

THE BIRMINGHAM INQUESTS (1974)
FURTHER NOTE BY THE CORONER’S LEGAL TEAM
ON DISCLOSURE FOLLOWING THE PRE-INQUEST REVIEWS
IN DECEMBER 2018 AND JANUARY 2019

Introduction

1. At §50 of his Ruling of 31 December 2018 (‘the December 2018 Ruling’), the Coroner to the Birmingham Inquests (1974), HH Sir Peter Thornton QC, requested that his legal team (‘the CLT’):

set out briefly in writing the nature of the past, present and ongoing disclosure process, if and when PII hearings will be heard, the question of redacted material and dealing with particular areas of concern as expressed by [Counsel instructed by the Jackson Canter families] (including, for example, as much information as possible on the two missing Government files).

2. This Note is the response to that request. It deals with the following topics.
 - (i) Principles of disclosure, disclosure in these inquests and the role of the Coroner’s Legal Team
 - (ii) Searches and disclosure relating to West Midlands Police (‘WMP’)
 - (iii) Searches and disclosure relating to by Her Majesty’s Government (‘HMG’), including the Security Service (‘MI5’), the Secret Intelligence Service (‘SIS’), the Ministry of Defence (‘MOD’), the Foreign and Commonwealth Office (‘FCO’), the Cabinet Office and the Home Office
 - (iv) Material found to be missing by HMG
 - (v) Searches and disclosure relating to other organisations and individuals
 - (vi) Public Interest Immunity
 - (vii) Anonymity and redactions
 - (viii) Issues raised by Interested Persons at recent Pre-Inquest Reviews
 - (ix) Outstanding issues

Principles of disclosure

3. A coroner has a statutory duty to investigate a death with which he or she is concerned.¹ The purpose of that investigation is to ascertain the answers to four statutory questions – who died, when, where and how – and to identify the particulars required for a death to be registered.²
4. At the start of an investigation a coroner may take a wider approach to seeking documents and evidence from organisations and individuals who may be able to assist. As material is received and reviewed, the investigation is likely to become more focussed. The analogy of a funnel has been used to explain this process.³
5. During the course of an investigation a coroner may make rulings on the scope of the inquest. These will further direct the work of identifying documents and evidence that may be of relevance.⁴
6. The process described above concerns the first stage of the process of disclosure: disclosure to the coroner. The next stage is to consider disclosure from the coroner to Interested Persons. This is a distinct stage, requiring decisions to be made according to the relevant statutory rules.⁵ As the (current) Chief Coroner has stated in a recent Guidance note, *'it is often the case that the coroner will receive a larger body of material than they disclose to Interested Persons.'*⁶
7. The relevant rules are rr. 13, 14 and 15 of the Coroners (Inquests) Rules 2013 (SI 2013/1616) ('the Inquests Rules 2013'). The effect of these is as follows.
 - a. Where an Interested Person asks for disclosure of a document held by the coroner, then the coroner *must* provide that document where he or she considers it to be relevant, except where one of the conditions in Rule 15 is met.⁷

¹ Section 1, Coroners and Justice Act 2009 ('CJA 2009').

² Section 5, CJA 2009.

³ *R (Lewis) v Mid and North Shropshire Coroner* [2009] EWCA Civ 1403, [§26].

⁴ See Chief Coroner Guidance No. 30, *'Judge-led Inquests'*, [§19].

⁵ *Worcestershire County Council and another v HM Coroner for Worcestershire* [2013] EWHC 1711 (QB). See also the Chief Coroner's Law Sheet, no. 3, *'The Worcestershire case'*, and the Chief Coroner Guidance No. 30, *'Judge-led Inquests'* [§§19-20].

⁶ The Chief Coroner, Guidance No. 30, *'Judge-Led Inquests'*.

⁷ Rule 13.

- b. Those conditions include there being a statutory or legal prohibition on disclosure, or the document relates to contemplated criminal proceedings, or the coroner considers that the document is irrelevant to the investigation.⁸
- c. Where one of the conditions is met, then the coroner *may* refuse to provide disclosure.⁹
- d. Thus if the coroner considers that a document is not relevant to the investigation, then he or she has a discretion as to whether or not to disclose it, on request, to Interested Persons. This will be referred to as ‘voluntary disclosure’ in this Note. It contrasts with the compulsory disclosure that the coroner must make of a relevant document where none of the conditions in Rule 15 are met.
- e. The coroner has a power to disclose redacted versions of documents.¹⁰ He can also provide disclosure electronically rather than in hard copy.¹¹

Disclosure in these Inquests

- 8. In these Inquests, the Coroner has been assisted by the CLT, comprising solicitors and barristers. The CLT are independent. They are instructed to assist the Coroner in his work. This is common in inquests involving large amounts of evidence or complex questions of law. Given the huge amount of material generated in respect of the bombings of 21 November 1974, it would be impossible for one person to conduct a full and thorough review of the potentially relevant material.
- 9. The CLT have, therefore, reviewed the *potentially* relevant material that is discussed in this note. They have been informed by the decisions made by the Coroner, following submissions and hearings, on the scope of the Inquests. In turn, they have kept the Coroner fully informed of their work at all stages. The CLT have inspected material held by organisations and individuals and have, in many instances, requested that this be provided to the Coroner. In general, the Coroner has disclosed the material that he has received to Interested Persons without waiting for them to request it.
- 10. This has included much material that is not relevant to the scope of the Inquests, but which has been disclosed voluntarily – for example, the Interim and Final Reports of Operation

⁸ Rules 15(a), (d) and (e).

⁹ Rule 15.

¹⁰ Rule 14(b), Inquest Rules 2013.

¹¹ Rule 14(a), Inquest Rules 2013.

Aston and Operation Review. This was intended to inform Interested Persons of previous investigations into the bombings, of specific topics raised by those investigations, and about the types of evidence obtained by Devon and Cornwall Police and WMP in the 20 years following the bombings. It is also intended to indicate to Interested Persons the nature and extent of the Coroner's investigation.

11. In some instances, the Coroner has not disclosed material that he has received or reviewed. This is because that material is not relevant to the Inquests, having regard to the Coroner's decision on scope generally, or his specific decisions made in respect of individual documents or classes of documents. It is important to keep in mind the distinction between *potentially relevant* material – that which was identified as being worthy of review – and actually relevant material – that which the Coroner is under an obligation to disclose under rules 13 and 15 of the Inquests Rules 2013.¹²
12. As the Coroner made clear in his December 2018 Ruling, he has acted throughout the disclosure process in accordance with the Inquests Rules 2013 and standard practice.¹³
13. At the time of writing, the Coroner has disclosed 2,916 documents comprising 28,593 pages.
14. Throughout the disclosure process, the Coroner and the CLT have provided detailed and regular updates about the work being undertaken. These have been provided in notes and at hearings.¹⁴ The CLT have also maintained an 'open door' policy to Interested Persons. This has resulted in suggestions being made by Interested Persons that have led directly to further searches being undertaken, for example those relating to Operation Kenova and the Belfast Project (on which, see below). The CLT have been willing, and remain willing, to discuss any disclosure issue with Interested Persons should that be of assistance.

Searches and disclosure relating to WMP

15. In 2012, WMP established Operation Castors, which was initially intended to '*consolidate, understand and preserve all material gathered in previous investigations and to assess if the conclusions and recommendations contained in the material remain valid.*'¹⁵ Part of the

¹² See §54(2) and (3) of the Coroner's December 2018 Ruling.

¹³ See §54(11), and §54 generally, of the Coroner's December 2018 Ruling

¹⁴ See the notes of 14 September 2017, 16 November 2017, 6 March 2018, 30 October 2018 (on the Agent/Informant issue), and 27 November 2018 (on the Forewarning topic).

¹⁵ ACC Cann's report of 7 August 2017, §§289-293.

work of Operation Castors was to obtain material relating to the bombings of 21 November 1974 and to consolidate it in its own archive. That archive is voluminous. It contains material from WMP investigations and the investigations undertaken by the Devon and Cornwall Police. It also includes material generated by other police forces which was identified as being of potential relevance to the bombings of 21 November 1974.

16. Prior to the resumption of these Inquests, WMP made disclosure to the Senior Coroner for Birmingham and Solihull, Ms Louis Hunt ('the Senior Coroner'). WMP also provided submissions to provide context for and a summary of the documents that they had provided. Further disclosure and submissions were provided after the Senior Coroner's decision to resume the Inquests. In all, six submissions were received, and numerous documents were disclosed to the Coroner and to Interested Persons to accompany them.
17. The CLT have reviewed both the material disclosed to the Senior Coroner and the WMP archive, to which they were granted full access. A detailed explanation has been provided of the review that was undertaken of it.¹⁶ In short, this involved the following:
 - a. Opening all of the boxes held by WMP in their archive, including those containing materials generated by the original investigation, by Devon and Cornwall Police during Operation Aston, by WMP during Operation Review, and by WMP during Operation Castors (see §19 of the 30 October 2018 Note for details of the extensive volume of material involved).
 - b. Comparing the contents of those boxes against the indices prepared by WMP through its HOLMES accounts.
 - c. Selecting materials from the indices and the boxes to read and consider for disclosure. This included reading the contents of the Senior Investigating Officer's Cabinet, which were classified as SECRET and TOP SECRET.
 - d. Obtaining electronic copies of material considered to be of potential relevance, which was then subject to detailed review prior to a decision being taken on disclosure to Interested Persons.

¹⁶ See §§19-28 of the Note of 30 October 2018.

- e. Requesting WMP to conduct further searches or produce notes on matters of interest identified by the Coroner or the CLT. The notes, and the underlying materials on which they were based, were then considered by the Coroner and the CLT for onward disclosure.
 - f. At the Coroner's request, WMP reviewed obsolete storage devices such as floppy disks, tapes and microfiche archived to ensure that material was not missed.
18. This exercise involved many months of work by members of the CLT. This included members of the CLT spending weeks at the WMP archive physically checking each box and reading selected materials. This was followed by the review of selected material that was provided electronically to the Coroner, a process that took many weeks to complete. Throughout the period during which the Coroner's investigation has been active, the CLT have made numerous additional requests to WMP for further searches to be undertaken or further documents or reports to be produced. This has all taken place *in addition to* the extensive disclosure and submissions made by WMP to the Senior Coroner prior to her decision to re-open the Inquests.
19. Throughout this process, the CLT have adopted a broad approach to what may constitute a relevant document. The Coroner has been fully informed of the ongoing work and has made decisions on relevance. Where material was assessed to be of relevance to the Inquests, it was disclosed. A large amount of material that is not relevant was also disclosed by the Coroner on a voluntary basis, including the reports of Operation Aston and Operation Review. These had not previously been made available to the families.
20. Counsel to the Inquests made the following observation at §11 of their submissions dated 5 December 2018.

In the course of this investigation, the Coroner's legal team (CLT) have received full co-operation from each and every organisation that they have approached. Where searches have been requested, they have been conducted, with the results provided to the CLT. Where extant papers have been identified and requested, they have been provided. No request for access to information has been refused. The Coroner has been kept informed of the work conducted throughout, and has himself reviewed some of the relevant materials.

21. This observation is repeated in respect of the co-operation provided by WMP.

Searches and disclosure relating to HMG

22. The first request for HMG to conduct searches relating to these Inquests was made by the Senior Coroner at a time when she was considering the application to re-open the Inquests. The Coroner subsequently renewed the request and made further enquiries. These are set out in CLT's Note of 30 October 2018,¹⁷ and in the witness statement of Ellie Oakley dated 5 December 2018.¹⁸ The same statement described the methodology applied and the searches undertaken by HMG.¹⁹

23. Among the search requests made by the Coroner are the following:

a. Two general questions, posed in the following terms:

Are you aware of, or in possession of, any evidence that confirms or suggests that any state agency, including [name of recipient of the letter], had or had received advance notification of the Birmingham pub bombings?

Are you aware, or in possession of any evidence that confirms or suggests that any state agency, including [name of recipient of the letter] covered up information regarding the Birmingham pub bombings to protect an informant?

- b. Specific requests relating to the activities of James Kelly and Kenneth Littlejohn, and their involvement with (i) the intelligence agencies, and (ii) the Provisional IRA or other republican groups in the period 1 January 1974 to 31 December 1975.
- c. A specific request concerning information about another named individual.
- d. Requests relating to evidence concerning threats made to the wife of Witness B.
- e. Requests relating to evidence about a former British soldier making reports to British Army Intelligence and others about the activities of other individuals (on which, see below).
- f. Requests to review the minutes of the Joint Intelligence Committee ('JIC') and the Ireland Current Intelligence Group ('CIG'), a sub-group of JIC, for the period 20 October to 20 December 1974.
- g. A request to review any intelligence briefings from the same period.
- h. A request for searches to be made relating to the suggestion that members of MI5 may have been involved in a surveillance operation in Birmingham on the evening of 21 November 1974. This request was linked to the evidence of John Tonkinson.

¹⁷ §§10-18.

¹⁸ §§10-14.

¹⁹ §§15-17.

24. As Ms Oakley explains, a ‘pot’ of *potentially* relevant material was identified by those searches. This was reviewed by the CLT, a process that took, cumulatively, a number of weeks. The review was undertaken at the Home Office, MI5, SIS, the FCO and the Cabinet Office.
25. This review included reading (in full) three files from the Prime Minister’s Office that refer to Kenneth Littlejohn and have a date range of 22 November 1972 to 6 February 1974.²⁰ These files are retained by the Cabinet Office under s.3(4) of the Public Records Act 1958, and hence are not accessible to the public. The files contained nothing that was assessed to be of relevance to the Inquests whether relating to any of the four potential scope issues, or otherwise. As such, nothing fell for disclosure. Some of the families have expressed a desire to review those files themselves.²¹ As the information contained within them is sensitive, and is not relevant to the Inquests, it is difficult to see how disclosure could be effected by the Coroner in line with his legal duties and powers. However, it is open to the families to make a Freedom of Information Act request for such material to be provided to them and/or be placed in the public domain at the National Archives.
26. It is relevant to note that a further file from the Prime Minister’s Office, PREM 16/2133, which covers the period from 17 March 1974 to 10 April 1979 – including the time at which the pub bombings took place – is held at the National Archives and is open for public inspection. The CLT have reviewed this (and other) files at the National Archives and, as is explained below, material from them is being considered for disclosure.
27. The CLT informed the Coroner of their work and the Coroner inspected a number of potentially relevant documents.²² The CLT also ‘*questioned and probed throughout the process, asking for stones to be turned over and further avenues to be explored*’.²³ No request was refused. The CLT repeat the observation on co-operation made in the submissions of 5 December 2018, as set out above.
28. At the conclusion of this process, it was determined that no document fell to be disclosed from the MOD, the FCO, SIS or MI5 as none were relevant to the scope of these Inquests.²⁴

²⁰ PREM 15/1705, PREM/1706, PREM 15/2139. See §36 of the CLT Note dated 30 October 2018.

²¹ See submissions of KRW Law dated 13 December 2018, at §27.

²² See Note of 30 October 2018, §31.

²³ Transcript of the Pre-Inquest Review of 17 January 2019, p.23.

²⁴ A small number of Home Office documents are being considered for disclosure. These relate to policies and procedures for dealing with bomb threats, on which see below.

It has been suggested that this amounts to a claim by HMG that those departments and agencies hold no papers relating to the Birmingham pub bombings. That is incorrect. HMG has made no such claim. The CLT expect that there are many government papers referring to the Birmingham Pub bombings, and indeed that is borne out by material available at the National Archives and otherwise in the public domain. The requests made to HMG were to search for documents relating either to forewarning of the bombings, or to the involvement of an agent or informant in them. Those are the searches that returned no relevant material.

Material found to be missing by HMG

29. As is set out above, among the documents requested by the Coroner were the minutes of meetings of the JIC and the CIG, for the period 20 October 1974 to 20 December 1974. In the course of searches for this material, HMG found that two folders of records covering 1974 were missing. It is important to note that these folders had been found to be missing during an independent review of JIC papers undertaken by a Cabinet Office team in 2008, several years before any requests for searches were made by the Senior Coroner or the Coroner.
30. In order to better understand the significance of this ‘missing’ material, it may be helpful for the CLT to set out some of the JIC and intelligence material that they have seen during their research at various HMG locations.

The Joint Intelligence Committee

31. The CLT have reviewed a document dating from May 1974 in which it was proposed that the JIC should have regular reviews of affairs relating to Northern Ireland at about monthly intervals.
32. Other documents suggest that regular reviews of affairs in Northern Ireland were subsequently introduced, and were held every two months. The basis for saying that is that the file contains minutes of JIC discussions on Northern Ireland affairs held on 21 November 1974 and 23 January 1975, and then minutes on this topic from March 1975, May 1975 and July 1975.

33. From this the CLT conclude that they might have seen all JIC minutes concerning Northern Ireland affairs from the period requested. However, it is not possible to state this definitively on the material provided for review.

The Northern Ireland Central Intelligence Group

34. HMG located one document concerning the CIG, this being a report of a CIG meeting held on 26 November 1974. This is the only such document the CLT have reviewed.
35. The CLT conclude that they have not seen all of the material from this group from the period requested. The basis for saying this is that the same document from May 1974 to which reference was made earlier makes it clear that the CIG met regularly.

Daily Intelligence Summaries and Fortnightly Intelligence Assessments

36. The CLT have seen a complete set of the Daily Intelligence Summaries and the Fortnightly Intelligence Assessments prepared in respect of Northern Ireland affairs for a month before and a month after the bombings. The CLT are confident from the internal referencing of these documents that this is a complete set.

Summary

37. None of the material seen in these documents was assessed to be relevant to the Birmingham Inquests (1974). In particular, there was nothing in the documents that (i) confirms or suggests that any state agency had or had received advance notification of the Birmingham pub bombings, or (ii) confirms or suggests that any state agency covered up information regarding the Birmingham pub bombings.
38. The material reviewed included a complete record of the daily and fortnightly intelligence summaries for a period from a month before the bombings to a month after the bombings. It also included minutes relating to Northern Ireland from JIC meetings on 21 November 1974 (the day of the bombings) and 23 January 1975. Other evidence suggests that these might have been the only such discussions in that period. If that is correct, the only material

requested by the Coroner that the CLT have not seen are the minutes of the CIG from 20 October 1974 to 20 December 1974.

39. The CLT also note the comment by Counsel for HMG, Samantha Leek QC, at the hearing on 18 December 2018:²⁵

‘It would be surprising if there were materials in the [missing folders] that was not contained or reflected in the JIC minutes. Sir, your team have seen the minutes as requested ... [I]t would also be surprising if there were anything in those [missing] folders that were not to be found elsewhere within the disclosure that has been provided from other departments and agencies.’

Searches and disclosure relating to other organisations and individuals

40. The Coroner has made requests of a large number of other organisations and individuals for searches to be conducted and disclosure to be made. These include: the Crown Prosecution Service, the Ministry of Justice, the National Archives, the Metropolitan Police Service, the Police Service of Northern Ireland, the Hull History Centre (which holds the documents of the National Police Chiefs Council), the College of Policing, University Hospital Birmingham, Birmingham City Archive, West Midlands Fire and Rescue Service, West Midlands Ambulance Service NHS Foundation Trust, Mitchells and Butler (who managed the Rotunda in 1974), Prudential (tenants of Kind Edward House in 1974), the Criminal Injuries Compensation Authority, the Open University, Caters News Agency, Getty Images, Rex Features, the Press Association, the Media Archive of Central England, the Trinity Mirror Group, the *Birmingham Mail*, the British Film Institute, St John Ambulance, the British Red Cross, the Imperial War Museum, Sinn Féin, TOA Taxis, the Samaritans, the Fire Service College, Operation Kenova (a police investigation into allegations concerning alleged agent ‘Stakeknife’), Shakespeare Martineau (a legacy firm of the solicitors who represented James Kelly), Ed Moloney and the Belfast Project (an oral history project involving interviews with former paramilitary figures), Chris Mullin and many other witnesses.
41. The Coroner has disclosed relevant material from these sources to the Interested Persons. He has also made voluntary disclosure of some material that was not assessed to be relevant

²⁵ Transcript of the Pre-Inquest Review of 18 December 2018, pp.98-99.

to the Inquests. No relevant information from these sources has been withheld from disclosure for any reason.

Public Interest Immunity

42. An application for public interest immunity ('PII') may arise where a coroner intends to disclose to Interested Persons material that may damage the public interest. In such circumstances, a balancing exercise must be carried out between *'the competing public interests that harm should not be done to a public service ... and the public interest that the administration of justice should not be frustrated by withholding documents'*.²⁶ Examples may include disclosure of documents that might undermine national security, or which might reveal sensitive information about how the police or intelligence agencies undertake certain operations.
43. No public interest immunity application has been made in these Inquests. This is because there has been no instance where any individual or organisation has sought to withhold from disclosure evidence that the Coroner has determined to be relevant to the scope of these inquests.
44. As the Coroner made clear in his December 2018 ruling, there have been no informal PII decisions and no short-cuts to the proper procedures that should be followed.²⁷ Were an application for PII to be made, all Interested Persons would be informed, submissions would be invited, and the matter would be dealt with at a hearing, in keeping with usual practices.²⁸

Anonymity and redaction

Redaction

45. Some of the material disclosed by the Coroner has been redacted. Those redactions were provisional. They were made so that as much relevant evidence could be made available to the Interested Persons as early as possible.

²⁶ *Worcestershire County Council*, [§62].

²⁷ See §§51-54, and in particular §54(11).

²⁸ Inevitably, and also in keeping with usual practices, some of the proceedings would have to take place in closed session to allow arguments to be made about the material in question without revealing its contents publicly.

46. Some Interested Persons have raised concerns about the lack of explanation for some of the redactions. This tended to be in relation to material disclosed some time ago, whose relevance to the Inquest was often peripheral. In response, the CLT took on extra lawyers to conduct a thorough review of those redactions. This process has been underway for some months, is ongoing and will shortly reach its conclusion. At the end of the process, some redactions will be removed, and others will be explained further.
47. A lot of these redactions concern matters that may be characterised as data protection of personal information – for example addresses, dates of birth and such like. In many instances this is obvious, and requires no further explanation.
48. Other redactions are made on the grounds that material is both irrelevant to the Inquest, and also sensitive. An example may be a witness mentioning someone’s extra-marital affair in a statement, or a police report that contains details of a criminal offence that is unrelated to the events of 21 November 1974. In general, a witness expressing pure opinion evidence on the guilt of the Birmingham 6 is also being treated as sensitive and irrelevant. This material is being redacted so that the rest of the document can be disclosed to Interested Persons. It is a means of maximising both disclosure and transparency.
49. Material that is relevant to the scope of the Inquests has not been redacted. In order to withhold such information, a PII application would have to be made. As is set out above, there have been no such applications.

Anonymity

50. Certain witnesses have been referred to in disclosed material by ciphers – for example, Witness B or Witness O.
51. Again, these ciphers are provisional. Some (for example, ‘Witness S’) have been applied because the witness’ name is considered to be both sensitive and not relevant to the Inquests.
52. In other instances, the ciphers are in place as the Coroner may have a legal duty to protect the identity of a witness or someone referred to in the evidence – for example, because they

may come to harm if such steps were not taken. A provisional cipher has been used in order for material to be disclosed, and arguments to be made, before a final decision is taken.

53. Where such ciphers remain, the CLT are in the process of liaising with the relevant witnesses to see if they wish to make formal applications for anonymity. In some cases they have indicated that they do not, and in due course those ciphers will or may be removed. In other cases formal applications may be pursued. Work is ongoing in respect of those applications.
54. In some cases, a cipher has been used not because that individual is in danger or has requested anonymity, but because revealing his or her identity might identify someone else who is at risk.
55. It is an obvious but important point that great care must be taken. The sensitivities and the risks are real and substantial.
56. Where a witness whose identity would be relevant to the Inquests seeks anonymity, a hearing will be convened to allow submissions to be made by Interested Persons and the press.²⁹ The Coroner has given notice that the pre-inquest review on 11 February 2019 will be used for this purpose.

Issues raised by Interested Persons at recent Pre-Inquest Reviews

Merseyside Police

57. The families represented by KRW Law have suggested that further enquiries are made in respect of what they have termed ‘the Liverpool connection’.³⁰ This relates to the evidence disclosed by the Coroner in respect of the arrest of Arthur Peter Jolley, and other evidence relating to the discovery of a ‘bomb factory’ in Liverpool in 1975.
58. Material from Merseyside Police is contained within the WMP archive. This has been reviewed for relevance by the CLT. However, in light of the submissions made by KRW Law, the Coroner has instructed the Solicitor to the Inquests to write to Merseyside Police

²⁹ Again, some of the hearing may have to be private to allow for consideration of evidence that would otherwise reveal the identity of the applicant.

³⁰ See submissions of KRW Law dated 13 December 2018, p.16.

to request that searches are undertaken. An update will be provided in due course. WMP have also been asked to provide a note on the material that they hold, which will be disclosed to Interested Persons (subject to any legal arguments).

Policies, protocols and procedures

59. The families represented by KRW Law also made submissions that there should be disclosure of policies, protocols and procedures relating to the threat posed by bombs during the IRA mainland campaign. The CLT agree that such documents would be relevant to the Inquests, particularly those that refer to procedures for police forces dealing with bomb warnings. The CLT have sought such documents throughout the disclosure process, including from WMP, the Metropolitan Police Service, the College of Policing and the National Police Chief's Council. Details of the efforts made have been given to the Interested Persons through correspondence,³¹ an update note,³² and at the last Pre-Inquest Review.³³
60. Very few such documents have been identified. This may be because they simply did not exist; 1974 was a very different world to today. It may be because the relevant documents have been destroyed or lost at some stage over the four decades since the bombings. This is a matter that is best explored through witness evidence before the jury. If it is the case that there were no policies or procedures, or that individual police officers were not aware of them, then this may be a matter for the jury to consider in its deliberations.
61. However, in light of the submissions made by KRW Law, the Coroner has instructed the Solicitor to the Inquests to make further requests to relevant bodies for additional searches to be made to seek to identify such documents. An update will be provided in due course.
62. One document, emanating from the Home Office, has been identified by the CLT during an earlier review. This is presently with the Metropolitan Police Service, who requested an opportunity to see the document before disclosure to the Interested Persons in order to assess whether it contained sensitive information such as may give rise to a PII application. The CLT await confirmation from as to whether any such application will be made. This

³¹ See email of 26 May 2017.

³² See Note of 14 September 2017.

³³ Transcript of the Pre-Inquest Review on 17 January 2019, pp20-21.

matter is now pressing; if an answer is not forthcoming shortly, Counsel to the Inquests will consider seeking a direction from the Coroner in order to set a deadline for a response.

63. HMG have provided a link to a MPS public information film, seemingly dating from the 1970s, about the threat from terrorism.³⁴

The 'C' document

64. KRW Law have sought further disclosure of material connected with the 'C' document. As Counsel to the Inquests have previously explained, such documents have been reviewed by the CLT.³⁵ They reveal that there is no evidence that the individual who provided the information in the document, referred to here as 'C', was acting as an agent or informant prior to the bombings on 21 November 1974. This has been confirmed by a witness statement from William Squires, the police officer who interviewed 'C'.³⁶ The 'C' document, and the documents surrounding it, provide no evidence relating to the forewarning or agent/informant topics. While the CLT well understand the interest that the families have in the 'C' document – in particular its potential relevance to the question of which individuals were responsible for the bombings – it is not relevant to the Inquests.
65. The CLT have no doubt that were the 'C' document and the surrounding material to be disclosed on a voluntary basis by the Coroner, the vast majority of the material would have to be redacted. This would either be on the basis of a PII application made by WMP (which would be highly likely to succeed), or because redactions would have to be applied in order to prevent a real and immediate risk to life. The result would be that the documents, if disclosed at all, would be largely 'blacked out'. This would do nothing to allay rumour or suspicion and would not provide any basis on which to scrutinise the chronology set out above.
66. For these reasons, the CLT remain of the view that no further disclosure can or should be made.

Documents concerning Martin Foran

³⁴ <https://www.youtube.com/watch?v=Up3Mh2nR-4o>

³⁵ See Note of 30 October 2018, §§66-70.

³⁶ INQ004369.

67. The families represented by KRW Law requested that the Coroner obtain and provide the prison records of Martin Foran.³⁷ This has been done. The records show that Mr Foran was in prison at the time of the bombings and hence that there is no question that he could have provided forewarning of the bombings by attending a police station in Birmingham on 21 November 1974.

'The Young Planter'

68. The families represented by Jackson Canter have made representations about the reasons why Granada TV withheld the name of the 'Young Planter' while naming others at the conclusion of their 1990 dramatisation, *'Who Bombed Birmingham?'* The reason given on the broadcast was that the Young Planter was not named for *'security reasons'*. It was suggested that this may be of relevance to the Agent/Informant topic.

69. The CLT are making enquiries to seek to understand why the producers of the documentary took those decisions. An update will be provided in due course. It is, however, relevant to note that Chris Mullin has provided a statement to the Inquests.³⁸ *'Who Bombed Birmingham?'* is based largely on Mr Mullin's work. Mr Mullin's statement provides no support for the proposition that the 'Young Planter' was an agent or an informant, and suggests that Mr Mullin had no reason for believing that he was.

Outstanding issues

Talk of the Town

70. At the December 2018 Pre-Inquest Review, the CLT informed Interested Persons of ongoing work about what has been referred to as the 'Talk of the Town' issue. In short, there is some evidence to suggest that an individual, Witness W, may have provided information to WMP on the morning of 21 November 1974 about a conversation in which one person said that *'it's on/it's up for the Talk of the Town today'*.³⁹

71. Work has continued since the hearing. The Solicitors to the Inquests have conducted interviews with Witness X (said to have been part of the conversation), and two children of

³⁷ Submission of KRW Law dated 13 December 2018, §§51-56.

³⁸ INQ003919.

³⁹ Note, 27 November 2018, §§34-38.

Witness W. Statements are in the process of being finalised and signed, and relevant witnesses are considering whether or not to make applications for anonymity. The statements will be disclosed in due course, and all Interested Persons, and the media, will be informed of any applications for anonymity.

Material under review for disclosure

72. A small amount of material remains under review by the Coroner prior to a decision on whether it is relevant to the inquests, or whether it should otherwise be disclosed to Interested Persons. This includes the document referred to at §31 of the CLT Note of 30 October 2018, and material identified in material held for public viewing at the National Archives. This material is being considered in light of the Coroner's recent ruling on scope and evidence, and in light of the proposals made as to which witnesses should be called.
73. The CLT have also investigated a further matter that potentially relates to the forewarning topic. A document from the WMP archive suggested that a serving British soldier may have informed military intelligence and/or WMP of his suspicions about a named individual's involvement with the IRA in the West Midlands at or around the time of the bombings of 21 November 1974. The date on which any information was provided (if it was provided) was initially unclear from the documents. At first, it was believed that the soldier in question was either deceased or uncontactable. However, searches undertaken by the MOD revealed that he was alive.⁴⁰ He, and other individuals relevant to this matter, have now been interviewed. The general tenor of their evidence is that the soldier provided the information some years after the 1974 bombings. Further investigations continue.
74. The Coroner has not, at present, disclosed to Interested Persons any of the material referred to in the previous paragraph. This is in part because the investigations continue and a decision on relevance is best made at their conclusion. It is also because the information may touch upon the ongoing criminal investigation being conducted by WMP, meaning that this material may engage the exemption from disclosure under rule 15(d) of the Inquests Rules 2013. The Coroner will provide further updates in due course. All involved are aware that this, too, is a pressing issue.

⁴⁰ See statement of Ellie Oakley, dated 5 December 2018, at §§12, 17(c) and 20.

75. The Coroner also holds the un-broadcast ‘rushes’ of interviews conducted by BBC and ITV television crews with Michael Hayes and others in 2017 and 2018. These have been withheld from disclosure to date because of the ongoing WMP criminal investigation. The CLT propose that the Coroner direct that WMP make submissions on whether the rushes be withheld from disclosure. It is further proposed (i) that the submissions be shared with Interested Persons, insofar as it is possible to do so without jeopardising the criminal investigation, (ii) that Counsel to the Inquests, the Interested Persons and relevant media companies be given an opportunity to make their own submissions, and (iii) thereafter the Coroner determines whether the rushes should be disclosed, in whole or in part.

The Coroner’s Legal Team

5 February 2019