

Thursday, 15 December 2016

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(10.40 am)

Housekeeping

THE CHAIRMAN: Yes, Mr Beer.

MR BEER: Sir, can I begin with introductions.

For Mr and Mrs Schofield and Stuart Grainger,
Mr Thomas appears.

For Gail Hadfield-Grainger, Mr Wetherby and
Ms Murphy appear. For Greater Manchester Police,
Ms Whyte and Mr Evans appear and for the
National Crime Agency, Ms Barton and Mr Dixey appear.
I appear with Ms Cartwright as your counsel.

Today's preliminary hearing, which is the third in
the Inquiry, was listed on 14 November and was originally
set down for two days, namely yesterday and today. That
is because it was originally envisaged that in addition
to the issue which will be determined today, three other
significant issues would also require to be addressed.

Firstly the response, or at that time the lack of
it, by the Attorney General to a request that you had
made of him on 15 August this year for the provision of
an undertaking as to the use which might be made of
evidence and documents provided to the Inquiry by
witnesses against such witnesses in any future criminal
proceedings.

1 I am pleased to say that on 21 November this year
2 the Inquiry received a reply to your letter in which the
3 Solicitor General stated that he did not think that it
4 would be appropriate to give the undertaking in the
5 terms sought but that he would of course consider any
6 further representations that the Inquiry or any other
7 party might wish to make.

8 In the light of that response, it has been
9 unnecessary for the Attorney General or the Solicitor
10 General to attend this hearing by legal representation
11 in order to progress the issue of a response to your
12 letter.

13 Secondly, it was at one stage anticipated that there
14 may have been argument as to whether this Inquiry,
15 instituted as it is under the 2005 Act, could hold
16 closed hearings and receive evidence about the receipt,
17 interpretation and dissemination of certain intelligence
18 in such closed hearings. The Inquiry has been informed
19 that this argument is not to be pursued, so that issue,
20 too which would have been a substantial one, taking up
21 yesterday, I suspect, has also fallen away.

22 Thirdly, at the hearing on 14 November you reserved
23 the ability, the facility, to reconvene in a closed
24 hearing if it was necessary for you to do so in order
25 properly to determine any of the 49 applications for

1 background by reference to which the issues arise. But
2 can I first just ensure you have the relevant material
3 before you. You should have three files, A to C,
4 containing the material that is listed in the opening
5 paragraphs of our open submissions. In short, bundle A
6 contains open material prepared for a preliminary
7 hearing before you, when you were sitting as a judge
8 coroner, on 7 October 2015.

9 THE CHAIRMAN: Yes.

10 MR BEER: It includes your open ruling when sitting as
11 a judge coroner dated 30 October 2015.

12 Bundle B consists of a bundle of closed material
13 prepared for that hearing, and includes your closed
14 rulings.

15 THE CHAIRMAN: Yes.

16 MR BEER: That was the past, now to the present. Bundle C
17 is a bundle of closed material prepared for the purposes
18 of this hearing and effectively consists of the primary
19 material which was to be the subject matter of
20 consideration divided into the four classes of
21 information with which we were to be concerned.

22 THE CHAIRMAN: Yes.

23 MR BEER: Additionally, you should have mine and
24 Ms Cartwright's open submissions, dated 13 December.

25 THE CHAIRMAN: Yes.

1 MR BEER: You should have Mr --

2 THE CHAIRMAN: Take this a little slowly, because I have had
3 to distribute everything on the desk.

4 MR BEER: Sorry.

5 THE CHAIRMAN: It is all right, just a matter of making sure
6 I keep track and have everything in its proper place.

7 MR BEER: I am doing a stock take and then not ensuring the
8 stock is taken. You should have mine and
9 Ms Cartwright's open submissions. Then Mr Wetherby's
10 two documents, one is a note dated 12 December, and one
11 is submissions dated 12 December. If you do not have
12 those I can hand copies up.

13 THE CHAIRMAN: I have the submissions.

14 MR BEER: There is a note which is two pages long, in fact
15 it is about anonymity. It probably is not necessary to
16 look at it, it in fact arrived after you had reached
17 your ruling.

18 THE CHAIRMAN: Yes. Yes.

19 MR BEER: Then you should have the submissions of Mr Thomas
20 of 13 December, submissions by John and Marina Schofield
21 and Stuart Grainger.

22 THE CHAIRMAN: Yes, thank you.

23 MR BEER: And you should have Ms Whyte's closed skeleton
24 argument.

25 THE CHAIRMAN: Yes.

1 MR BEER: Turning to the background then, in the inquest
2 into the death of Mr Grainger, applications for the
3 non-disclosure of certain documents to properly
4 interested persons, PIPs were made by GMP and the NCA.
5 It was agreed at a pre-inquest review held on
6 7 September 2015 that such applications would be made on
7 an expedited basis and would relate to broad categories
8 of classes of documents on the basis of a conspectus by
9 each organisation of the material held by each of them,
10 as opposed to applications made by reference to specific
11 information contained within identified documents and
12 following a detailed review of all of the information
13 held by both GMP and the NCA.

14 That agreed approach was designed to facilitate
15 early determination by you, sitting as a judge coroner,
16 of whether the inquest could proceed, in particular
17 having regard to the state's article 2 obligations or
18 whether it would be necessary to request the Secretary
19 of State to initiate an Inquiry under the 2005 Act.

20 Following written submissions, and a hearing on
21 7 October that was part ex parte and part inter partes,
22 on 30 October 2015 you promulgated rulings in response
23 to the application, one open ruling to all PIPs and two
24 closed rulings, one to the GMP and one to the NCA.

25 In the open ruling in short you held that there was

1 a public interest in bringing the material which was the
2 subject matter of the applications into the public
3 domain, paragraph 14.

4 Secondly, that disclosure of the material would
5 bring about a real risk of serious harm to an important
6 public interest, paragraph 15.

7 Third that there were no alternative means, ie by
8 limited disclosure or gisting by which the public
9 interest could be protected, paragraph 16.

10 Fourthly, in the light the unavailability of all
11 alternative measures, the balance of the public interest
12 lay in favour of non-disclosure, paragraph 17.

13 In the light of those decisions, you expressed the
14 provisional view that an inquest would not discharge the
15 state's investigative obligations under article 2 and it
16 was therefore necessary to establish a public inquiry
17 under the 2005 Act, hence this Inquiry.

18 On 3 October 2016, GMP and the NCA provided to the
19 Inquiry schedules in accordance with paragraph 9 of this
20 Inquiry's protocol about disclosure and redaction of
21 documents. That set out a sequentially numbered
22 schedule of the broad categories of reasons why
23 documents relevant to the matters being investigated by
24 the Inquiry may not be capable of being disclosed to
25 other core participants or to the public. They have

1 been distributed.

2 On 24 October, the NCA provided to the Inquiry
3 a schedule of the proposed redactions that it wished to
4 be made, that was 32 pages long. On the same date, the
5 GMP provided a much longer schedule, just shy of 6,000
6 entries on it, setting out the redactions that it
7 sought. We as your counsel have analysed the schedules
8 of redactions sought, combined them into a single
9 schedule and on 18 November, notified GMP of three
10 classes of information that we submit should not be
11 redacted. These replicated three classes of information
12 which had originally been redacted by GMP from the
13 Ian Arundale report but which after written
14 representations to GMP by us, GMP agreed should not be
15 redacted and then two additional classes of information
16 which we argued should not be redacted.

17 More recently, on 8 December, we notified GMP and
18 the NCA of four classes of information which they had
19 argued ought to be redacted from the disclosed material
20 but we suggested fell to be disclosed.

21 Two of those classes of information were the subject
22 matter of your rulings back in October 2015 and which
23 you ordered should not be disclosed. We, as your
24 counsel, take the view that some of the information
25 within these categories can and ought to be disclosed,

1 even if in places it requires to be gisted. Two of the
2 classes of information were not the subject matter of
3 your previous rulings.

4 As to the four classes of information, the first
5 class of information cannot be described without causing
6 the harm which GMP presently suggest would accrue if it
7 was disclosed. We as your counsel have given careful
8 consideration to this category of material and take the
9 view that in answering the fourth question in R v H
10 [2004] 2 AC 1341, namely can disclosure be ordered to
11 an extent or in a way that would give adequate
12 protection to the public interest in question and also
13 afford adequate protection to the legitimate interests
14 of the core participants and to the public, that
15 disclosure short of full disclosure should be ordered by
16 the preparation of summaries or extracts of evidence in
17 places or the provision of documents in an edited or
18 anonymised form.

19 The second category of information appears on
20 Greater Manchester Police's intelligence chronology.
21 This is an important document. This information in the
22 intelligence chronology is presently redacted in its
23 entirety. We take the view that seven entries are
24 particularly relevant and significant and should be
25 unredacted, whilst the balance of the entries which are

1 of far less relevance ought to be gisted and that this
2 approach properly protects the public interest in the
3 non-disclosure of much of the information whilst
4 allowing those entries that are particularly relevant to
5 this Inquiry to be seen by the core participants and the
6 public.

7 The third category is training material for MASTS
8 and we maintain that the training material for MASTS,
9 which is again currently redacted in its entirety, and
10 which addresses the MASTS tactic, strike method and
11 responsibilities, all of which are relevant to the terms
12 of reference, should be disclosed to the core
13 participants.

14 The fourth category is the casebook of DI Cousens
15 and DS Hurst. Again, GMP have redacted the entirety of
16 DI Cousens's casebooks and we submit that these should
17 have large portions unredacted.

18 More recently still we delivered to GMP and the NCA
19 the schedules of the proposed redactions, marked up with
20 our views, against all 5,850 or so entries, as to
21 whether or not in counsel to the Inquiry's view, the
22 restriction of disclosure of information proposed was or
23 was not justified in accordance with section 19 of the
24 2005 Act.

25 We understand that it is probable that a large

1 measure of agreement can be reached in relation to the
2 presently redacted material which we have argued on the
3 schedule to GMP should be unredacted.

4 It is proposed that the process of disclosing that
5 information if necessary by gisting it be carried
6 forward between counsel to the Inquiry and GMP in order
7 that a pragmatic solution may be reached so as to ensure
8 as much of that information as possible is disclosed to
9 the core participants and to the public.

10 In relation to the four categories of material which
11 this hearing was intended to address, which I have just
12 outlined, I am pleased to be able to say that in the
13 last two or three days, much progress has been made with
14 the result that only one category of material is in
15 issue today.

16 Can I deal with the four categories of material in
17 reverse order.

18 The casebooks of DI Cousens and DS Hurst, on I think
19 it was Monday of this week, GMP provided to the Inquiry
20 a revised version of DI Cousens's casebooks with far,
21 far less material redacted.

22 The approach now seemingly having been taken to
23 consider each piece of information in the casebook
24 rather than to apply a blanket approach to the entirety
25 of the casebook. In the light of this development, we

1 take the view that we need to review the newly delivered
2 redactions and revert to GMP on each of them in the same
3 way that we have done in relation to the other 5,850
4 redactions, ie on an individual basis. So that is not
5 before you today.

6 THE CHAIRMAN: No.

7 MR BEER: The previous approach of blanket redactions from
8 start to finish of the books has not been pursued,
9 recently delivered targeted redactions which we need to
10 consider.

11 Secondly, the MASTS training material. On I believe
12 Tuesday of this week, GMP informed the Inquiry that
13 public interest immunity was no longer asserted over the
14 MASTS training materials, so the approximately 450 pages
15 of material that we have identified as MASTS training
16 material can now be disclosed to the core participants
17 unredacted.

18 Thirdly, the intelligence chronology. Yesterday,
19 the NCA delivered to the Inquiry two proposed gists of
20 the information in the intelligence chronology, one
21 relating to the seven items of intelligence that we as
22 your counsel had identified as being of direct relevance
23 to your terms of reference, relating as they do to the
24 key individuals in the Audi on 3 March 2012 and the
25 others relating to other entries on the chronology which

1 relate to other matters, including other alleged members
2 of an organised crime group.

3 In relation to the seven-item gist, we firstly took
4 the view that the information on it should, as far as
5 possible, remain on the intelligence chronology itself
6 and not be lifted from it and put into a new document.
7 I am pleased to report that the NCA have agreed that
8 approach.

9 Secondly, we took the view that one entry on the
10 gist didn't properly reflect the entirety of the
11 intelligence on the intelligence chronology and the NCA
12 have now agreed. So that issue falls away. The
13 intelligence chronology will be released with, where
14 appropriate, the seven entries on it in relation to some
15 of them very slightly gisted.

16 In relation to the balance other than the seven
17 items we have not had the opportunity yet of reviewing
18 all of the remaining entries against the underlying
19 intelligence as it stood on the chronology. At first
20 sight it appears to be a broadly acceptable gist but we
21 would wish to reserve our position on that and deal with
22 that if necessary by meeting the NCA and discussion.

23 So that is not before you.

24 THE CHAIRMAN: No.

25 MR BEER: The first category of material, that is the GMP

1 material, it will be necessary for that issue to be the
2 subject of argument and ruling in a closed hearing.
3 That is because on GMP's case, to disclose the class of
4 material with which we are here concerned would harm the
5 very public interest which it asserts falls to be
6 protected by non-disclosure. Whilst we as your counsel
7 disagree with GMP as to the harm which they say would be
8 caused by such disclosure, we cannot pre-empt the
9 argument and simply disclose the class of material in
10 open session.

11 Before we proceed to that closed hearing, I would
12 propose that any of the core participants present who
13 wish to supplement their existing written submissions on
14 the -- it has to be said -- fairly well trodden approach
15 to the determination of claims to public interest
16 immunity in the context of this Inquiry should be given
17 the opportunity to do so.

18 After those submissions, we should proceed to
19 a closed hearing with GMP present. I don't think it is
20 necessary for the NCA to be present at that hearing.

21 THE CHAIRMAN: No.

22 MR BEER: But the other core participants are asked to
23 remain in the court building, firstly in case it is
24 necessary to call upon them in relation to any issue
25 that you assess ought to be addressed in open and in any

1 event to address a short number of other issues arising
2 from Mr Wetherby's submissions about the Inquiry's
3 closed substantive hearing.

4 THE CHAIRMAN: Yes, all right.

5 Mr Thomas I think probably it makes sense to you go
6 to you first --

7 MR THOMAS: Yes.

8 THE CHAIRMAN: -- is there anything you want to say?

9 Submissions by MR THOMAS

10 MR THOMAS: Not a lot. In fact, there are nine points I just
11 wish to emphasise and highlight. Sir, you will be
12 assisted if you have our submissions in front of you.

13 THE CHAIRMAN: From 7 October?

14 MR THOMAS: No, the submissions that we did dated
15 13 December.

16 THE CHAIRMAN: Yes.

17 MR THOMAS: Do you have those?

18 THE CHAIRMAN: Yes.

19 MR THOMAS: Sir, the points that I would like to make, just
20 emphasise, are -- if you go to paragraph 15, these are
21 just general principles that I know, sir, you are
22 familiar with but it is just worth emphasising again and
23 I just do so very quickly and shortly.

24 We stress that open justice is a fundamental
25 principle at the heart of our common law and again

1 I just make reference to those cases there. If you go
2 across to paragraph 18, again, open justice helps allay
3 the public concern in the administration of justice.
4 Paragraph 1, what Lord Taylor says "Open justice
5 requires maximum disclosure".

6 Over the page, sir, paragraph 21, here we have
7 serious allegation of potentially wrongdoing, what may
8 be the unjustified shooting of an unarmed man, we don't
9 know, that is for the Inquiry to determine but we would
10 ask you to bear in mind that this is by state agents and
11 there is a weighty public interest in exposing to public
12 debate and accountability the possibility of serious
13 wrongdoing and therefore the issues that you are about
14 to look at in closed session really touch upon that, and
15 we don't participate in that.

16 Just over to paragraph 24, sir.

17 THE CHAIRMAN: Yes.

18 MR THOMAS: The dangers of closed proceedings are liable to
19 inhibit the allaying of that public concern in two ways.

20 Privacy would tend to damage public confidence in
21 the Inquiry's ability to get to the truth.

22 Secondly, unpublished and untested evidence would
23 tend to increase speculation about the reliability and
24 impartiality of your process.

25 Over the page, sir, paragraph 28, it cannot be

1 forgotten that this is meant to be an article 2 Inquiry
2 and that makes it all the more important that all parts
3 of this in the redactions are exposed to public scrutiny
4 and that we, representing the family, are not excluded
5 from that process.

6 Then just over the page, sorry, over the page on
7 paragraph 29, this is probably the last point that
8 I will make -- I will just check.

9 Just the importance of public and family scrutiny in
10 this type of case and the case of Ramsahai and the quote
11 there, can I just -- I know you have seen it before but
12 it is worth repeating what is at stake here is nothing
13 less than public confidence in the state monopoly on the
14 use of force.

15 Sir, you have had our submissions in writing but
16 I just emphasise those points, particularly when you
17 come to go into closed session.

18 THE CHAIRMAN: Yes, thank you, Mr Thomas.

19 Mr Wetherby.

20 Submissions by MR WETHERBY

21 MR WETHERBY: Very briefly, I endorse those comments.

22 THE CHAIRMAN: I will make sure that I've got your...

23 MR WETHERBY: Indeed. As I understood Mr Beer's invitation,
24 it was that I would address the points in my written
25 submissions about closed hearings after you have dealt

1 with the redaction material. May I take that as being
2 the process?

3 THE CHAIRMAN: Yes.

4 MR WETHERBY: I will be very brief then in terms of the
5 process that you are dealing with at the moment. I echo
6 the comments made about open justice. Of course, we are
7 not privy to the material that you are considering, so
8 that presents us with a considerable difficulty in
9 making the submissions and we can only deal with this in
10 principle but it also means I can be much shorter.

11 What concerns us, looking in from the outside of
12 this process is that, in a case which doesn't obviously
13 affect national security or indeed matters for example
14 of terrorism, we have a position where there are a very
15 large number of anonymity applications, there are more
16 than 6,000 redaction proposals, and of course presently
17 envisaged two weeks of closed sessions. It is the sheer
18 scale of it which we are concerned about.

19 Now, of course, I reiterate not having seen the
20 material, then it may be that at the end of the day, you
21 will rule so be it, but what, with respect, we are
22 hearing from Mr Beer in the submissions is that in fact
23 proposals are being made on a very wide basis indeed and
24 I simply want to flag up in the careful protocol that
25 was promulgated about this matter, that the Inquiry

1 called for restraint from the public authorities in
2 respect of making the proposals.

3 No doubt your team has been working extremely
4 carefully to go through these matters in as short
5 a period of time as is available, but what we are
6 concerned about is that matters will be dealt with on
7 a class basis, where they need to be considered on
8 a contents basis, and where matters will simply go
9 through because of the enormous number proposals that
10 have in fact been made. That is the concerns we have
11 about that.

12 Further to that, we would raise that in some of
13 these proposals it may be that the Inquiry can tell us
14 about categories of the material that we can make
15 further submissions about.

16 I know Mr Beer has dealt with some of the categories
17 this morning about that, but we would ask that, as this
18 process is ongoing, where information can be given to
19 us, then it should be given to us. Because as far as
20 possible, to make this difficult part of the process of
21 preparation effective, then we should be involved as far
22 as possible.

23 Those are the only submissions I would make about
24 this part of the hearing. If it is of assistance I will
25 be very short after this is dealt with in terms of the

1 closed hearings points.

2 THE CHAIRMAN: Yes. Thank you.

3 Mr Beer.

4 MS WHYTE: Sir, I would like to say something in open
5 session, please.

6 THE CHAIRMAN: Certainly.

7 MS WHYTE: Principally for the benefit of other core
8 participants.

9 Submissions by MS WHYTE

10 MS WHYTE: First I would like to acknowledge, certainly on
11 behalf of the Greater Manchester Police, the enduring
12 and careful industry of counsel to the Inquiry in
13 relation to the process of redaction and restriction.
14 It is no mean feat and we are very conscious of the work
15 that has gone into it.

16 The GMP are also very conscious of and endorse the
17 view that privacy and secrecy create more problems than
18 they solve. We hope that some comfort can be taken from
19 the fact that in relation to an enormous volume of
20 material, relating to highly complex and covert series
21 of operations, there in all probability is only one
22 matter which requires our attendance at a closed hearing
23 in terms of redaction and restriction. I hope and will
24 expect the core participants to take the comfort from
25 that that they should.

1 The task of considering redactions has been enormous
2 and it has been a trickled but consistent task by
3 necessity. The priority has always been to provide as
4 much documentation as possible and as quickly as
5 possible to core participants. This has historically
6 and indeed contemporaneously necessitated at times
7 an over rather than an undercautious approach to
8 redaction. But overcaution should not be interpreted by
9 others participating in this important Inquiry as
10 obstructive self-interest.

11 You, sir, and your counsel, have always had open
12 access to all of the unredacted material and you have
13 had it, as have your counsel, in a form which openly
14 indicates the natures of the redactions being made at
15 any given time.

16 Viewing it as a whole has been an enormous task and
17 one that has been taking place incrementally but finally
18 in one fell swoop very recently. So documents such as
19 the Cousens or the Hurst notebooks which ordinarily
20 never see the light of day in any other type of
21 proceedings had been anticipated to be reviewed earlier
22 than now and if they hadn't that is not out of self
23 interest but as a result of the sheer task that everyone
24 has to perform in relation to this complex matter.

25 We are also profoundly conscious that core

1 participants and in particular the family should have
2 and expect to have maximum permissible access to
3 material which touches upon the circumstances in which
4 Mr Grainger died and upon your terms of reference. We
5 take no issue principally with any of the submissions of
6 law made by core participants and by counsel to the
7 inquest.

8 This is an important Inquiry and the public interest
9 engaged by it is, likewise, important and we fully
10 recognise that.

11 To deal with Mr Wetherby's submission, it should not
12 be assumed from the number of redactions that the
13 redactions lack discrimination or merit. Many relate
14 solely to other people's data and an overcautious
15 approach has been taken because we have a responsibility
16 to protect other people's data. Many, as we hope will
17 be apparent, relate to pending voluminous anonymity
18 applications. It doesn't take much imagination to
19 appreciate that somebody's name might be repeated in
20 documents over and over and over again.

21 In addition to that, a significant number of lengthy
22 documents have been duplicated over various bundles
23 which means that redactions in one have to be repeated
24 in all of the others and that, of course, multiplies
25 mathematically the number of redactions. Where counsel

1 to the Inquiry have indicated that third party data in
2 their view is relevant, it is in the process of being
3 unredacted. We hope the core participants will hear
4 that in the spirit in which it is intended.

5 You have now made anonymity rulings and as a result
6 of those rulings the process of unredaction can also
7 likewise continue, we hope as quickly as time permits.

8 It should not be assumed that redactions are
9 cynically convenient to the Greater Manchester Police,
10 or designed to prevent the anxious scrutiny which their
11 actions as a state agency should quite properly attract
12 in proceedings of this sort. Certain of the redactions
13 are entirely consistent with approaches taken by other
14 national and local law enforcement agencies and are not
15 particular to GMP or to the circumstances of
16 Mr Grainger's death. Indeed, it can be openly stated
17 that in some respects, it would suit GMP greatly to
18 unredact some of the material because they would wish to
19 place relevant reliance on it as much as possible. We
20 note also in the open submissions, understandably,
21 a reference to any previous inconsistency on the part of
22 GMP and notably in relation, for example, to the
23 response given to the Arundale report. Can I assure all
24 of those who are listening to these submissions that any
25 inconsistency has been inadvertent and reflects the

1 duration and the scale of the task in hand. It is
2 an exercise which has been and will continue to be
3 conducted in good faith and with open and collaborative
4 lines of communication with your counsel.

5 One remaining area in contention which perforce must
6 be dealt with in closed hearing is and relates to
7 an issue which law enforcement agencies, their staff and
8 prosecuting authorities are by guidance expected to
9 defend. It relates to a class of material which is
10 subject to applications to protect it day in and day out
11 by agencies other than the Greater Manchester Police and
12 in that sense our stance, whether right or wrong,
13 whether merited or unmerited, is consistent with the
14 approach of other agencies, as we understand it to be,
15 and we hope that the core participants will appreciate
16 that fact.

17 I don't think there is anything more I can usefully
18 say in open proceedings. Thank you.

19 THE CHAIRMAN: Thank you, Ms Whyte.

20 Shall we go straight into the closed session at this
21 point or is there anything else you want to say at this
22 stage in front of the core participants?

23 MR BEER: No, thank you.

24 THE CHAIRMAN: Thank you very much.

25 MR BEER: I think if you would rise for a moment while we

1 sort out the logistics of the room.

2 THE CHAIRMAN: Can I leave the material I have here?

3 MR BEER: Yes.

4 (11.21 am)

5 (Proceedings continued in closed session)

6 (12.40 pm)

7 MR BEER: Sir, thank you. I think as events have unfolded,
8 it has been unnecessary for you to go into open session
9 in relation to the issue that we have just held a closed
10 hearing about.

11 THE CHAIRMAN: Yes, right.

12 MR BEER: We will now move on with the remainder of the
13 issues --

14 THE CHAIRMAN: Yes.

15 MR BEER: -- to be discussed, which I think is
16 Mr Wetherby's, or part of Mr Wetherby's submissions, the
17 longer ones, dated 12 December.

18 THE CHAIRMAN: Yes.

19 MR BEER: 2016. The floor is his.

20 Submissions by MR WETHERBY

21 MR WETHERBY: Thank you very much. It is the submissions
22 headed "Closed hearing submissions on behalf of
23 Gail Hadfield-Grainger". I will be very succinct,
24 because we have set out our position in as much detail
25 as we thought appropriate.

1 THE CHAIRMAN: Yes.

2 MR WETHERBY: In short order, if there are to be closed
3 hearings, and evidence heard in closed session, then our
4 submission is that there should be a protocol which sets
5 out the process. Now it may be very, very simple in
6 practice what happens, because it may be that there is
7 a limited amount that the Inquiry could say publicly
8 about this. But obviously, and again I hope I am not
9 taxing patience here with rolling back to the
10 principles, but the idea of closed sessions and closed
11 evidence is such a departure for an open justice that
12 the Inquiry ought to concentrate at each stage, once it
13 decides that it is necessary, on what information the
14 Inquiry can indicate, not simply to the core
15 participants but more generally.

16 Not least to allay suspicions about what it might
17 not be considering.

18 For example, it might be that if the Inquiry
19 determined that there was evidence that ought to be
20 heard in closed session, a short public ruling might say
21 something along the lines that, "The Inquiry has
22 anxiously considered the position and determined for the
23 following short reasons that this evidence must be heard
24 in closed session and the Inquiry intends to hear six
25 witnesses on a subject which relates to intelligence in

1 the month before the shooting".

2 Or, for example, "12 witnesses relating to
3 intelligence on the day of the shooting". Therefore, to
4 give as much information as is possible.

5 At paragraph 5 we have set out the very simple
6 stages that we would invite the Inquiry to put into
7 a protocol. Dealing only with the fourth of those, so
8 moving on from the submissions I have made, that if
9 there are to be closed sessions and closed evidence, the
10 next question is: what happens with that evidence?

11 Our concerns, and we set it out in greater detail in
12 writing, but our concerns are that part of the key
13 sections of the terms of reference are what intelligence
14 the decision makers had, when they had it, what the
15 quality of that intelligence was, the timing of it.
16 Matters such as that.

17 In our submission, of course not knowing what the
18 subject evidence that we are considering here is, but in
19 our submission: to a high degree it ought to be possible
20 to gist and summarise whatever the closed evidence is.
21 Even if the closed evidence relates to material that
22 cannot as a matter of law be adduced in public. That
23 prohibition relates to the source rather than the
24 content, and therefore, with some careful consideration,
25 we submit that it should be possible to convert any

1 evidence that is heard in closed into a disclosable
2 format, which can be put into the open hearings and can
3 therefore form part of the open and effective process
4 that we are all trying to achieve.

5 We have set out, as I say, from 16 onwards, and then
6 from 19 onwards, the importance of this approach to this
7 particular Inquiry, and I don't intend simply to read
8 through that. But it is clear in our submission that
9 there is a reliance on neither confirming nor denying,
10 there is a reliance on public interest matters, that in
11 our submission will have to be dealt with and it can
12 only be dealt with in the way that we are submitting.

13 Therefore, we would seek that the Inquiry gives some
14 further consideration to a process and a process that
15 can be promulgated to us as well so that we know what
16 will happen if and when there is closed evidence heard.

17 I am not sure I can assist further than that.

18 THE CHAIRMAN: Thank you.

19 MR BEER: Before I respond --

20 THE CHAIRMAN: I think Mr Thomas may want to..

21 MR BEER: -- I don't know whether other core participants
22 want to speak.

23 THE CHAIRMAN: Yes.

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Submissions by MR THOMAS

MR THOMAS: Sir, can I endorse what has been said just now.
Can I also just draw your attention to the very brief way we have dealt with this at paragraph 44 in our submissions. It is a short point, that, given what has been said about closed sessions -- I just really align myself to what Mr Wetherby has said and just remind you of the principle of what is set out there.

THE CHAIRMAN: Thank you. Anybody else? No.

Response submissions by MR BEER

MR BEER: Three points.

We will notify core participants if a minister issues a restriction notice, none has been issued to date.

Secondly, if you make a restriction order in relation to closed proceedings, the core participants will be told in the same way as you did in paragraphs 101 to 105 of your anonymity ruling of 9 December, setting out as much as you could in an open ruling for the grounds for so ruling.

As to Mr Wetherby's third point, we will give consideration, even anxious consideration, to gisting evidence after it has been heard. But we wouldn't recommend to you, as I think he suggests in his submissions, that there be a gist of your views as to

1 the credibility of that evidence, even on a provisional
2 basis, for reasons too obvious to state.

3 We will give consideration to whether it is possible
4 to gist the evidence or some of it in the closed
5 hearings after it has been heard.

6 THE CHAIRMAN: Right. Thank you.

7 MR BEER: Sir, I don't think there is anything else to
8 discuss today. We set on the last occasion a timetable
9 for the beginning of the hearings, openings, closed and
10 then open evidence. We are still obviously progressing
11 the issue of the redaction documents.

12 THE CHAIRMAN: Yes.

13 MR BEER: And separately we are progressing other disclosure
14 requests with the core participants, in particular
15 Greater Manchester Police.

16 We received yesterday 564 pages of emails and other
17 material from Greater Manchester Police in response to
18 a disclosure request, material that we had not seen
19 before. We will work very quickly to ensure that that
20 is assessed for its relevance and then goes through the
21 redaction exercise.

22 THE CHAIRMAN: I am grateful to everybody, as I know
23 a number of people have been working very, very hard in
24 relation to this so I am grateful to everybody
25 concerned.

1 MR BEER: Sir, unless there is anything else, that is the
2 business for today.

3 THE CHAIRMAN: Thank you very much. All right then, this
4 hearing is closed.

5 There is no need for any further hearing before we
6 begin on 17 January?

7 MR BEER: No. Thank you.

8 (12.52 pm)

9 (The hearing concluded)

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