of Mr Arundale's report and the written reports of
20 Mr Pemberton and Mr Sturman, you determine it now but
21 allow GMP the facility, if some new and significant
22 material emerges, to renew the application within
23 a short period of time, say 14 days.

24 But we already know that there is disagreement
25 between Mr Arundale and Messrs Pemberton and Sturman,

1 that is the nature of Mr Arundale's report. He sets out
2 the conclusions of each of Pemberton and Sturman and
3 says where he agrees and disagrees with them. The fact
4 that Mr Sturman and Mr Pemberton come back and say,
5 "I don't agree with what Mr Arundale says here and
6 there", will not, as it seems to us, take us any further
7 than we are at present. We know there is disagreement.

8 Sir, those are my submissions on that case
9 management issue.

10 THE CHAIRMAN: Yes.

11 DISCUSSION RE CASE MANAGEMENT

12 MR BEER: Can I turn, before you give any decisions, to
13 broader issues of case management as to the future.

14 THE CHAIRMAN: Yes.

15 MR BEER: And really repeat for the wider public's benefit
16 in case anyone is listening that which we have already
17 said in our written submissions as to the timetable for
18 written and oral opening statements and the approach to
19 the questioning of witnesses.

20 We propose the following schedule. On the opening
21 day of the Inquiry, which is Tuesday, 17 January 2017
22 and Wednesday, 18 January 2017, we, counsel to the
23 Inquiry, should make an opening statement. We will
24 produce a written opening in advance of that and
25 distribute it. We propose that each of the core

1 participants may make a written opening statement --
2 there is no obligation on them to do that but they may.
3 If they do wish to do so, they should submit it to the
4 Inquiry by Monday, 9 January. We will pass all of those
5 on to the other core participants after the cyphering
6 and redaction check, we will publish those opening
7 written statements on the morning of Tuesday,
8 17 January.

9 Each of the core participants may make time limited
10 opening statements on the Thursday and Friday of week
11 one, 19 and 20 January, providing that they have made
12 written opening statements in the way that I have just
13 mentioned and have notified the Inquiry of their
14 intention to do so. Again, there is no obligation to
15 make an opening statement and, if they do, the
16 participant should be aware that you will have read
17 their opening statements in writing in full.

18 Given that we intend to publish written opening
19 statements on the website, the time allocated to each
20 core participant we suggest should be a maximum of
21 an hour and a half per team, 90 minutes per team. They
22 should not raise issues or contain allegations or
23 criticisms of other core participants or witnesses that
24 have not already been made in any written opening
25 statement previously provided.

1 They should be taken in the following order, Marina
2 and John Schofield and Stuart Grainger first,
3 Gail Hadfield-Grainger second, Greater Manchester third,
4 Q9 fourth and the National Crime Agency last.

5 That is the timetable for openings. As to the
6 approach to the questioning of witnesses, there is
7 plainly a variety of means that can be adopted and have
8 been deployed in past Inquiries. We propose that in the
9 circumstances of this Inquiry, the following approach
10 should be taken in relation to closed hearings.

11 Where all of the evidence of a witness can
12 necessarily be received only in closed, then that
13 evidence should be received as part of a block of closed
14 evidence alongside that of other closed witnesses at the
15 commencement of the Inquiry and immediately after the
16 conclusion of the opening statements.

17 We envisage that on Friday of week one, we will hear
18 the evidence about Mr Grainger, that we mentioned
19 earlier --

20 THE CHAIRMAN: Yes.

21 MR BEER: -- and then on Tuesday, 24 January we move to the
22 first evidence, which is closed. Doing the best that we
23 can, we think that there are about 20 witnesses who fall
24 into that category, closed only, and we think that the
25 evidence will take about two weeks to hear.

1 Where some of the evidence that a witness can give
2 requires to be given in closed but the remainder of it
3 can be given in open, then we suggest that that
4 witnesses should be timetabled to give their evidence
5 whenever it fits into the normal timetable of the
6 Inquiry's open hearings, so comes either within the
7 chronological account that we provide or the issue or
8 theme that we will provide in the witness list. They
9 should give their evidence openly first, then followed
10 by closed evidence, with a facility, importantly, to
11 have a further open hearing after the closed hearing so
12 that you can, having heard their closed evidence, decide
13 whether it is necessary to hear some of that closed
14 evidence again in open.

15 THE CHAIRMAN: Yes.

16 MR BEER: Those witnesses will just be slotted into the
17 timetable as to where their evidence naturally falls.
18 On that basis the open hearings of the Inquiry would
19 commence on Tuesday, 7 February.

20 THE CHAIRMAN: Yes.

21 MR BEER: In terms of the approach to the questioning of
22 witnesses, the default position is set out in rule 10
23 but we are anxious to avoid constant applications for
24 permission to you to ask questions of witnesses, thereby
25 either giving the witness advanced notice of the line of

1 questioning that is proposed or adjournments with
2 witnesses going out of court and core participants
3 having to explain to you why it is proper and
4 appropriate for them to ask a question. That would slow
5 down the Inquiry and add additional cost.

6 Instead we propose as follows.

7 The first proposal is that we should have the first
8 and last opportunity to question witnesses, including
9 core participants.

10 Although we will cover the relevant issues with
11 witnesses, that you should allow relevant and brief
12 questioning of witnesses by core participants to deal
13 with any relevant matters not addressed by us but where
14 in accordance with the procedure I am about to outline,
15 we have indicated that it is appropriate for the core
16 participant to put the question.

17 The third, to avoid the regular interruptions that
18 I have just mentioned by the making of applications, you
19 should initially countenance the following procedures,
20 reserving the right to change them if it doesn't work or
21 people don't behave. Firstly, short and relevant
22 questioning envisaged under rule 10.2, that is
23 questioning from a witness's own legal representative.
24 Normally it will take place after that of all other core
25 participants but before we re-examine. That will be

1 permitted without application.

2 Where advanced notice is given to counsel to the
3 Inquiry, in accordance with the procedure I am about to
4 outline, of a topic or question which a core participant
5 wishes to canvass with a witness and we have indicated
6 agreement to them pursuing that questioning, the core
7 participant may assume that they have leave to question
8 relevantly and briefly in respect of that topic without
9 an oral application, but again only to the extent that
10 we have not covered the topic already.

11 That concession, as I have said, may be removed if
12 the procedures don't work.

13 THE CHAIRMAN: Yes.

14 MR BEER: No further questioning on that topic should be
15 permitted without permission, again unless they have
16 given advanced notice. Where advanced notice is given,
17 and we suggest that the question ought not to be
18 pursued, then the procedures in rule 10.3 and 4 ought to
19 be followed, namely an application to you.

20 The advanced notice is on a document that we have
21 distributed, annex A to the submissions, which ask core
22 participants to set out the topic number, the broad
23 topic, the questions that they wish to be asked, the
24 relevance to their witnesses or their client and the
25 documents that they wish to be referred to. Then we

1 simply return that before the witness gives evidence and
2 mark it up, with a comment that either says, "Yes,
3 counsel to the Inquiry will ask it", "Yes, the core
4 participant can ask it" or, "No, you need to make
5 an application". That has worked very well in other
6 inquiries.

7 We don't intend that the notices, the annex As
8 should be distributed to the witnesses, albeit we are
9 keen to ensure that witnesses are not ambushed by being
10 shown documents that they have not had a reasonable
11 opportunity to consider.

12 Bearing in mind that they are all or nearly all
13 legally represented, where we think it is unlikely that
14 a witness has not been shown a document, we will
15 endeavour to alert them through their legal
16 representative to the document or topic.

17 Lastly, we envisage that the usual order of
18 questioning amongst core participants should be that
19 questions in the nature of cross-examination should
20 follow immediately after our questions and then other
21 questions for core participants should follow, then the
22 witness's own legal representative and then finally by
23 counsel to the Inquiry.

24 Sir, that is our proposal and it has all been set
25 out in writing.

1 THE CHAIRMAN: Yes.

2 MR BEER: If, subject to hearing anyone else, you agree with
3 that, we will reduce that into yet further protocol.

4 THE CHAIRMAN: Yes.

5 Does anybody have any comments to make on the
6 matters that have just been outlined?

7 MR THOMAS: Only to say that I think it is a sensible
8 approach and we agree with it.

9 THE CHAIRMAN: Thank you.

10 MR WETHERBY: Likewise.

11 THE CHAIRMAN: Thank you.

12 Anybody else?

13 MS WHYTE: Just one concern, we agree it is a sensible
14 approach and that anything which restricts questioning
15 to that which is proportionate and relevant is to be
16 welcomed I am sure by all.

17 It does seem to require the participants to give
18 notice 10 days before a witness gives evidence of
19 relevant issues when we are in the dark as to the view
20 taken by counsel to the Inquiry as to relevancy. It may
21 well be that we spend a lot of time filling in columns
22 referring to topics which Mr Beer and Ms Cartwright are
23 going to be addressing in any event, we have no idea
24 until they start questioning witnesses. It seems
25 a slightly strange approach. I fully understand and

1 support the doctrine behind it, which is to keep things
2 as tight and on table --

3 THE CHAIRMAN: What alternative do you propose?

4 MS WHYTE: Well, a document from counsel to the Inquiry
5 beforehand indicating what the broad areas of
6 questioning are going to be.

7 THE CHAIRMAN: Won't the opening provide sufficient
8 information? It should do, shouldn't it?

9 MS WHYTE: I don't know. I don't know what is going to be
10 in the opening, sir.

11 THE CHAIRMAN: Mr Beer, what is your reaction to that point?

12 MR BEER: We value the contribution, thank you.

13 We would respectfully suggest that that is the wrong
14 headed approach for three reasons.

15 Firstly, it will necessarily involve distribution of
16 our proposed questions to witnesses in advance of them
17 giving evidence. We do not wish witnesses to be given
18 advanced notice of the questions. This is designed so
19 that core participants can contribute to the
20 questioning, but that witnesses are not given a menu of
21 the questions that we intend to ask beforehand, so that
22 if they were so minded they can hunker down and prepare
23 responses to them. That is the first reason.

24 THE CHAIRMAN: Right.

25 MR BEER: Secondly, we want to involve core participants as

1 much as possible in this process so that they can
2 contribute to the lines of enquiry that counsel pursue.

3 THE CHAIRMAN: They may make valuable suggestions that might
4 otherwise be overlooked.

5 MR BEER: Yes.

6 Thirdly, it imposes a rather perverse burden on us.
7 We are here in some sense as the mouthpieces of the core
8 participants and intend to pursue all reasonable lines
9 of Inquiry that are suggested to us.

10 There will, of course, be -- I think the issues are
11 fairly well delineated after the extensive IPCC report,
12 the prosecution of the Chief Constable and the two
13 expert reports that we are going to get in. We will try
14 yet further to identify issues in the opening.

15 THE CHAIRMAN: Thank you.

16 MR THOMAS: Sir, may I assist, just in relation to that, the
17 point about the 10-day notice.

18 One assumes, and this is dealing with Ms Whyte's
19 point, that the rationale behind this is that your team
20 is given proper notice in relation to some of the themes
21 or issues that we would wish to raise and, as I have
22 said, I think that is a sensible approach. In terms of
23 the 10-day period to give notice, I assume, because we
24 had a similar provision in the Azelle Rodney Inquiry,
25 that it is not rigid. Obviously it is what you would

1 want to happen but there may be an occasion when
2 something arises and, you know, I am sure that the
3 Inquiry would be flexible enough that if I make
4 a suggestion and give nine days' notice nobody is going
5 to take too much objection, as long as that is not
6 abused. I hope you understand the sentiment in which
7 that is said.

8 THE CHAIRMAN: I do. Thank you.

9 Mr Davies.

10 MR DAVIES: Sir, I respectfully disagree with Mr Beer's
11 approach.

12 THE CHAIRMAN: Yes.

13 MR DAVIES: It is not that the objective is wrong, the
14 objective is right and consistent with rule 10 in that
15 questioning at a public inquiry is deliberately
16 restricted relative to other forms of tribunal, to
17 eliminate repetition and so on and so forth. Everyone
18 gets that, but the approach being advanced would
19 effectively require each core participant to set out the
20 line of questioning they would take ab initio, identify
21 all the issues, all the relevant documents and, somehow,
22 five sets of such lists from core participants will
23 receive a CTI or core participant response or not
24 relevant response, how distributed, having to be
25 filtered by your team in a way that actually we would

1 suggest adds to the administration rather than reduces
2 it. If the objection is that witnesses are going to be
3 given pre-notification of lines of questioning, it is
4 not entirely clear to me what the core participants
5 would get back and when from your team from such a list.

6 Secondly, and importantly, each core participant
7 would not be giving the lines of questioning as
8 finalised to the witness anyway.

9 THE CHAIRMAN: What are you suggesting should be done
10 instead?

11 MR DAVIES: I am suggesting that counsel to the Inquiry
12 produce their list of issues and documents they would
13 introduce, left to their own devices. Core participants
14 then are able to react to what is already going to be
15 covered by counsel to the Inquiry and suggest additional
16 lines of questioning. In relation to those additional
17 lines of questioning, there will be a choice between
18 counsel to the Inquiry saying, "We will adopt them
19 ourselves", or, "Yes, the core participant can take it"
20 or, "No, irrelevant, nobody will take that line of
21 questioning".

22 I am not inventing this, I for my sins was counsel
23 to the Inquiry on the Litvinenko Inquiry and this was
24 the procedure we adopted whereby we identified, if only
25 by annotated witness statements, highlighting the areas

1 that would be led and those that would not in advance,
2 what we were intending to do and the multiple core
3 participants, as here, then reacted. It provides
4 a coherent, known, common starting point.

5 As things stand, there will be five sets of
6 suggestions and on the sound of it, five different sets
7 of answers back to each core participant, depending on
8 what they have asked for. This is a recipe for
9 administration rather than progress. As long as the
10 witnesses are not pre-notified of the lines of
11 questioning that different people intend to take and one
12 gets that point.

13 THE CHAIRMAN: Anybody else have any observations?

14 MS BARTON: Sir, might I just add my voice to Mr Davies's,
15 I support his submission.

16 THE CHAIRMAN: Anything you want to add?

17 MR BEER: No, I have said all what I want to say. We have
18 deliberately designed it in a way that requires the core
19 participants to do some work.

20 THE CHAIRMAN: I have to say with great respect to the
21 submissions I have heard just now, I do think that to
22 adopt the alternative that is suggested would impose
23 an excessive burden on counsel to the Inquiry quite
24 apart from other considerations, so I approve the scheme
25 as set out by you, Mr Beer.

1 Have we now completed the agenda, subject to
2 anything I have to say about the application in relation
3 to Sturman and Pemberton?

4 MR BEER: Yes, sir. I think so.

5 THE CHAIRMAN: Are there any other matters anybody wants to
6 raise?

7 Mr Thomas.

8 Housekeeping

9 MR THOMAS: Sir, there is one matter which relates to
10 Stuart Grainger. I think it may have been floated to
11 your team in relation to video-link access.

12 THE CHAIRMAN: Yes.

13 MR THOMAS: Can I just clarify with you, sir, openly, in
14 open court, what the position is in relation to
15 Stuart Grainger, because, as we understand it, and
16 I think your team understands that he is a close brother
17 of the deceased and he does want to participate as best
18 he can. We do have the difficulty in relation to his
19 incarceration. What we are asking for is one of two
20 things.

21 Firstly, that a video-link is provided so that from
22 prison he is able to access that and, secondly,
23 something we would ask for if possible, that on one or
24 two occasions in terms of key evidence, and we can
25 liaise in relation to that, whether a production order

1 could be made to bring him to the Inquiry.

2 It is those two aspects.

3 THE CHAIRMAN: There may be serious practical difficulties
4 with the second suggestion. As far as the video-link is
5 concerned there should be no problem but that is really
6 a matter for those who instruct you to set up. As far
7 as the court is concerned, the building I mean, there
8 are the facilities here. I know we are not using this
9 exact room but the facilities are the same and the
10 Inquiry will certainly, at the court end, if you like,
11 facilitate the necessary arrangements if those who
12 instruct you want to organise the other end, as it were,
13 to make sure that he can have the link.

14 MR THOMAS: I am grateful for that indication. It may well
15 be that just to smooth the wheels of administration,
16 that a letter from your team just to the effect -- I am
17 not asking the court to set it up at the other end --

18 THE CHAIRMAN: No, that we will not do. It is no part of
19 our function.

20 MR THOMAS: That I am not asking for, but a letter from
21 yourself to say that at this end, that, you know, the
22 facilities are there in relation to it, and why you have
23 set it up in relation to the fact that he is a core
24 participant, that may well as I say just smooth the
25 wheels at the other end.

1 THE CHAIRMAN: Yes.

2 Mr Beer, I see no difficulty with the provision of
3 a letter of that kind, do you?

4 MR BEER: No, sir.

5 THE CHAIRMAN: I am happy to do that, as long as it is
6 understood that that is as far as the Inquiry's
7 involvement goes. We will certainly do everything we
8 can at this end but the actual arrangements have to be
9 made on his behalf. Thank you very much.

10 Any other business?

11 MS BARTON: May I indicate with the timetable that I do not
12 propose to participate in the opening statement that so
13 may give a little more flexibility on the timetabling.

14 THE CHAIRMAN: That is very helpful, Ms Barton, thank you
15 very much indeed.

16 Yes, Ms Whyte.

17 MS WHYTE: I do have an issue I wish to raise, please, and
18 that relates to the application of restriction orders.
19 Naturally that is a large task as you, sir, are well
20 aware given the many months that have been devoted to
21 an issue that remains unresolved.

22 We are grateful for the notification that there will
23 be two days set aside shortly before Christmas for
24 dealing with this matter. Of course the work will not
25 end there, because subject to any rulings you will make,

1 sir, and we don't know when you will be in a position to
2 do that, naturally, there will have to be work done by
3 others, I don't know who yet, in relation to the process
4 of unredacting. So there is I think collective concern
5 about the tightness of the timetable, that is not
6 a criticism, it is where we are --

7 THE CHAIRMAN: Yes.

8 MS WHYTE: -- and everyone will work hard together to ensure
9 that that timetable remains in place, naturally.

10 It would be helpful to have some sort of indication
11 as to when we will receive a view, even if it is
12 provisional or piecemeal, from the team as to the
13 redactions that have been effected so far, because if it
14 is the case, for example, that the team or the Inquiry
15 take a view that a straightforward redaction is totally
16 unnecessary, and that is returned to us and in
17 conjunction with the NCA we can quickly take
18 instructions, and start the process of identifying --

19 THE CHAIRMAN: You think it might be possible to deal with
20 it, as it were -- I don't mean this critically --
21 piecemeal, is that what you are suggesting?

22 MS WHYTE: What I am asking for is a time or date by which
23 we are given at least some view as to the schedule that
24 has been received.

25 THE CHAIRMAN: There is an awful lot of work, as you know,

1 that is involved.

2 MS WHYTE: We do know.

3 It has taken months to compile that schedule. I am
4 sure like all other core participants, we are on
5 a resource-strapped horse.

6 MR BEER: Yes.

7 I had heard it had taken some three or four months
8 to compile the schedule. We obtained it 14 days ago.
9 This is the 1,000-page, 5,000 entries --

10 THE CHAIRMAN: Yes.

11 MR BEER: We are working as quickly as we can. The
12 difficulty -- I understand Ms Whyte's proposal. The
13 difficulty with it is, certainly our experience of the
14 Arundale report redaction exercise has assisted us in
15 this, is that redactions have been proposed that are
16 internally inconsistent.

17 THE CHAIRMAN: Yes.

18 MR BEER: What is allowed to be made public on page 1 is
19 said to be secret on pages 10 and 20. One has to read
20 nearly all of it to work out that which we can properly
21 say ought to be made public.

22 If there are any generic issues that can be
23 identified in early course, we will endeavour to do
24 that. I can think of two or three at the moment and if
25 GMP do, as they did in relation to the Arundale report,

1 ie immediately say, "Okay, we don't pursue the
2 application", the problem is, it appears that there has
3 been an extensive overredaction exercise.

4 THE CHAIRMAN: Right. All right.

5 MR BEER: So it is left to us to go through the 5,000
6 entries and unpick the work that has been done.

7 THE CHAIRMAN: Are you able to give any indication of
8 approximate timescale? I know it is going to take
9 a long time.

10 MR BEER: We are aiming to get back within a fortnight.

11 THE CHAIRMAN: Right.

12 MS WHYTE: Thank you, I am grateful. I wish to make it
13 clear there is no criticism at all --

14 THE CHAIRMAN: I understand that.

15 MS WHYTE: -- what I am anxious does not happen is that the
16 parties who have the most concern about redactions have
17 a very short space of time for the scheduled hearings to
18 deal with the view that the Inquiry team may take,
19 because that is something that has happened before.
20 Again, no criticism whatsoever, but the issue is
21 a difficult one and as Mr Beer has identified, when it
22 is rushed, inconsistencies can occur and that is not in
23 anyone's interests. We want to make sure it is all
24 dealt with as smoothly and as quickly as possible.

25 THE CHAIRMAN: Thank you.

1 Any other matters anybody wants to raise?

2 RULING

3 THE CHAIRMAN: Before we finish, I intend to deal with the
4 application by Greater Manchester Police in relation to
5 the witnesses Sturman and Pemberton. It is
6 an application I am not prepared either to adjourn or to
7 grant. My reasons for refusing it are those set out in
8 paragraph 29 of counsel to the Inquiry's written
9 submissions.

10 If in the light of any significant new material,
11 that is to say material that goes beyond more
12 disagreement, the Greater Manchester Police force wishes
13 to renew its application, then it has 14 days from today
14 in which to do so.

15 THE CHAIRMAN: Before finally closing this hearing I just
16 want to address, if I may, the media, representatives of
17 the media, because in my opening remarks this morning,
18 I made reference to some inaccurate reporting of the
19 proceedings at the last hearing on 26 July.

20 I recognise, of course, that that is something, it
21 is the very last thing of which any news organisation
22 would ever wish to be accused and invariably when
23 inaccuracies arise they are unintended and they are the
24 result of misunderstanding.

25 I also recognise that the Inquiry should do what it

1 can to facilitate accurate reporting of its proceedings,
2 so I should like to make this offer to representatives
3 of the news media. If you are ever in any doubt
4 concerning your understanding of any legal or procedural
5 matter that may fall to be reported, please feel free to
6 approach the Inquiry informally through its secretary
7 for further guidance. As long as the matter is one of
8 law or procedure we will certainly do whatever we can to
9 help.

10 I hope that is of some practical assistance for
11 future reference.

12 Does that cover everything now, Mr Beer?

13 MR BEER: Yes, it does, sir, thank you.

14 THE CHAIRMAN: Thank you.

15 I am grateful to everybody for the care that has
16 been taken over the oral and written submissions I have
17 heard today.

18 Thank you all very much.

19 (2.50 pm)

20 (The hearing concluded)

21

22

23

24

25

1
2
3
4
5
6
7
8
9
10
11
12
13
14
15
16
17
18
19
20
21
22
23
24
25

I N D E X

Opening remarks1
Submissions by MR BEER8
ANONYMITY AND PROTECTIVE MEASURES25
Submissions by MR THOMAS25
Submissions by MR WETHERBY25
Submissions by MR EVANS38
Submissions by MS BARTON48
Submissions by MR DAVIES51
Submissions in reply by MR THOMAS56
Submissions in reply by MR WETHERBY58
Submissions in reply by MR BEER60
EXPERT EVIDENCE - POLICE COMMAND AND CONTROL65
Submissions by MR BEER65
Submissions by MS WHYTE71
Submissions by MR THOMAS78
Submissions in reply by MR BEER82
DISCUSSION RE CASE MANAGEMENT84
Housekeeping97
RULING103

