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Tuesday, 26 July 2016

(11.00 am)

Procedural hearing

His Honour Judge Teague QC

JUDGE TEAGUE: Good morning. My name is Thomas Teague and I am a serving circuit judge.

On 17 March this year, the Home Secretary appointed me to conduct an independent public inquiry into the death of Mr Anthony Grainger, who was fatally shot by an armed officer of Greater Manchester Police on Saturday 3 March 2012.

Before saying anything else, I should like to take this opportunity of expressing my own sympathy and condolences to Mr Grainger's family. They will never forget him, nor will they ever forget the circumstances in which he met his death. Neither should the rest of us. In the well-known words of George Santayana, "Those who cannot remember the past are condemned to repeat it". But remembrance is not enough. The killing of any person by police officers attempting to make an arrest must always be a matter of the utmost public concern, particularly where that person turns out to have been unarmed at the material time. If lessons are to be learned, such a tragic outcome demands a thorough, open and fearless investigation. Normally, such an investigation takes the form of a coroner's inquest.

1 That indeed is how the present investigation began.
2 I first became involved in May last year when the
3 Lord Chief Justice appointed me as coroner. With the
4 help of counsel to the inquest, Miss Cartwright,
5 I immediately initiated a process of obtaining relevant
6 material and disclosing it to properly interested
7 persons.

8 Before that process was complete, however, it became
9 clear that for sound legal reasons it would not be
10 possible for a jury to consider certain material which
11 I regarded as central to the scope of the inquest.
12 Since the Coroners and Justice Act 2009 requires such
13 an inquest to be held with a jury, there was a clear
14 risk that without consideration of all relevant
15 material, the investigation might produce conclusions
16 that were incomplete or even wrong.

17 However, material that would not be disclosable to
18 a jury can be taken into account, albeit in closed
19 session, by a public inquiry of the present kind. It
20 was for that reason, and having regard to the State's
21 obligation to conduct an effective investigation in
22 accordance with Article 2 of the European Convention on
23 Human Rights, that I invited the Government to cause
24 this public inquiry to be held under section 1(1) of the
25 Inquiries Act 2005.

1 The inquiry's detailed terms of reference closely
2 mirror the scope of the original inquest. They are to
3 ascertain when, where, how and in what circumstances
4 Anthony Grainger came by his death during a Greater
5 Manchester Police operation and then to make such
6 recommendations as may seem appropriate. In particular,
7 the inquiry is to investigate the objectives and
8 planning of the operation; the information available to
9 those who planned the operation and the accuracy,
10 reliability, interpretation, evaluation, transmission
11 and dissemination of such information; the decision to
12 deploy armed police officers and to make arrests and the
13 criteria applied in reaching those decisions; the
14 command and control of the operation, its
15 implementation, the actions of officers during the
16 arrest phase and the circumstances in which the officer
17 who fired the fatal shot came to discharge his weapon;
18 the suitability or otherwise of the firearms,
19 ammunition, and other munitions deployed in the
20 operation; any relevant firearms policies, protocols or
21 manuals in force at the material time, together with any
22 subsequent revisions or amendments; whether (and, if so,
23 to what extent) the judgment, reactions or operational
24 effectiveness of any of the planners, commanders or
25 firearms officers were compromised by extended hours of

1 duty or by limitations in their professional
2 capabilities; the extent to which Mr Grainger's injuries
3 would have incapacitated him while he remained
4 conscious; whether, after Mr Grainger was shot, his life
5 could have been saved.

6 Some of those questions are likely to prove more
7 difficult to resolve than others. Some may advance or
8 recede in significance as the inquiry unfolds. My aim
9 is to adopt a flexible approach so as to focus my
10 efforts where they are most needed. I intend to
11 concentrate on my terms of reference without wasting
12 time on purely peripheral matters or speculative
13 hypotheses. One of my tasks will be to establish
14 whether there were any failures in the gathering,
15 handling or dissemination of relevant intelligence and,
16 if so, to identify such failures. That may well involve
17 the consideration of sensitive material of a kind which
18 cannot be openly ventilated and is therefore likely, as
19 I shall explain in a few moments, to impact on the
20 extent to which the inquiry is able to conduct its
21 proceedings under the public gaze.

22 I am fortunate in having the assistance of
23 a distinguished legal and administrative team.
24 Mr Jason Beer QC and Miss Sophie Cartwright
25 are independent counsel to the inquiry. They are

1 neutral in the sense that they will not be arguing for
2 any particular view of the facts. Their function is to
3 help me identify and gather all the relevant evidence,
4 to place that evidence before me, and to provide me with
5 independent advice as to any legal or procedural issues
6 that may arise. They are instructed by
7 Mrs Jane Worthington, the inquiry's solicitor. The
8 secretary to the inquiry is Mrs Susan Curran, who has
9 been seconded from the Ministry of Justice. Details of
10 the professional background and experience of each of us
11 will shortly be available on the inquiry website.

12 Pursuant to Rule 5 of the Inquiries Rules 2006,
13 I have power to designate core participants, with their
14 consent, at any time during the course of the inquiry.
15 I have already formally designated the following core
16 participants: Mrs Marina Schofield, Mr John Schofield,
17 Mr Stuart Grainger, Ms Gail Hadfield-Grainger, the
18 National Crime Agency, Greater Manchester Police, and
19 the police officer presently known as Q9.

20 I have declined applications for core participant
21 status on behalf of Mr Anthony Grainger's two children,
22 both of whom are still minors. In reaching that
23 decision I had regard to (1) their ages and lack of
24 direct knowledge of any of the issues disclosed by the
25 inquiry's terms of reference, (2) the fact that they had

1 not asked to be treated as 'interested persons' in the
2 inquest, (3) my assessment that their interests are
3 adequately protected by the designation of their
4 grandparents and uncle as core participants, and (4)
5 the absence of any established procedural mechanism for
6 dealing with minors analogous to the rules pertaining to
7 litigation friends in the context of civil, family or
8 Court of Protection proceedings.

9 Although neither Cheshire Constabulary nor the
10 Independent Police Complaints Commission has sought core
11 participant status, I will keep the position of both
12 bodies under review.

13 I wish to emphasise that this inquiry is an
14 independent investigation by me into the events that led
15 to the death of Mr Anthony Grainger. Its purpose is to
16 discover the truth of what happened and identify any
17 lessons that may help to prevent a repetition. I remind
18 everyone that I have no power to determine any person's
19 civil or criminal liability and am expressly precluded
20 from doing so by Section 2 of the Inquiries Act 2005.

21 At the same time, where I consider that criticism of
22 any individual or organisation is justified, I will not
23 shrink from including such criticism in my report.
24 I will in advance of the final hearing publish the
25 procedure that will apply to the notification of

1 possible criticism of core participants or witnesses.

2 Although for reasons of practical convenience this
3 hearing happens to be taking place in the Crown Court
4 centre where I normally sit, I should make it clear that
5 the business of the inquiry has nothing to do with the
6 Crown Court. Indeed, the inquiry's proceedings are of
7 a wholly different kind. They are not in any way
8 adversarial, nor will I permit them to be conducted in
9 an adversarial spirit. I should not like there to be any
10 misunderstanding about this.

11 A public inquiry is not a trial. It is, as its name
12 implies, inquisitorial in nature. There is no sense in
13 which it is even remotely analogous to any form of
14 litigation. It follows that those designated as core
15 participants are not parties and must not seek to
16 exploit the inquiry as a means to advance a particular
17 case.

18 Subject to that important qualification, however,
19 I will do everything I properly can to ensure that core
20 participants have a reasonable opportunity to take part.
21 That will include the making of opening statements, to
22 be timetabled by me after consulting counsel, but
23 I emphasise that it is for the inquiry itself to decide
24 what evidence is to be produced, which witnesses are to
25 testify, and what matters they are to be asked about.

1 I intend to require witnesses to attend in person
2 only where I consider that the inquiry cannot properly
3 fulfil its terms of reference without doing so. In all
4 other cases, relevant evidence will be read, summarised
5 or taken as read. In accordance with Rule 10 of the
6 Inquiries Rules 2006, it will be for counsel to the
7 inquiry to call and test the evidence. While counsel to
8 the inquiry will at all times remain objective and
9 indeed neutral, I have made it clear to them that
10 I regard their duty as encompassing a right to examine
11 witnesses robustly and, in appropriate cases, to
12 challenge their evidence.

13 Where core participants wish to explore particular
14 aspects of the evidence, I will generally invite them to
15 submit any relevant points in writing so as to enable
16 counsel to the inquiry to cover them in the course of
17 their examination. I may nevertheless permit core
18 participants through their counsel to question certain
19 witnesses directly, but only upon notice in accordance
20 with the provisions of Rule 10. Where I do allow such
21 direct questioning, I will not under any circumstances
22 permit repetition or duplication of one advocate's
23 questioning by another.

24 In accordance with the presumption of openness, the
25 inquiry's hearings will be conducted in public unless

1 in the particular case a manifest need to depart from that
2 principle can be demonstrated. Transcripts of public
3 hearings, together with any open rulings that I make,
4 whether orally or in writing, will be made available on
5 the inquiry website.

6 At the same time, it is obvious from my summary of
7 the genesis of the inquiry that not all the evidence can
8 properly be received in open session. Even where it
9 can, particular circumstances may dictate that certain
10 details be withheld from publication for good reason.

11 Equally I may from time to time be required to make
12 rulings which, by their very nature, cannot be
13 published. I will, after giving core participants an
14 opportunity to make representations, hold a series of
15 hearings in advance of the final hearing in order to
16 identify any evidential material which cannot be
17 received in open session, to rule upon any question that
18 may arise as to the anonymity of witnesses, and to
19 determine whether the inquiry should conduct closed
20 hearings in a single block or 'module', or move between
21 closed and open hearings with each relevant witness as
22 the need arises.

23 While I recognise that situations can arise in which
24 it may be necessary to redact written applications or
25 legal submissions in whole or in part, the inquiry's

1 default position is that such documents are public and
2 therefore liable to be disclosed to other core
3 participants. In certain particular cases they may be
4 more widely disseminated by being uploaded to the
5 inquiry website. Where core participants consider that
6 redactions should be made, it will be for the inquiry,
7 after receiving any representations, to decide whether
8 they are appropriate. Any proposed redactions must
9 therefore be clearly identified, with brief reasons, so
10 that the inquiry can decide to what extent, if at all,
11 they are justified.

12 I have determined that the inquiry will begin
13 hearing evidence in this building on Monday, 16 January
14 next year. It will sit conventional court hours from
15 Tuesday to Friday each week. Much of the necessary
16 preparatory work has already been carried out, but
17 a good deal remains to be completed between now and
18 then. The timetable I have set is a tight one. The
19 view I take is that those involved in these proceedings,
20 especially the family of Mr Grainger and the police
21 officers who took part in the operation that led to his
22 death, have already had to wait too long for matters to
23 be resolved.

24 Although there have been two sets of criminal
25 proceedings in respect of the events giving rise to this

1 inquiry, there has still been no forensic determination
2 of any of the factual issues covered by my terms of
3 reference. It is therefore essential that the final
4 hearing should begin on the appointed date and I will do
5 everything in my power to ensure that it proceeds with
6 all due despatch.

7 At this early stage it is not possible to specify
8 precisely when my report will be published, but I am
9 conscious of the need to avoid delay and to produce my
10 conclusions and recommendations as quickly as the
11 necessary processes, including the notification of
12 possible criticism to those affected, will allow.

13 The inquiry has a website on which transcripts of
14 its public hearings, open rulings and other relevant
15 material will be published. There must be no
16 photography, recording or filming of any part of the
17 inquiry's proceedings without my express permission, but
18 I will permit the use of live text-based communications
19 in the usual way.

20 Mr Beer.

21 Opening submissions by MR BEER QC

22 MR BEER: Thank you, sir.

23 Can I start with some introductions? As you've
24 already explained, I appear with Miss Cartwright as
25 counsel to the inquiry, instructed by Mrs Worthington,

1 the solicitor to the inquiry.

2 Present in court today are the following. To my
3 immediate right for Gail Hadfield-Grainger, that's
4 Anthony Grainger's partner at the time of his death,
5 Pete Weatherby QC. For Mr and Mrs Schofield, that's
6 Anthony Grainger's stepfather and mother, and
7 Stuart Grainger, Anthony Grainger's brother,
8 Leslie Thomas QC and Adam Straw, who sit on the
9 right-hand side of this bench.

10 For the Greater Manchester Police, Anne Whyte QC and
11 Julian Evans, who sit behind me. For Q9, the officer of
12 GMP that shot Mr Grainger, Rachel Scott, who sits in the
13 middle of the second row. For the National Crime
14 Agency, sitting next to her, is Jonathan Dixey. For the
15 Independent Police Complaints Commission, Claire Palmer
16 sitting next to Mr Dixey.

17 The purpose of my short opening today is threefold.
18 First, to explain publicly the work that the inquiry has
19 undertaken since its establishment. Second, to identify
20 to you, to the core participants and to the public, the
21 work that needs to be undertaken before we begin our
22 oral hearings on 16 January 2017 and, insofar as that
23 work requires action by the core participants, to
24 suggest a timetable for that work. Third, to make some
25 short submissions on the issue of seeking undertakings

1 as to the use of evidence given to the inquiry in
2 subsequent criminal and disciplinary proceedings against
3 the provider of it.

4 So first then the work of the inquiry to date. As
5 you've explained, sir, the inquiry was established by
6 the Secretary of State on 17 March this year. Since
7 that time, a period of four months or so, the inquiry
8 has appointed me and Miss Cartwright as counsel to the
9 inquiry after, in the case of me, a selection procedure
10 and interviews, appointed Mrs Worthington as solicitor to
11 the inquiry, again after a competition and interview
12 procedure, appointed Mrs Curran as the secretary to the
13 inquiry, secured for itself a premises at
14 Renaissance House in Warrington -- that's the formal
15 correspondence address for the inquiry to where all
16 correspondence should be sent -- and procured IT
17 facilities within Renaissance House.

18 It has set up a website -- this went live last
19 week -- which will contain all of the important
20 documents of record of the inquiry. It has secured the
21 use of a courtroom in this building for the conduct of
22 its oral hearings. It has given disclosure of some
23 additional material beyond that which was disclosed
24 in the course of the inquest and it has conducted, with
25 your team, exploratory visits to GMP and the NCA as

1 a precursor to making requests for witness evidence and
2 additional disclosure pursuant to Rule 9 of the
3 Inquiry Rules 2006.

4 Sir, additionally, you have made a number of
5 decisions. A decision, after receiving conflicting
6 representations from the core participants, as to when
7 the inquiry should commence its oral hearings, namely it
8 should commence on 16 January 2017. You have designated
9 the core participants that you have already mentioned as
10 core participants in the inquiry and you have, as you've
11 explained, determined not to designate a number of
12 individuals and organisations as core participants
13 in the inquiry for the reasons that you have given.

14 You have recently ruled on whether to designate
15 a single lawyer as the recognised legal representative
16 of both parts of Mr Grainger's family, even though
17 at the time that you considered the application they
18 were separately represented, and you determined pursuant
19 to Rules 6 and 7 of the Inquiry Rules that it wouldn't
20 be fair and proper for both parts of the family to be
21 represented by such a single lawyer; you will be
22 providing your reasons for that shortly.

23 You have lastly, sir, promulgated a costs protocol,
24 and those core participants who wish to make
25 applications for their legal expenses to be publicly

1 funded have been informed that they must make
2 applications in accordance with the protocol by Friday
3 29 July, this Friday.

4 The second part of my opening, then, sir, the
5 identification of work to be undertaken. To ensure that
6 the oral hearings commence on 16 January 2017,
7 efficiently and effectively, we suggest that the work
8 that needs to be undertaken falls under five main
9 headings: one, disclosure; two, witness statements;
10 three, expert evidence; four, applications for anonymity
11 and other protective measures; and, five, the holding of
12 a preliminary hearing principally to deal with the
13 arrangements at the oral hearings for taking evidence in
14 closed session.

15 I propose briefly to explain the background of each
16 of these five headings and then give some dates by which
17 we say relevant steps ought to be taken mainly by your
18 inquiry team, but also by the core participants. These
19 are set out in draft directions that have been
20 circulated this morning.

21 First then, disclosure. Having regard to the
22 material disclosed in the course of the inquest, which
23 the inquiry treats as having been disclosed in this
24 inquiry, the inquiry has already disclosed a substantial
25 volume of material. It has been disclosed on a series

1 of CDs, each described by a letter of the alphabet; the
2 latest disclosure was in bundle P.

3 Given the quantity of material disclosed, the nature
4 of the investigation that is being undertaken and the
5 need to avoid incurring unnecessary cost, the inquiry
6 does not propose to utilise a disclosure or document
7 management platform to facilitate further disclosure or
8 indeed to reconcile on such a platform past disclosure,
9 nor will the inquiry use evidence visualisers in the
10 course of the oral hearings, again for the same reasons.

11 The inquiry does propose to employ LiveNote or
12 a similar service for recording the evidence that
13 witnesses give and the distribution of it by way of
14 transcripts, both to core participants and to the
15 public.

16 In terms of the disclosure that remains to be
17 obtained from core participants, to the best of the
18 inquiry's knowledge, save for specific and targeted
19 requests to GMP and the NCA, arising in particular about
20 the handling of intelligence, to the best of the
21 inquiry's knowledge all relevant requests for disclosure
22 have been made and answered.

23 In terms of disclosure of material which the inquiry
24 possesses but which is yet to be distributed to the core
25 participant, there are two classes of material that fall

1 to be dealt with. The first is sensitive unused
2 material obtained from the IPCC in the course of its
3 investigation. The inquiry has identified which material
4 it regards as potentially relevant to its terms of
5 reference and has provided that material to GMP for the
6 purposes of redaction. It did that on 28 June of this
7 year. The inquiry is therefore waiting for GMP and the
8 NCA to revert to it with proposed redactions. That's
9 about 4,000 pages of material.

10 The inquiry proposes that you direct that the
11 material be returned to the inquiry with proposed
12 redactions within 28 days of today, ie by
13 23 August 2016. That's paragraph 1 of the directions
14 order. So that will have meant that GMP and the NCA
15 have had about two months or so to consider that
16 material.

17 Secondly, other unused material. The inquiry has
18 obtained further unused material from the IPCC, the last
19 folder of which was received on Friday of last week.
20 It is in the process of reviewing that material for
21 relevance and will be distributing the extracted
22 relevant material to GMP by 10 August. That's
23 paragraph 2A of the directions order.

24 The volume is not likely to be great given the large
25 scale duplication within this material, but it may be of

1 the same order as that which I've mentioned already
2 in the sensitive unused. The inquiry proposes that you
3 direct that this material be returned to the inquiry,
4 marked with proposed redactions, within 28 days of
5 10 August, ie by 8 September. That's paragraph 2B of
6 the directions order.

7 Finally, the inquiry will require all core
8 participants to sign in due course a disclosure
9 statement. In the case of core participants which are
10 organisations, this will be signed by a senior and
11 responsible person within the organisation. The
12 disclosure statement will, in summary, firstly set out the
13 steps that the individual or the organisation has taken
14 to locate material which is potentially relevant to the
15 inquiry and then to have disclosed it to the inquiry
16 and secondly certify that, to the best of that core
17 participant's belief, all relevant material has been
18 disclosed to the material. We haven't made specific
19 provision for that in the directions order because there
20 is no need; that will be something that will be
21 administered through correspondence.

22 JUDGE TEAGUE: Yes.

23 MR BEER: Can I turn then to witness statements. The
24 inquiry has obtained a very significant quantity of
25 witness statements. Presently, by my estimation, about

1 370 witnesses have provided evidence by way of witness
2 statements. These have been provided in a number of
3 ways and for different purposes: some as a result of the
4 IPCC's independent investigation into Mr Grainger's
5 death; some for the purposes of the criminal
6 investigation of Messrs Travers, Totton and Rimmer for
7 conspiracy to rob; and some for the purposes of the
8 defence of Sir Peter Fahy in the criminal proceedings
9 for breach of the Health and Safety at Work Act 1974.

10 What remains outstanding is a relatively small
11 number of witness statements from officers or employees
12 of GMP and the NCA in relation to the intelligence
13 gathering operation that preceded the decision to arrest
14 Mr Grainger. The inquiry will shortly be addressing
15 requests pursuant to Rule 9 of the Inquiry Rules 2006,
16 seeking to obtain such evidence from such witnesses, and
17 we have made provision for this in paragraphs 3 and 4 of
18 the directions order.

19 Paragraph 3:

20 "The inquiry shall use its best endeavours to send
21 any requests for the provision of a witness statement
22 pursuant to Rule 9 of the Inquiry Rules (2006) by
23 31 August 2016."

24 And paragraph 4:

25 "Those in receipt of the request shall provide such

1 a witness statement to counsel to the inquiry [that's
2 deliberately framed in that way, not to the solicitor to
3 the inquiry] within 28 days of service of the request."

4 Thirdly, then, expert evidence. The inquiry
5 proposes to instruct expert witnesses in two disciplines
6 to supplement the expert evidence that's already
7 available. Firstly, an expert in firearms and ballistic
8 reconstruction. Second, an expert in the command,
9 control and conduct of firearms operations by the police
10 service in England and Wales in 2012.

11 In relation to the former, the inquiry proposes to
12 instruct Dr Phillip Seaman of key Forensic Services.
13 Dr Seaman is a former member of the Forensic Science
14 Service and will be well-known to a number of the
15 advocates in the inquiry.

16 You'll see that we have made provision for a sharing
17 of the draft of the letter of instruction to Dr Seaman,
18 before it is despatched, in paragraph 5A of the proposed
19 directions order and for core participants, if so
20 advised, to send to us any proposed additional issues
21 which they suggest Dr Seaman should be asked to report
22 on by 12 August.

23 We expect core participants to be constructive in
24 this regard and not to redraft the letter of instruction
25 as if it was being done by committee, but instead to

1 propose any other issues for the consideration of
2 Dr Seaman that in their view have been omitted.

3 In relation to the latter, command and control of
4 firearms operation, we're in the process of identifying
5 an expert with the necessary qualifications,
6 independence and experience. We have adopted a similar
7 approach of sharing the letter of instruction in draft
8 with core participants in paragraphs 6A and B of the
9 proposed directions.

10 Fourthly then, sir, applications for anonymity and
11 other protective measures. It's plain from the evidence
12 that the inquiry has received to date that some
13 witnesses are likely to wish to give evidence
14 anonymously or with the benefit of other protective
15 measures. But core participants should be aware that
16 simply because a witness has de facto anonymity at
17 present is neither here nor there; applications will
18 need to be made to the chairman -- to you, sir -- on
19 their merits, justifying any proposed anonymity or other
20 protective measure and you, sir, will have to determine
21 them in accordance with section 19 of the 2005 Act.

22 We wish to avoid the unnecessary cost to the inquiry
23 and to core participants of making such applications
24 in relation to witnesses who will not in the event give
25 live evidence to the inquiry at its oral hearings and so

1 propose that applications are not made until after the
2 inquiry has indicated to core participants that
3 a witness should be treated for the purposes of making
4 such an application as a live witness in the inquiry.
5 That will not commit the inquiry to calling that witness
6 and instead only act as a trigger for the making of any
7 application that he or she wishes to make.

8 The first step on the way to determination of such
9 applications will be set out in an inquiry protocol on
10 anonymity and other protective measures. This will be
11 published shortly after this hearing today.

12 The next step in the process is the notification of
13 witnesses who are likely to give evidence to the inquiry
14 at its oral hearings. We propose that the inquiry
15 should give such notification by Monday, 5 September,
16 save for those witnesses who we are concurrently seeking
17 witness statements from and which I've addressed already
18 in paragraph 3 of the directions order.

19 Applications must be made within 21 days of
20 a witness being notified that they may be required to
21 give evidence at the oral hearings of the inquiry; see
22 paragraph 8 of the directions order. So if the inquiry
23 delivers notification as planned on 5 September,
24 applications will be due by Monday 26 September.

25 Lastly, a preliminary hearing. We judge it

1 necessary to have a hearing after all or nearly all of
2 witness evidence is in and any further disclosure
3 provided to determine the process for hearing closed
4 evidence -- as you've mentioned, sir, ie in one go or as
5 it arises -- and to ensure that as much closed evidence
6 has been placed into the open as is lawfully possible.

7 In determining that matter it may be that the
8 additional case management hearing will itself have in
9 part to sit in a closed session to determine the final
10 management of the oral hearings, but we propose that
11 this hearing is listed on Monday, 14 November 2016; see
12 paragraph 9 of the directions order.

13 JUDGE TEAGUE: Yes.

14 MR BEER: Can I turn, then, sir, to the third issue that
15 I mentioned: undertakings.

16 JUDGE TEAGUE: Yes.

17 MR BEER: The solicitor to the inquiry, on 18 July,
18 distributed a note setting out your provisional views on
19 the undertaking or undertakings as to the use of
20 evidence produced or given to the inquiry by a witness
21 against that witness in any future or criminal
22 disciplinary proceedings. This was described as your
23 "minded to" note. In short, in the "minded to" note,
24 you propose firstly to seek an undertaking from the
25 Attorney General as follows -- I'll read it with some

1 less important parents omitted:

2 "In respect of any person who provides evidence to
3 the inquiry, no evidence he or she may give before the
4 inquiry, whether orally or by written statement, nor any
5 written statement made preparatory to giving evidence,
6 nor any document, thing or information produced by that
7 person to the inquiry, will be used against him in any
8 criminal proceedings or when deciding whether to bring
9 such proceedings, except proceedings where he or she is
10 charged with having given false evidence in the course
11 of this inquiry or having conspired with or procured any
12 other person to do so, or is charged with any offence
13 under Section 35 of the 2005 Act, or having conspired
14 with or procured others to commit such an offence.

15 "It is further undertaken not to use in criminal
16 proceedings against that person any evidence which is
17 itself the product of an investigation commenced as
18 a result of the provision by that person of any
19 evidence, document, thing or information to the inquiry.
20 For the avoidance of doubt, this undertaking does not
21 preclude the use of the information and/or evidence
22 identified independently of the evidence provided by
23 that person to the inquiry.

24 "Secondly, to seek from the chief constables of
25 Greater Manchester Police and Cheshire Constabulary and

1 from the Director General of the NCA an undertaking in
2 similar form in respect of the use of evidence given to
3 the inquiry by a witness in disciplinary proceedings
4 against them or in deciding whether to bring such
5 proceedings."

6 You invited written submissions from core
7 participants and from Cheshire Constabulary and from the
8 IPCC and each of them has kindly supplied such written
9 submissions. In summary, they each say as follows as to
10 the proposed undertaking from the Attorney General.

11 Mr and Mrs Schofield and Mr Stuart Grainger suggest
12 that the reasons for seeking such an undertaking are, at
13 first blush, difficult to understand, in particular
14 because all relevant officers have given detailed
15 accounts. They suggest that the only form of
16 undertaking that is justified is an undertaking from the
17 Attorney that he would not prosecute any person for the
18 commission of a section 19 RIPA 2000 offence in
19 connection with giving evidence to the inquiry. They
20 ask that the matter is deferred for a short time to
21 allow them to take full instructions and for counsel to
22 the inquiry to produce a note explaining the reasoning
23 for the proposed undertaking.

24 Miss Hadfield-Grainger submits that in previous
25 inquiries counsel to the inquiry has made detailed

1 written submissions setting out the full context for the
2 proposed undertakings and providing all of the
3 authorities on which reliance is placed. She also
4 suggests that a particular circumstance that pertains in
5 this inquiry is that Q9 has already provided a detailed
6 account.

7 Greater Manchester Police takes no issue with this
8 part of the "minded to" note, but asks whether
9 consideration has been given to seeking a different form
10 of undertaking in relation to the occupants of the Audi
11 in which Mr Grainger died to the effect that evidence
12 against each other will not be used against any of them
13 in criminal proceedings.

14 Q9 supports the proposed undertaking by his
15 solicitor's letter of 21 July 2016, but also remains
16 neutral by his counsel's submissions of the same date.

17 The NCA have indicated that if you decide that it's
18 appropriate to seek an undertaking in the form set out,
19 then they would support that approach.

20 The IPCC adopts a neutral stance in respect of the
21 proposed undertaking from the Attorney, as does
22 Cheshire Constabulary.

23 It follows that I should address briefly the
24 submissions that are made by the two family groups that
25 you should not determine the issue today. I should

1 address the submission that only an undertaking giving
2 immunity in relation to the commission of a section 19
3 RIPA 2000 offence should be given, and I should
4 address the submission that a different undertaking
5 might be given to the occupants of the Audi.

6 As to the first matter, we submit that you should
7 determine the issue now for the following reasons.
8 First, whilst it's correct that in some inquiries that
9 have taken place over the past 15 years or so, counsel
10 to the inquiry has analysed in depth the authorities
11 relating to the provision of undertakings and the extent
12 of the privilege against self-incrimination in civil
13 proceedings. They have addressed whether asymmetric
14 undertakings should be given in respect of different
15 individuals or groups of individuals. They have
16 addressed whether the undertakings should prevent
17 derivative use of material provided to the inquiry.
18 They have also addressed the form that an undertaking
19 might take and have, on occasions, placed numerous
20 authorities before the chairman of the inquiry or the
21 panel in the process. Indeed, I have previously done
22 so.

23 These issues are well settled now. In particular,
24 the key issue of the extent of the privilege against
25 self-incrimination is well settled. The form of your

1 proposed undertaking reflects accurately that privilege
2 and no one in their submissions has suggested that it
3 does not. Just because, in other inquiries there has
4 been a parade of knowledge before the chairman before he
5 or she has come to rule that an undertaking be sought in
6 conventional form, is no reason for that to be done
7 here. It is your view of the matter that matters and
8 it is entirely in keeping with the need to conduct this
9 inquiry expeditiously and to avoid unnecessary cost if,
10 having regard to the previous learning on the issue, you
11 take it into account and set out your views first.
12 Indeed, that was the very purpose of you doing so on
13 this occasion.

14 Second, there are very good case management reasons
15 to determine the issue now. Before the inquiry seeks
16 evidence from witnesses in relation to evidential
17 matters -- I have mentioned them already in paragraph 3
18 of the directions order -- it wishes to be in a position
19 to set out to them the undertaking that will be sought
20 or is being sought from the Attorney General.

21 Third, for the most part, the reasons given by those
22 who do not support the seeking of an undertaking relate
23 to whether the undertaking should be given by the
24 Attorney General and don't relate to you as to whether
25 such an undertaking should be sought. You have as your

1 principal focus whether seeking such an undertaking may
2 assist you in the discharge of your terms of reference,
3 not wider issues such as the accountability of agents of
4 the State after this inquiry is over.

5 As to the second matter, the suggestion by Mr and
6 Mrs Schofield and Mr Stuart Grainger that the only
7 undertaking that should be sought is an immunity from
8 prosecution for a section 19 RIPA 2000 offence in
9 connection with the giving of evidence to the inquiry.
10 The first thing to say is that, as is recognised in the
11 submissions on this issue, by replying to them
12 I neither confirm nor deny that this inquiry is
13 concerned with communications covered by part 1 of
14 chapter 1 of RIPA 2000.

15 I can deal with the submission shortly. We submit
16 that such an undertaking should not be sought because,
17 firstly, it would not assist the inquiry in the
18 discharge of its terms of reference. To the extent that
19 the inquiry does involve such communications, the
20 statutory bar on adducing evidence of them in section 17
21 of RIPA 2000 would remain and any section 9 immunity
22 would be nugatory.

23 Second, the principal purpose of an undertaking
24 given in the course of a public inquiry is to permit or
25 encourage witnesses and other persons who engage with

1 the inquiry to be open and frank about their past
2 conduct or the past conduct of others, not to permit
3 them to commit a criminal offence whilst they're giving
4 their evidence to the inquiry or providing evidence to
5 the inquiry and not face the consequences of doing so.

6 As to the third matter, the seeking of a different
7 undertaking restricted to the occupants of the Audi, we
8 submit that you shouldn't seek an undertaking in that
9 form for the following reasons. Firstly, there's no
10 good reason on the face of the papers to differentiate
11 between the occupants of the Audi and other witnesses
12 in the inquiry and single the occupants of the Audi out
13 for special treatment.

14 Second, such an undertaking would not have as its
15 purpose combatting the difficulties which arise through
16 the application of the privilege against
17 self-incrimination to this inquiry by section 22.1 of
18 the 2005 Act. Third, such an undertaking would be very
19 unusual indeed and, to my knowledge, unprecedented.

20 So for these reasons we submit that you should
21 determine the matter now and should seek an undertaking
22 in the form set out in your "minded to" note.

23 In relation to the question of an undertaking as to
24 the use of evidence given or produced by a witness
25 against him in disciplinary proceedings, we see the

1 force in the submissions made by a number of core
2 participants as to the prematurity of seeking such an
3 undertaking at this stage and therefore propose that you
4 should leave this matter in abeyance to be addressed if
5 and when a concrete situation arises that calls or may
6 call for the seeking of such an undertaking.

7 In adopting that course we do, however, note two
8 points. First, that a number of core participants made
9 submissions on the basis that a relevant consideration
10 for you in seeking the undertaking should be whether
11 each force and the NCA should be able to maintain
12 discipline and render accountable any officers who are
13 or may be guilty of misconduct. As it seems to us,
14 that's a matter more directly relevant to those charged
15 with seeking accountability of State agents, ie the
16 forces, the NCA and potentially the IPCC, and is not
17 a matter of the first importance for you.

18 Second, some core participants seem to regard the
19 idea of such an undertaking as unusual or unprecedented;
20 see, for example, paragraph 4 of the NCA's letter of
21 21 July where it is described as "extremely unusual" and
22 paragraph 6 on page 2 of Bhatt Murphy's letter of the
23 same date where it is suggested:

24 "We are not aware of any inquiry having previously
25 obtained undertakings in the conduct of police

1 misconduct proceedings."

2 In fact, there are a number of examples of exactly
3 that occurring. For example, a qualified undertaking
4 in the Rosemary Nelson inquiry given by the then
5 Chief Constable of the Police Service of
6 Northern Ireland and undertakings given by the heads of
7 the armed services in the Baha Mousa inquiry and the
8 same undertakings in the Al-Sweady inquiry. So for
9 those reasons we suggest it is important to progress the
10 issue of the criminal undertaking, but we see the force
11 of the submissions made by others in relation to the
12 issue of a disciplinary undertaking.

13 That is all I say at the moment and I would propose
14 to reply when I have heard others.

15 JUDGE TEAGUE: Thank you, Mr Beer.

16 Mr Weatherby, are there any observations or
17 submissions that you wish to make at this stage with
18 regard to any of the matters raised by Mr Beer in his
19 opening?

20 Submissions by MR WEATHERBY QC

21 MR WEATHERBY: Yes. Good morning, first of all.

22 On behalf of Ms Hadfield-Grainger, can I say that we
23 take to heart the opening comments that you, sir, have
24 made and we very much will be collaborating with counsel
25 to the inquiry and with the inquiry itself in trying to

1 achieve truth and justice in this matter.

2 So far as the proposed directions are concerned,
3 we are content with the helpful suggestions made by
4 Mr Beer. I would like to make just one or two further
5 submissions regarding the proposed undertakings.

6 First of all, can I note that we put in submissions
7 in a letter from my solicitor dated 22 July. I'll be
8 quite brief as I'm sure you've had an opportunity of
9 looking at those.

10 JUDGE TEAGUE: Yes.

11 MR WEATHERBY: But can I say that the starting point for
12 consideration of undertakings, in our submission, should
13 be a recognition that this sort of undertaking is
14 a departure from normal legal principle. Although
15 Mr Beer is entirely correct that it is available as an
16 option, in our submission it needs to be clearly
17 justified and the basis for it, both in law and in the
18 particular case, needs to be clearly set out.

19 Our submission starts with the fact that none of the
20 core participants have actually sought this, that no one
21 has suggested that any likely or proposed witness will
22 invoke the privilege and that in fact the central
23 witness, if I can refer to Q9 as that, has in fact given
24 a relatively full account already. There's no
25 suggestion that he will invoke the privilege beyond

1 that. Therefore we say that the inquiry should be very
2 slow indeed to deviate from normal principles.

3 Although, as I say, Mr Beer is correct that this
4 sort of undertaking has been sought and given in
5 a number of other cases, in the vast majority of
6 Article 2 circumstances, no such undertaking is either
7 sought or given. We've set out in the written
8 submission in the letter the recent cases of the
9 Hillsborough inquests. They're particularly good
10 examples because there were and are two criminal
11 investigations going on and in fact a number of
12 witnesses were warned in court by the coroner of their
13 right and their privilege not to answer questions and
14 they did not. Not one single witness did that.

15 But we also say that there is a potential Article 2
16 issue here because the giving of such an undertaking
17 might give rise to a situation where the State is unable
18 to take the fruits of an inquiry to its appropriate
19 conclusion, which may be a prosecution, and therefore
20 that would amount to what we've described as a partial
21 or evidential immunity. Therefore this inquiry in those
22 circumstances should be very slow to advance that.

23 So in our submission what ought to follow is that
24 counsel to the inquiry should set out the legal basis
25 and should set out the particular basis on these facts

1 of why such an undertaking is or may be required and
2 then the inquiry can deal with that on the basis of
3 further written or, if necessary, oral submissions.

4 Those are the further comments that I'd seek to
5 make.

6 JUDGE TEAGUE: Thank you, Mr Weatherby.

7 Mr Thomas?

8 Submissions by MR THOMAS QC

9 MR THOMAS: Good morning, sir.

10 JUDGE TEAGUE: Good morning.

11 MR THOMAS: Sir, I do have a few observations in relation to
12 what your counsel, Mr Beer, has already set out. Can
13 I just take this in stages first and I'll come on to the
14 undertakings towards the end.

15 Sir, as you know, and as you've indicated, there has
16 been significant delay and a period of time since the
17 unfortunate death of Mr Grainger, some four-and-a-half
18 years now. Yes, it's correct that there has been some
19 disclosure to the core participants, but, sir, we are
20 concerned in relation to the timetabling that has been
21 suggested for a number of reasons.

22 Sir, you will remember that at a previous hearing,
23 when this was still under an inquest as opposed to the
24 public inquiry, there was indicated that there were the
25 following -- I'm going to set these out. These are set

1 out in the note that we sent to you and your counsel on
2 12 May where we suggested the proposed timetable -- when
3 it was first announced that this hearing was going to be
4 converted to a public inquiry, but I'll just set out
5 just the disclosure as we understood it.

6 (A), 26 folders from the IPCC unused, including
7 sensitive materials; (B), further sensitive materials
8 held by the Cheshire police, (C), six boxes of material
9 found by Greater Manchester Police, which were in deep
10 storage; (d), the NCA were to produce gists of what had
11 been redacted; and then (e), sir, you were due to look
12 again at the redactions in bundle K.

13 In relation to that outstanding disclosure back
14 then, our difficulty is this. What we don't know is,
15 out of the materials, the disks that we have already
16 been sent, what is covered by some of the disclosure
17 we've already had and what is outstanding -- we've had
18 very little further sensitive material held by Cheshire.
19 We don't know whether we've had any additional
20 information in relation to the six boxes of material
21 held by GMP. We don't know -- in fact, we do know,
22 we are still awaiting the gists from the NCA as to what
23 has been redacted. Sir, as I say, you were to look
24 again at the redactions in bundle K. I'll be happy to
25 be corrected, but I don't think that has made its way to

1 us as of yet.

2 The reason why I mention that and I set that out is
3 because you will see in our note to you and your team
4 that we were hoping that we would have received the
5 outstanding disclosure within six weeks of us sending
6 that note to you, by 17 June. There's a timetable
7 that's set out --

8 MR BEER: I hesitate to interrupt, but I don't want
9 Mr Thomas to build an edifice on something that is less
10 than sound. (A) is dealt with by paragraph 2. (B), the
11 further sensitive information held by Cheshire has
12 already been distributed in bundle M and no doubt he's
13 read it. C, the six boxes of material, are distributed in
14 bundle P.

15 MR THOMAS: I'm grateful for that, which is why I say our
16 difficulty is just knowing, out of what we were asking
17 for, what we've actually got because I don't think it is
18 particularly clear -- it certainly hasn't been said to
19 us, in terms of what you're asking for, this is it. But
20 if Mr Beer is saying some of those items we have, then
21 we can have a conversation with him outside just to see
22 if there's anything outstanding.

23 Nevertheless, in relation to the proposed timetable
24 in the directions order that we've been handed today, we
25 still have the following observations. Firstly -- sir,

1 do you have that directions order in front of you?

2 JUDGE TEAGUE: Yes.

3 MR THOMAS: We would submit that we need an opportunity --
4 so this needs to be built into the order ... firstly,
5 number one, to request further disclosure and/or
6 redactions to be removed. We just need an
7 opportunity -- once that process has started, we need to
8 have an opportunity to make submissions on that.

9 Secondly, it needs to be built in -- we need to have
10 the opportunity to request, if advised, further witness
11 statements. Sir, you raise an eyebrow. Let me explain
12 what I mean by that if it's unclear. For instance, it
13 may well be say, for example, the planning and control
14 of the operation, we believe that there may be a gap
15 in the evidence that hasn't been covered, that we be
16 given an opportunity to make representations in relation
17 to that, and that's just by way of one example.

18 Thirdly, sir, if you look at item 6, this is
19 in relation to the instruction of a suitable police
20 witness in relation to command and control, to be able
21 to fully participate in that exercise and in particular
22 the letter of instruction. We can only do that, I would
23 say respectfully, if the disclosure of all the relevant
24 material in relation to the -- of the material has been
25 disclosed.

1 Because what we don't want to do is for us to agree
2 a letter and then learn, if further disclosure is coming
3 up, that there are parts of the letter of instruction
4 that we would have added to or wanted to be amended or
5 asked for certain things to have been taken into account
6 and we were unaware of that because we didn't have full
7 disclosure. So, sir, it's effectively to effectively
8 contribute to that process.

9 Sir, coming on to the issue of the undertakings and
10 the suggestion that has been made in relation to the
11 criminal proceedings as opposed to the disciplinary
12 proceedings, can we echo the comments that have been
13 made by Mr Weatherby. So I don't repeat them, I just
14 echo them.

15 Sir, will you just bear with me one moment? (Pause)

16 That is all I say.

17 JUDGE TEAGUE: Thank you very much, Mr Thomas.

18 Ms Whyte, is there anything you want to contribute
19 on any of these points?

20 Submissions by MS WHYTE QC

21 MS WHYTE: Only extremely briefly. We echo our thanks as to
22 both the content and the spirit of both opening sets of
23 remarks.

24 Nothing at all to add in relation to the
25 undertakings point. We have dealt with that in our

1 note. So far as proposed timetables are concerned, only
2 a couple of matters. So far as paragraph 1 is
3 concerned, I can confirm that in fact that material has
4 been provided to the NCA today on disk and so it will be
5 a matter for the NCA to address you on whether that
6 timetable is now a realistic one or not.

7 So far as number 2 is concerned, we will of course
8 use our best endeavours to meet that timetable. We're
9 unaware of the precise volume; I hear what Mr Beer says
10 that it's not a great deal. If that's the case, there
11 should be no difficulty at all.

12 So far as the provision of witness statements to
13 counsel to the inquiry is concerned, again if GMP are to
14 play any role in that, we'd be very grateful if there
15 could be some correspondence as to the mechanism in
16 which such statements are to be taken so that there is
17 transparency about that process.

18 Finally, and simply in relation to the extent of the
19 timing in paragraph 6, sir, we're obviously about to
20 enter August when quite a lot of people tend to go away
21 on holiday. Certainly so far as the GMP legal team are
22 concerned, some of them are away for the first two
23 weeks, some of them are away for the latter two weeks,
24 which I expect may be a current theme amongst other core
25 participant representatives, I don't know. We're

1 a little concerned that only a week is allowed in
2 paragraph 6 for core participants to respond with
3 additional issues in relation to such a central issue.

4 The command and control of the firearms operation is
5 quite a diffuse but very important topic and we think
6 a week in the middle of August might just be unrealistic
7 and we wondered whether we could prevail upon the
8 inquiry to ask for three weeks so that a proper
9 comprehensive reply can be given with sufficient time,
10 given the holiday season.

11 Those are our only observations, thank you.

12 JUDGE TEAGUE: Thank you, Ms Whyte.

13 Ms Scott, do you have anything to add to what's
14 already been said?

15 Submissions by MS SCOTT

16 MS SCOTT: Sir, nothing on the directions, thank you.

17 So far as the question of the undertakings are
18 concerned, it has already been noted that you have two
19 documents, I think, from Q9: one a letter from
20 Slater & Gordon solicitors and one a short submission
21 prepared by Mr Davies Queen's Counsel. Sir, in light of
22 those two documents, simply to clarify our position,
23 which is this. You, sir, are very well aware of the
24 competing interests which bite on that issue, both so
25 far as the criminal and the disciplinary undertakings

1 are concerned.

2 We support your desire to put in place all
3 appropriate measures to ensure that this inquiry is
4 conducted in as full and transparent a manner as
5 possible and we can see that the undertakings you have
6 proposed would promote that objective.

7 So far as the decision is concerned, our position
8 is that it really is a matter for you whether the
9 benefits outweigh some of the disadvantages that have
10 been outlined. So that is why we adopt a neutral
11 position.

12 JUDGE TEAGUE: Thank you very much, Ms Scott.

13 Mr Dixey?

14 Submissions by MR DIXEY

15 MR DIXEY: Sir, very briefly, on behalf of the NCA, we will
16 continue to provide all assistance that we can to you
17 and your team. On the directions, as Ms Whyte has
18 explained, we have been provided this morning with GMP's
19 proposed redactions. We see no issue with complying
20 with the 23 August date provided in the directions.

21 On item 2, paragraph 2, we are slightly in the dark
22 as to the extent of the material. I may have got it
23 wrong, but Mr Beer appeared to suggest there was around
24 about 4,000 pages in the second tranche of material.
25 We would request a similar amount of time to GMP to

1 consider the redactions. As you're aware, GMP review
2 the material initially, it's then passed to the NCA for
3 its review and so we would ask for an extension to
4 paragraph B insofar as it applies to the NCA and we
5 propose a date, four weeks on from 8 September, to
6 6 October, but I preface that again by saying that we're
7 unsure of the precise amount of the material.

8 To address a point that my learned friend Mr Thomas
9 raised: the gist that was referred to, we provided to
10 your team in February. We understand that that is to be
11 visited by you and your team and we understand will be
12 updated by you in due course. We say nothing on the
13 undertakings point; Mr Beer has faithfully summarised
14 our point and you have it in writing.

15 JUDGE TEAGUE: Thank you very much.

16 Ms Palmer?

17 MS PALMER: Nothing to say, sir.

18 JUDGE TEAGUE: Thank you. Yes, Mr Beer.

19 Submissions in reply by MR BEER QC

20 MR BEER: Can I deal with those submissions in the sequence
21 in which they were made --

22 JUDGE TEAGUE: Yes.

23 MR BEER: -- rather than issue by issue?

24 Mr Weatherby first then. His principal point was
25 that as no one has come to the inquiry and asked for the

1 undertaking, nor so far actively suggested that they
2 will seek to rely on the privilege against
3 self-incrimination, it's unnecessary to seek it, to seek
4 the undertaking. I have two points in reply as to that.

5 Firstly, in all past cases such a request or such an
6 indication has not been recognised as a condition
7 precedent to the seeking of the undertaking, ie it's not
8 necessary as a condition precedent for the seeking of
9 the undertaking that a claim or intimation to the
10 privilege has already been made.

11 JUDGE TEAGUE: Yes.

12 MR BEER: The examples go back to the Stephen Lawrence
13 inquiry, where an undertaking was given at the request
14 of Sir William MacPherson in March 1998. The
15 Bloody Sunday inquiry, a decision by Lord Saville of
16 Newdigate of 27 December 1998. In the Ladbrooke Grove
17 inquiry in 2000, a request by Lord Cullen. In the
18 Robert Hamill inquiry, a decision of Sir Edwin Jowitt in
19 2004. By Sir Michael Morland in the Rosemary Nelson
20 inquiry in 2005. By Sir William Gage on 6 January 2009
21 in the Baha Mousa inquiry. And more recently, by Sir
22 Thayne Forbes in the Al-Sweady inquiry on 27 July 2010
23 and by Sir Christopher Holland in 2011 in the Azelle
24 Rodney inquiry.

25 In each case, the intimation of a claim to the

1 privilege was not regarded as part of a necessary step
2 on the way to seeking the undertaking. That's for the
3 very good reason that one cannot wait until, in the
4 course of a witness giving evidence on oath, when
5 they're asked or may be asked a difficult question, the
6 answer to which may incriminate them and they therefore
7 take the privilege before seeking the undertaking from
8 the Attorney.

9 Because to adopt such a course would mean that the
10 inquiry would have to stall whilst that was sorted out.
11 That's why a course is taken of seeking the undertaking
12 beforehand, both so that evidence given to the inquiry
13 in witness statement form, in documents produced to the
14 inquiry, and evidence on oath can be given and produced
15 in the knowledge of the undertaking.

16 Sir, turning to Mr Thomas' submissions. You heard
17 what I said when I intervened. The 26 folders of unused
18 material that were mentioned previously when this was an
19 inquest are addressed in paragraph 2 of the proposed
20 directions order. The further materials held by
21 Cheshire Police, that was his paragraph B, are
22 constituted by bundle M, which has been distributed.

23 The six boxes of material are constituted by
24 bundle P. You have heard what Mr Dixey has said about
25 gists, issue D. It's right that the NCA has

1 produced a gist to us. We've taken the deliberate
2 decision to defer responding to it while we seek out
3 additional evidence relating to the intelligence that
4 led to and informed the operation to seek to arrest
5 Mr Grainger before finalising the gist because it's
6 inevitably going to be informed by the witness evidence
7 that we are presently seeking.

8 Mr Thomas said, secondly, that his team would ask
9 for the facility to request further disclosure or to
10 make submissions on de-redaction, if that's a word, of
11 documents. We, of course, welcome any suggestions as to
12 further disclosure that should be sought so long as it's
13 targeted and specific and is made by reference to either
14 existing material or material which is assessed to be
15 likely to exist but which has not been disclosed.

16 Similarly, if after the further exercise that we're
17 engaged in at the present time, his team wishes to
18 suggest unredaction of material, we will of course give
19 a facility to allow all core participants to argue that.

20 It seems quite theoretical at the moment, but if
21 concrete examples do arise of a gap in the evidence,
22 then we'll be only too pleased to hear about it.

23 As to item 6 on the directions order, he submitted
24 that he had a concern that he was being asked to provide
25 additional areas for an expert witness to address in his

1 report when disclosure is not complete.

2 There are three things to say as to that. Firstly,
3 the material that is outstanding is largely unused
4 material. The important word to take from that is that
5 it's unused material. The primary material has already
6 been long disclosed.

7 Secondly, the concern is pitched at a theoretical
8 level. No concrete example is given of material that
9 needs to be disclosed but which hasn't been disclosed
10 and which would relate to a topic that they would like
11 to ask the expert about.

12 Thirdly, if that situation does arise, that some
13 disclosure is given after the expert is instructed and
14 before he's reported, then we can put in a supplemental
15 letter to him and say, by the way, this document has
16 just been turned up, please address this. If a document
17 is turned up after the expert has produced his report,
18 we can ask him to produce a supplemental report.
19 We would say to you, sir, it's not a good reason, given
20 the other imperatives, to delay his instruction.

21 Turning then to Ms Whyte's submission. In
22 conjunction with what Mr Dixey said, we are pleased to
23 hear that there will be no difficulty with paragraph 1
24 of the directions order.

25 She made a submission about her request for some

1 transparency on the process by which witness statements
2 are to be taken. For the avoidance of doubt, core
3 participants are to take their witness statements from
4 their witnesses, so where they have solicitors they will
5 take the witness statements. The inquiry is not
6 employing a team of investigators or witness-statement
7 takers; they're to be taken by the core participants
8 themselves and provided to the inquiry.

9 If it assists, we will produce a yet further
10 protocol on the format of witness statements. A Rule 9
11 request will set out in detail -- in extensive detail --
12 the areas which must be addressed in the witness
13 statement.

14 In relation to her comments on paragraph 6 of the
15 proposed direction order, I think she was asking for
16 a little longer, given the August break. Of course,
17 it's slightly unusual to allow core participants the
18 facility to see the letter of instruction before it's
19 even sent. We've done it in an attempt to be
20 collaborative and open and transparent with core
21 participants and to prevent the possibility arising of
22 people after the event saying, he hasn't been asked
23 about this, or, he should have been asked about that.
24 We are trying to make sure that everyone is involved in
25 the process.

1 Sir, it's entirely a matter for you, but we wouldn't
2 see a huge difficulty with another week in paragraph 6B
3 taking us to 26 August.

4 Sir, I have addressed what Mr Dixey has said
5 already.

6 JUDGE TEAGUE: Yes.

7 MR BEER: Sir, those are the only submissions that we make
8 now, unless there's anything that Ms Cartwright and
9 I can assist you on further.

10 JUDGE TEAGUE: No, I don't think so. What I propose to do,
11 because I think it's an important matter that needs to
12 be resolved quickly, is to indicate what I intend to do
13 with regard to undertakings and to do so at this stage
14 having listened carefully to what everybody has had to
15 say about it.

16 Then, if there's nothing else, I'll go on to deal
17 with the directions. It won't take me more than
18 a second or two.

19 MR BEER: Sir, yes.

20 JUDGE TEAGUE: The view I take is this: that it is important
21 that witnesses who are required to attend in person
22 should be encouraged to give full and candid evidence to
23 the inquiry and that witnesses who are asked to make
24 statements should be encouraged to be candid and
25 complete in what they say in those statements.

1 To that end I will seek an undertaking from the
2 Attorney General in the following terms. I appreciate,
3 Mr Beer, that you have been through the substance of it
4 already in public, but not, I think, every word of it.

5 MR BEER: No, it wasn't.

6 JUDGE TEAGUE: Although it will go on the website in due
7 course, and I think it's set out in my "minded to" note,
8 I think it is appropriate to go through it in full at
9 this stage. As I say, it will be in these terms:

10 "It is undertaken that in respect of any person who
11 provides evidence to the inquiry, no evidence he or she
12 may give before the inquiry, whether orally or by
13 written statement, nor any written statement made
14 preparatory to giving evidence, nor any document, thing
15 or information produced by that person to the inquiry
16 will be used against him or her (or a spouse or
17 civil partner) in any criminal proceedings (whether
18 present or future or on appeal from a conviction) or
19 when deciding whether to bring such proceedings, except
20 proceedings where he or she is charged with having given
21 false evidence in the course of this inquiry or with
22 having conspired with or procured any other person to do
23 so, or is charged with any offence under section 35 of
24 the Inquiries Act 2005, or having conspired with or
25 procured others to commit such an offence.

1 "It is further undertaken not to use in criminal
2 proceedings against that person (or a spouse or
3 civil partner) any evidence which is itself the product
4 of an investigation commenced as a result of the
5 provision by that person of any evidence, document,
6 thing or information to the inquiry.

7 "For the avoidance of doubt, this undertaking does
8 not preclude the use of information and/or evidence
9 identified independently of the evidence provided to the
10 inquiry by that person."

11 So that's the proposed wording. The purpose of that
12 undertaking is to ensure as far as possible that no
13 person need fear that any evidence he may give to the
14 inquiry will be used against him in any criminal
15 proceedings, neither shall any written statement or
16 other document made for the purposes of this inquiry be
17 used against the maker. The only exceptions will be
18 those provided for in the undertaking itself, that's to
19 say in relation to criminal proceedings for the giving,
20 or conspiring or agreeing to give or provide, false
21 evidence, documents, information or other material to
22 the inquiry or procuring others so to do.

23 For the reasons you have given, Mr Beer, I do not
24 intend to seek a different undertaking in respect of the
25 occupants of the Audi car in which Mr Grainger sustained

1 his fatal injury, nor will I seek any undertaking which
2 would purport to confer immunity from prosecution for
3 any offence, whether under the Regulation of
4 Investigatory Powers Act or otherwise.

5 Finally, with regard to potential disciplinary
6 proceedings, I am inclined to the view that it would be
7 premature to seek any undertakings at this stage.

8 So that, I hope, makes clear what the position is
9 with regard to undertakings, unless there's anything,
10 Mr Beer, you think I have overlooked.

11 MR BEER: No, thank you, sir.

12 JUDGE TEAGUE: With regard to the directions, as I see it
13 the amendment that needs to be made is as to the date.
14 I agree with Ms Whyte's point that to allow just one
15 week in the middle of August is asking an awful lot and
16 I'm inclined to extend the time limit set in
17 paragraph 6B from 19 August to 26 August. However,
18 subject to that, I propose to make the directions in the
19 form of the draft, of which everybody has a copy.

20 MR BEER: Thank you, sir.

21 We'll perfect that order and promulgate it and also
22 place it on the inquiry website.

23 JUDGE TEAGUE: Thank you very much.

24 Are there any other matters that we need to deal
25 with in this hearing?

1 MR BEER: No, thank you, sir.

2 JUDGE TEAGUE: Thank you all very much indeed.

3 (12.25 pm)

4 (The hearing adjourned)

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